



RMID1064 - nbn Special Access Undertaking Variation 2021 – Discussion Paper

Submission by the Australian Communications Consumer Action
Network to nbn Co.

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About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards communications services that are trusted, inclusive and available for all.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will represent the views of its broad and diverse membership base to policy makers, government and industry to get better outcomes for all communications consumers.

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Contents

Executive Summary.....	4
Recommendations.....	4
Responses to RMID1064 - nbn Special Undertaking Variation 2021 – Discussion Paper.....	5
Overview and objectives of the SAU	5
Broader SAU Reforms	6
Long-term pricing reform	8
Proposed TC- 4 pricing constructs for consideration	9
Pricing construct: design considerations.....	11
SAU price controls	12
Entry level price control.....	13
Implementation and network impacts of the pricing constructs.....	13
Feedback on long-term pricing options.....	13
Options for low-income households	15
Potential withdrawal of “Basic” AVC and CVC Offers.....	17
Use of targeted discounts remains relevant and appropriate	17
Inclusion of MTM technologies	18
Other proposed SAU changes.....	21
Appendix A. Constructs wholesale charge comparison between May-22 Roadmap	22

Executive Summary

Nbn's Special Access Undertaking (SAU) provides the regulatory framework that determines the prices nbn can charge for wholesale phone and internet services, as well as the maximum amount of revenue nbn is allowed to earn each year. As a provider of these services with significant market power, the SAU is vital to ensuring that the nbn operates in a way that protects the long-term interest of end users.

The experience of the COVID-19 pandemic has demonstrated the essential nature of telecommunications, and nbn must be commended for keeping Australians connected during lockdowns. Having access to the NBN has allowed households to continue working, learning, staying in touch with friends and family, and accessing essential services such as health and government services. Yet ACCAN is concerned at reports from community organisations and consumers that there are households who do not have sufficient access to broadband to allow them to continue to fully engage with the economy throughout lockdowns.

One of the key challenges to becoming connected to the NBN is the price of the service. Given the SAU provides a mechanism for setting prices, the SAU variation is an opportunity to assist households that are either struggling to connect or are finding it difficult to remain connected, through the development of a targeted offer towards low income households.

Furthermore, now is a suitable time to consider the appropriateness of the SAU, prior to the potential privatisation of the network, to ensure that it is fit for purpose. It is unclear to ACCAN whether the two mechanisms designed to protect end users - the Maximum Regulated Prices, and the Long-Term Revenue Constraint Methodology - are currently operating as intended. The SAU variation provides an opportunity to ensure that the expectations of consumers are met, whilst supporting a competitive retail market and allowing nbn to recover the cost of delivering the service.

Recommendations

- For the Long-term Revenue Constraint Methodology (LTRCM) to be re-examined to ensure it is fit for purpose.
- For the Maximum Regulated Price to cover all access technologies and be updated to reflect the predominant method in which nbn's services are charged as well as the efficient cost of providing the service.
- Prices set in the SAU should be periodically reviewed in line with replacement modules.
- That any pricing changes are done in such a manner that ensures lower speed plans are an affordable option for consumers.
- Nbn should continue developing and implementing a targeted product aimed at improving affordability of services for low income consumers as initially planned as part of the 2021 Pricing Review, as well as the SAU variation process.
- Nbn should report information, publicly or to the ACCC, on the location, duration and number of services that are in remediation, and rebates paid.
- The Fixed Wireless speed performance rebate should increase with every subsequent month for which the wireless speed underperforms, and the performance metric for remediation of fixed wireless should be reconsidered.
- Evidence must be provided that incorrect call out charges are on a scale that causes significant business detriment to nbn before being applied.

Responses to RMID1064 - nbn Special Undertaking Variation 2021 – Discussion Paper

Overview and objectives of the SAU

ACCAN does not consider that the SAU ‘*continues to meet the objectives that it was designed to meet*’.¹ ACCAN questions whether the two mechanisms within the SAU designed to protect the long-term interests of end users, the Maximum Regulated Prices (MRPs), and the Long-term Revenue Constraint Methodology (LTRCM), are currently operating sufficiently to meet their objectives.

Long-term Revenue Constraint Methodology

The objective of the Long-term Revenue Constraint Methodology is to restrain nbn from earning monopoly rents via a revenue cap, whilst still enabling nbn to be able to recover the cost of providing the service plus an appropriate rate of return. Many others, including the ACCC,² have acknowledged that it is unlikely that the Initial Cost Recovery Account (ICRA) set out in the SAU will be extinguished during the duration of the SAU, which is set to expire in 2040. Frontier Economics modelling suggests that the ICRA will reach about \$70 billion by 2040.³

Whilst the ICRA remains positive, there will not be any direct constraint on the revenue nbn is allowed to earn. We have previously expressed our concern regarding the impact of a lack of revenue constraint on a monopoly provider of an essential service.⁴ If revenue is not constrained appropriately, there exists the opportunity for nbn to charge above costs, resulting in inefficiently high prices for end users. ACCAN is concerned that should the NBN be privatised with the current regulatory framework in place, the ICRA could be used to significantly harm consumers. Given the importance of the LTRCM, ACCAN has the following concerns regarding the methodology:

- That the Initial Cost Recovery Account is unlikely to be depleted.
- That the Weighted Average Cost of Capital used to calculate nbn’s revenue requirement does not accurately reflect the true cost of nbn’s capital.⁵
- To what extent the ICRA reflects efficiently incurred accumulated costs.
- The absence of appropriate time limits for nbn to recover the cost of its investment.

Whilst the revenue cap might not have much bearing on how nbn currently sets its price, ACCAN considers that it has an important role to play in protecting the long-term interests of end users, thus

¹ Nbn Co, 2021, *SAU Variation 2021 - Discussion paper*, pg.3.

² ACCC, 2021, *ACCC Industry Roundtable on regulatory arrangements under NBN Co’s Special Access Undertaking*.

³ Frontier Economics, 2019, *Writing down the NBN*, <https://www.frontier-economics.com.au/publications/writing-down-the-nbn/>.

⁴ ACCAN, 2020, *Submission to ACCC Long-term Revenue Constraint Methodology 2018-19 Draft Determination*.

⁵ Nbn Co’s weighted average cost of drawn debt is currently 3.17% and expected to decrease as nbn refinances more of their government loan. The LTRCM allowed for a nominal rate of return of 4.9% in 2019-20. <https://www.itnews.com.au/news/nbn-co-pays-3-billion-of-its-195-billion-government-loan-560876>

we think it is appropriate that these concerns are addressed as part of the current SAU process. Ultimately, we would like to see a LTRCM that appropriately restrains revenue.

Recommendation 1: For the Long-term Revenue Constraint Methodology (LTRCM) to be re-examined to ensure it is fit for purpose.

Maximum Regulated Prices

The Maximum Regulated Prices (MRPs) were designed to provide a level of certainty about the terms of access to Retail Service Providers (RSPs), to support retail competition. As the SAU was implemented in 2013, prior to the switch to the Multi-technology Mix, the Maximum Regulated Prices do not cover all access technologies from which nbn supplies its services. As such most aspects of the SAU including price controls, product development and withdrawal provisions only apply to services provided over nbn’s fibre, Fixed Wireless, and satellite networks. Additionally, the introduction of Bundles, whilst enabling greater take up of the services and creating consumer surplus, have also introduced a level of uncertainty for retailers given they can be removed, and prices set to the higher MRPs. Significant levels of uncertainty in wholesale costs for retailers pushes costs into the system which will ultimately be passed onto consumers.

ACCAN considers that the Maximum Regulated Prices should provide certainty of price for the services nbn sells.

Recommendation 2: For the Maximum Regulated Price to cover all access technologies and be updated to reflect the predominant method in which nbn’s services are charged as well as the efficient cost of providing the service.

Broader SAU Reforms

Rate of recovery of the ICRA

ACCAN considers that if the ICRA were to remain in its current form, then considering its rate of recovery may be a sensible option to ensure that there is some form of constraint on the annual revenues nbn is able to earn to provide price stability and limit the extent to which nbn can utilise its monopoly power each year.

Frequency of price reviews

ACCAN also considers that more frequent price reviews, potentially in line with ‘replacement modules’, where the prices are periodically incorporated into the SAU will assist with increasing certainty.

Recommendation 3: Prices set in the SAU should be periodically reviewed in line with the ‘replacement modules’.

Competition

Genuine competition to nbn's fixed line network may exist on the margins; predominantly in specific use cases and where households live in a 5G footprint and are able to afford those more expensive services. However, for the majority of households, nbn is the only wholesale provider of broadband to appropriately support their telecommunication needs. Whilst we do not know the cross elasticity of demand between fixed line broadband and wireless alternatives, we would assume that the two goods are indirect substitutes. This is acknowledged by the fact that mobile services are not required to fund the Regional Broadband Scheme. Thus, the statistic that 1 in 3 households are not connected to the nbn does not necessarily indicate a completely competitive market, as it is important to note there are other reasons why consumers have not yet connected to the nbn.

One of the key reasons a consumer may choose a wireless alternative to the nbn is affordability. 19.9% of Australians are mobile-only users, yet we know this type of use is linked to socio-economic factors, as the proportion of mobile-only users increases to 32.8% of people in the lowest household income quintile, 28.6% of those with low levels of education and 26.7% of the unemployed.⁶ Additionally, 33.5% of low income families with school aged children are mobile only internet users. Given the disproportionately high number of mobile-only households amongst households in lower socio-economic settings there will be a significant number of households amongst the 4 million not connected to the nbn who do so out of necessity, and not choice.

The Australian Digital Inclusion Index (ADII) states that being mobile-only reduces digital inclusion as it reduces the connectivity options available to a person as well as the amount of data allowance users have access to since mobile plans tend to have significantly lower data allowances than fixed line broadband plans. There is also a greater prevalence of prepaid users amongst mobile only users, which also depresses data allowance. Mobile-only users report lower affordability on the ADII, as mobile data costs more per gigabyte than fixed line broadband, furthermore mobile-only users are likely to be more restricted in heavy data use activities.⁷

So, whilst there may be some households that willingly opt for nbn alternatives, we consider that, if given the opportunity, there would be a significant number of households that would prefer a fixed line connection. As access to a fixed line broadband connection improves digital inclusion, ACCAN considers that all households should be given the opportunity to access one, regardless of their circumstances, within technological limits.

ACCAN agrees with the discussion paper that in areas where there is sufficient competition, price controls may not be necessary. Segments which are considered to operate in competitive markets such as the Enterprise market, should be considered in regard to how they are incorporated into the LTRCM as there is a need for greater transparency between competitive and non-competitive market segments.

⁶ Barraket et al., 2020, *Measuring Australia's Digital Divide: The Australian Digital Inclusion Index 2020*, RMIT and Swinburne University of Technology, Melbourne.

⁷ Ibid.

Long-term pricing reform

The 'user pays' principle is central to nbn's current pricing construct as set out in the SAU; that is as end users acquire higher speed services or increase their demand for data, nbn expects that they should pay for using that additional network capability. To a certain extent, consumers do expect to pay more where they receive greater benefits from the service, this includes receiving greater download and upload speeds, as well as access to greater data inclusions.

However, there is a significant proportion (approximately 83%)⁸ of the market where consumers have paid for budget certainty, by purchasing unlimited data plans. These consumers will struggle to understand why, when they have purchased an unlimited data plan, and are receiving the same internet speeds each year, they should experience real price increases. This potential outcome is created by the disconnect between the products nbn sells, and the products Retail Service Providers sell.

The extent to which consumers expect to pay more where they receive greater benefits from the service is influenced by the fact that the cost of delivering a GB of data has continuously fallen over time. Therefore, to a certain degree, consumers do expect to be getting greater value for their money over time, as this has been their experience. Where the user pays for the service, they should be paying a price equal to the cost of providing the service. If the cost of delivering data over the network has fallen over time, ACCAN would expect that either the service becomes cheaper, or more data is provided.

Additionally, the 'user pays' principle needs to take into consideration that the service nbn is providing is an essential service, and the nbn is the monopoly provider of that service. Whilst ACCAN agrees that the user should pay for the service they receive, they should not be paying monopolistic prices.

Lastly, prices need to be based on the service an end user receives. Nbn currently sells AVCs and bundles which offer a speed range for the same price as services which offer a set speed tier. It is unfair to end users to charge the same price when a different service is being delivered. For example, the AVC speed range of 25-100/5-40 Mbps over the FTTN and FTTB technologies is currently set at the same cost of the 100/40 Mbps AVC offered over other technologies.⁹ ACCAN is aware of instances where a consumer either has to downgrade to a 25Mbps service because the line is not able to deliver 50Mbps download speeds, or alternatively continue to pay for the 50 Mbps service even though the maximum speed they are receiving may be slower.

The SAU variation provides an opportunity to address the above issues, so that there is more alignment between wholesale products, and retail products whilst ensuring end users are paying a fair value for the service they use.

⁸ Roughly 8.2 million households are connected to the NBN, with 1.4 million households on data capped plans according to the Accenture report. <https://www.nbnco.com.au/corporate-information/about-nbn-co/corporate-plan/weekly-progress-report>

⁹ <https://www.nbnco.com.au/content/dam/nbn/documents/sell/wba/2021/sfaa-wba-nbn-ethernet-price-list-20210505.pdf>

Proposed TC- 4 pricing constructs for consideration

Construct 1

Construct 1 will see the variable (overage) charge decreasing from \$8 per Mbps to \$6 per Mbps whilst increasing the fixed charge between \$2-\$5 depending on the service speed. Voice only services will retain the current price of \$22.50 per month. The rebalancing of the variable charge with the fixed charge should reduce RSPs uncertainty and associated costs with sudden surges in data demand. ACCAN is unable to say whether this rebalancing goes far enough to ensure RSPs are able to better manage their CVC usage, but we would assume that the critical issues expressed by RSPs still exist with this pricing construct.

If this construct were to remain in place, we consider the overage charge should be reflective of nbn's cost of provisioning the extra capacity.

Construct 2

Construct 2 consists of retaining the variable cost at \$8 per Mbps for lower speed tiers, including the 12/1 Mbps, 25/5 Mbps and 50/20 Mbps services. The effective charge on the 12/1 Mbps and 25/5 Mbps service remains the same as proposed in the Pricing Consultation Paper 2 (May-22 Roadmap).

The effective charge for the 50/20 Mbps service in the May-22 Roadmap is \$45, with 2.65 Mbps of CVC inclusions. As part of the pricing in Construct 2, nbn has proposed to increase the effective charge to \$50, whilst providing 3 Mbps of CVC inclusions. ACCAN considers that the price for this service should remain as proposed in the May-22 Roadmap. It would be cheaper for RSPs to purchase the bundle on offer in the May-22 Roadmap at \$45, and provision an extra 0.35 Mbps to bring CVC inclusions up to 3 Mbps at an additional cost of \$2.80 (0.35 x \$8) than to purchase the \$50 bundle proposed in this pricing construct. Therefore, the May-22 Roadmap proposed effective charge and CVC inclusions provides better value than that proposed in construct 2.

Construct 2 also proposes that the overage charge be removed for higher speed tiers (100 Mbps download speeds and higher), and that this would be rebalanced with an increase in the fixed charge.

Retaining the variable charges on the lower speed tier will allow retailers to continue offering limited data allowances which are currently in the market. However, ACCAN would like to understand what proportion of 50/20 Mbps services are sold as unlimited plans. If the majority of 50/20 Mbps services are sold as unlimited data plans, this construct may not resolve the issue of CVC management and cost uncertainty associated with that speed tier. As this is the most popular service, it is important that the price construct is suitable.

To better support this price construct, ACCAN would like to understand if particular services create greater cost uncertainty for RSPs. If overall higher speed plans require RSPs to purchase overage, and manage CVC, compared to the lower speed tiers, then this option would provide greater cost certainty. That said, if retailers are finding that the lower speed tiers are the products where greater CVC management is required, then this construct would not be successful in resolving this issue.

Construct 3

Construct 3 proposes that all CVC charges are removed and AVC charges increase. Table 1 shows the price impact when overage charges are considered, by comparing the estimated wholesale charge of

the May-22 Roadmap provided in the discussion paper, and the fixed charge in an AVC-only construct. It is unclear why the entry level service must increase by \$5, a 17% increase in the estimated wholesale charge and the 25/5 Mbps service will see a 5 - 18% increase. At the same time some of the higher speed tiers (Home Superfast and Home Ultrafast) could see a reduction in the effective charge.

Table 1 Comparison of AVC-only pricing construct with the current May-22 Roadmap estimated charges

Bundle	Estimated wholesale charge May 22 roadmap¹⁰	Construct 3 proposed charge	Cost difference between Construct 3 proposed charge and May-22 Roadmap estimated charge	Percentage difference
ELB [12/1]	\$30	\$35	\$5	17%
B25 [25/5, 25/10]	\$38	\$40 - \$45	\$2 - \$7	5% - 18%
B50 [50/20] and Wireless Plus	\$51	\$51 - \$55	\$0 - \$4	0% - 8%
Home Fast [100/20]	\$58	\$60 - \$63	\$2 - \$5	3% - 9%
Home Superfast [250/25]	\$78	\$70 - \$76	-\$8. - -\$2	-10% - -3%
Home Ultrafast [1000/50]	\$95	\$82 - \$100	-\$13 - \$5	-14% - 5%
Premium [100/40]	\$ 65.00	\$67 - \$68	\$2 - \$3	3% - 5%

Nbn has expressed concern that these changes would reduce the affordability of nbn for low income consumers, and that 69,000 – 170,000 end users would no longer be able to afford to take up the service. Thus, the pricing proposals under this construct have been adjusted to account for potential losses in nbn take up. ACCAN questions whether the removal of CVC charges has to necessarily result in increased prices for the lowest speed tiers.

ACCAN considers that if CVC charges were to be removed, the rebalancing of prices necessary to ensure the construct change is revenue neutral should not disproportionately impact the slower speed

¹⁰ Nbn Co., 2021, *SAU Discussion Paper*, page 12. Estimated average wholesale cost of AVC and CVC product components, based on May-22 TC-4 Bundles Discount Roadmap charges including \$8/Mbps Overage rate and weighted average expected usage growth to 3 Mbps within the roadmap period.

tiers. This is important as the consumer impact of increasing the price of speed tiers 12-50 Mbps will be significant considering this covers 81% of nbn’s residential services in operation.¹¹ Nbn has currently not explained how it came to the proposed charges in construct 3.

If the nbn were to consider a pricing proposal that removes the CVC charge, but has minimal impact on the slower speed tiers this would reduce the concern regarding affordability and take up of service. This way, the pricing proposals do not need to account for losses in nbn take up. This would allow for a more meaningful discussion around how an AVC-only pricing construct could look. ACCAN recommends:

Recommendation 4: That any pricing changes are done in such a manner that ensures lower speed plans are an affordable option for consumers.

Pricing construct: design considerations

ACCAN questions whether nbn’s CVC charge allows the recovery of fixed costs of the nbn in the most efficient manner (i.e., allocative efficiency). Allocative efficiency is achieved where the price is equal to the marginal cost of production. ACCAN would be interested to know if the CVC charge reflects the marginal cost of producing the service.

Improving accessibility and affordability of broadband for Australians

As mentioned previously, ACCAN is concerned regarding the affordability of services for certain households. The Accenture research highlights the impact of an average price shock of \$120 a year in retail prices for households currently purchasing data capped plans. This is not an outcome ACCAN would want to see, and we recommend that nbn explore alternative pricing arrangements which would not negatively impact the prices of the lowest speed tiers.

Additionally, nbn should continue work to develop a product targeted towards low income households. This service is needed now to provide relief to households who are either struggling to stay connected or are excluded from the broadband market altogether. If nbn moves to implement construct 3 with the current proposed prices, the service will be needed even more to ensure households can stay connected.

Recommendation 5: Nbn should continue developing and implementing a targeted product aimed at improving affordability of service as initially planned, as part of the 2021 Pricing Review as well as the SAU variation process.

Enabling retail differentiation

In regard to peak hour performance retail differentiation, for speeds tiers of 50 Mbps and below it appears that most retailers advertise busy hour speeds as the maximum speeds attainable for that

¹¹ ACCC, NBN Wholesale Market Indicators Report, 2021. <https://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/nbn-wholesale-market-indicators-report>

speed tier. Thus, for the majority of services sold (81%)¹² there is not a lot of diversity regarding how busy hour speeds are retailed. This has likely led to many consumers expecting to experience speeds close to the speed tier they are purchasing at all hours of the day, including during peak hours.

ACCAN would prefer to see differentiation in regard to customer service and service standards rather than speeds. Retail differentiation needs to be designed with the key principles that consumers should be receiving the speeds that are advertised and purchased, and that the network should work appropriately for all consumers, and not just those who are able to afford a premium service.

Providing greater wholesale price and cost certainty to RSPs

As ACCAN has mentioned before, any construct which reduces unnecessary uncertainty and associated cost will benefit end users as the cost savings should hopefully be passed onto consumers.

SAU price controls

ACCAN agrees that nbn should have the ability to earn the revenue required to recover its efficient costs and to support its ongoing efficient investment in the network. As mentioned previously in section 2.1, ACCAN would like to see a discussion in relation to which costs nbn has incurred efficiently.

ACCAN disagrees that nbn should be able to recover its costs by increasing fixed charge pricing components in real terms for all services excluding the entry level product. To do so would not incentivise nbn to increase productivity and become more efficient in delivering the service. Nbn should be looking to reduce the cost of providing the service over time, and thus reducing the wholesale prices. This would be achieved through prices changing by $CPI - X$, where X represents efficiency savings.

At a minimum, cost could be kept stable in real terms, balancing out the increased usage of the network with productivity gains. Nbn should aim to recover its cost by increasing take up of services and moving consumers to higher speed tiers rather than making lower speed tiers prohibitively expensive.

The discussion paper details two options regarding price controls:

- **Option 1, individual SAU price controls:** Different price controls would apply for the different bundle types described for the three pricing constructs. In the case where there are no CVC charges, nbn considers it reasonable to have the opportunity to index prices above the level of inflation. As ACCAN has discussed above, we are strongly opposed to indexing the prices above the level of inflation.
- **Option 2, basket price controls:** The SAU would implement price control over a basket of products, so that the price control would be applied to the weighted average price across all applicable TC-4 (residential) products based on average services in operation volume of the preceding year. ACCAN considers that this is the preferred option for price controls as it allows nbn flexibility to respond to changing market conditions. That said, there should remain an

¹² ACCC, NBN Wholesale Market Indicators Report, 2021. <https://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/nbn-wholesale-market-indicators-report>

individual SAU price control for an entry-level product to ensure that the service remains affordable.

Entry level price control

Nbn is proposing a price control of CPI for entry-level services, to enable the price to remain constant in real terms whilst increasing CVC inclusions based on actual usage growth of end users. ACCAN considers that the entry level service should retain the strictest price control to ensure the service remains affordable over time, and to provide a price anchor to other nbn offers.

The entry level price control should be implemented for the 25/5 Mbps service. The reason for this applying over the duration of the SAU, which lasts until 2040, is that the 12/1 Mbps service will become increasingly redundant as households require higher speeds to participate in the digital economy. Already the 12/1 Mbps service does not suit the needs of many households. By placing the 25/5 service as the entry level product in the SAU, the SAU will be more aligned with the Statutory Infrastructure Provider requirements¹³ as well as the Statement of Expectations.¹⁴ ACCAN questions the value of requiring network operators to provide a 25/5 Mbps service to all households in Australia, if a proportion of these households are not able to afford the service.

Implementation and network impacts of the pricing constructs

Nbn is exploring usage-based billing on the AVC + CVC construct. This would involve only billing RSPs for the CVC they use, rather than the current system which requires RSPs to purchase provisional CVC. The benefit of usage based billing is that it should reduce expensive and complex CVC management for RSPs. If construct 1 or construct 2 were to be implemented, ACCAN would support usage based billing as it only seems fair that RSPs pay for the service they are utilising.

Feedback on long-term pricing options

What impact would you expect nbn's proposed pricing constructs and price control options to have on your organisation's speed tier mix and volume?

Not applicable

¹³ Department of Infrastructure, Transport, Regional Development and Communications, 2020, *Telecommunications Reform Package*. <https://www.communications.gov.au/what-we-do/internet/telecommunication-reform-package>

¹⁴ Department of Infrastructure, Transport, Regional Development and Communications, 2016, *Statement of Expectations*. <https://www.communications.gov.au/publications/nbnstatementofexpectations>

How would nbn's proposed pricing construct and related price control options impact your organisation's overall nbn charges in the medium to long term?

The impact on wholesale costs of each construct depends on the amount of CVC provisioning required by an RSP. As ACCAN does not have access to CVC provisioning required in the future, we have compared the cost of each construct to the estimated wholesale charge where there is an overall CVC provisioning requirement of an average 3 Mbps weighted across all speed tiers, as provided in the discussion paper. The result of this comparison is provided in the appendix. Based on this average CVC provisioning, the price implications of each construct vary depending on speed tier. Construct 2 appears to have the *least negative* impact on wholesale costs, followed by construct 1, and then construct 3 which has the greatest adverse effect on charges RSPs would have to pay, and ultimately end users.

Generally, all three pricing constructs present negative consequences in regard to charges paid by RSPs, and (based on the average CVC provisioning requirement mentioned above) RSPs would likely see their wholesale charges increase. It is unclear to us why the charges on average are expected to be higher across nearly all speed tiers, for all pricing constructs when comparing the same amount of usage growth estimated across the May-22 Roadmap period. If the constructs are designed to be revenue neutral, we would expect that on average, a change in pricing construct would not have an impact on the total wholesale charges RSPs would pay. Thus, the charges RSPs pay overall should be less relevant to the decision on which construct to follow.

ACCAN acknowledges that there will likely be some value transfer between RSPs as some would be made worse off, and others better off from the change depending on their speed tier mix and CVC provisioning requirement. Nbn should only consider this impact to the extent it might reduce retail competition.

How would you rank the proposed pricing constructs and price control options for nbn's future wholesale pricing construct, and what factors influenced your ranking?

It is difficult to rank the proposed pricing constructs and price control options as we consider each option requires further development and consultation given the potential for negative impacts on consumers.

Construct 1 whilst improving the situation, does not fully address the issues of CVC management. Based on the proposed prices of each construct, construct 2 appears to be the least harmful to consumers. ACCAN does not support the current pricing proposals under construct 3, however if these were amended to reduce the negative impact on the lower speed tiers, construct 3 could be made into a suitable pricing option which would support a downstream retail market, provide consumers with an affordable service, and allow nbn to cover its costs. ACCAN considers that nbn should continue work to explore how this construct could be improved to meet these requirements.

In regard to price controls, consumers will benefit the most if either prices remain stable or decrease to reflect an improvement in productive efficiency. ACCAN supports the second price control option which would allow the price controls to be set over a weighted basket of services to allow nbn flexibility over time to respond to changing market demand.

Does your organisation foresee any transitional issues in any of the constructs including commercial and operational complexities?

There is likely to be commercial and operational complexities from any new pricing construct being implemented. Nbn should work with RSPs to provide a reasonable amount of time to implement a new pricing construct.

Does your organisation foresee any transitional issues in any of the constructs including commercial and operational complexities?

Not applicable

To assist nbn in capacity management, in the case of Constructs 2 and 3 (with “AVC-only” speed tiers), what would be the additional traffic that you anticipate nbn could see enter the network during surge events such as game updates? How would you manage traffic into the nbn network under these construct options?

Not applicable

One of the original principles behind nbn’s use of CVC in the product construct was to enable performance-based differentiation for RSPs. How do nbn’s proposed pricing constructs and price control options impact your organisation’s ability to differentiate and compete in the retail market? What are your performance expectations for “AVC-only” speed tiers, mindful that high performance standards will have cost implications?

Not applicable

Could nbn enable greater differentiation through service add-ons bundled into higher speed tiers (e.g., prioritised appointments, business operations centre)?

ACCAN would like to see retailers competing on customer service rather than speed performance, as consumers should be getting the speed performance they are paying for. From a wholesaler perspective, nbn could sell service add-ons for prioritised appointments or fault rectification, however these should not allow nbn to provide poor service standards and monetarise appropriate service levels, so that only consumers who are able to pay for a decent service are able to receive one.

What, if any, difference do you see in performance for your target customer segments?

Not applicable.

Options for low-income households

NBN has presented two options regarding support for low income households:

- **Option 1:** An offer to households with Age Pension and Disability Support Pension recipients, estimated to be over 1 million premises, with a price adjustment between 4-7% on all other TC- 4 services.

- **Option 2:** Nbn continues to explore targeted approaches put forward in the 2021 pricing consultation.

Since 2019, nbn has been consulting on how to connect the unconnected and ACCAN was led to believe that this product would be brought to market this year. We consider that nbn should continue to explore the targeted approaches put forward in the 2021 pricing consultation, which included providing a 25/5 Mbps service with a 150 GB data cap to premises not currently connected to the network. Whilst we have concerns about the limitations of the service proposed, nbn should continue the work it has done in this area, taking on board feedback from its 2021 Pricing Review consultation, as there is an immediate need for the service. Furthermore, nbn will benefit from implementing option 2 now as it will increase take up of services.

At the same time, we see no reason that discussion and development of a low income offer to be introduced to the SAU cannot continue. The benefit of embedding a low income offer in the SAU framework ensures longevity and certainty which may be required to encourage RSPs to resell the service.

Currently 46% of waged poor households with a broadband service report having trouble paying for the ongoing cost of the service, with around a third of waged poor households ‘usually or always’ having trouble paying for the cost of service.¹⁵ The situation is worse for waged poor households living in rented accommodation, where 53% of households report struggling to pay for the service. The report by SACOSS also indicated that households were prioritising phone and internet bills by going without other goods and services. Furthermore, the Bureau of Communications Research shows that the proportion of households engaging in unsustainable expenditure has increased from 2015 to 2017, indicating that potentially more households are maintaining expenditure on communications services by forgoing expenditure on other goods and services.¹⁶

Between 2018-19 – 2019-20 the advertised price for lower speed nbn plans increased by 6.1%, between 2015/16 – 2019/20 the price increased 16.5%.¹⁷ The increase in cost of lower speed plans creates greater financial stress for low income households. Whilst we acknowledge the negative impact a broader offer can have on nbn’s revenue there needs to be recognition of the long-term need for an affordable option for low income consumers and steps taken to achieve this.

¹⁵ Waged poor households are defined as those living below the poverty line (50% of median equivalised household disposable income) yet their main source of household income is wages and salaries. SACOSS, 2020, *Connectivity Costs II: Telecommunications affordability and waged poor households*. <https://www.sacoss.org.au/sites/default/files/public/Affordability%20and%20Waged%20Poor%20Report%20final%20Web.pdf>

¹⁶ Bureau of Communications, Arts and Regional Research, 2020, *Affordability of communications services for low-income households*. <https://www.communications.gov.au/publications/affordability-communications-services-low-income-households>

¹⁷ ACCC, 2020, *Communications Market Report*. https://www.accc.gov.au/system/files/20-47RPT_Communications_Market_Report_FA.pdf

Potential withdrawal of “Basic” AVC and CVC Offers

Does your organisation support the withdrawal of Basic AVC and CVC (TC-4) services from the SAU (for fixed-line and fixed wireless services only), and thereby from supply?

On introducing a new pricing construct, ACCAN supports the removal of the ‘Basic’ AVC and CVC offers from the SAU. With the introduction of the Bundles the Basic List Prices are relatively irrelevant within the fixed line and Fixed Wireless footprint and the prices in the SAU need to be brought more closely in line with how the market operates today.

What are the impacts your organisation foresees if existing Basic AVC and CVC (TC-4) services were to be withdrawn?

Not applicable

Would the withdrawal of existing AVC and CVC (TC-4) services reduce complexity and operational costs for your organisation?

Not applicable

If nbn was to withdraw Basic AVC (TC-4), how would this impact your organisation’s demand for TC-2 services?

“Basic” AVC (Access Virtual Circuit) TC-4 offers refer to residential services sold which are not part of a bundle, the RSP then has to purchase capacity by purchasing CVC (connectivity virtual circuit). Following the introduction of bundles the basic AVC offer stopped being the predominant method for which RSPs purchase access to the network. However, around 4,500 of the Basic AVCs purchased are done so to supplement TC-2 (symmetrical business grade) services. Nbn should consider how these services are being used in conjunction with TC-2 services and whether they could develop an ‘add-on’ for TC-2 services to replace the Basic AVC List price for those RSPs that are purchasing the service for this use.

Use of targeted discounts remains relevant and appropriate

ACCAN supports nbn’s ability to introduce discounts as providing nbn with flexibility to test products and services, as well as respond to changing market demand, provides benefit to consumers. That said, there needs to be safeguards to ensure that the prices at which the majority of nbn services are sold do not diverge significantly from those set out within the SAU, leaving RSPs and end users open to the possibility of significant price shocks. ACCAN considers that this could be achieved via more frequent SAU price reviews, in line with the replacement modules, which occur on a 3-5 year timeframe.

Inclusion of MTM technologies

Do RSPs consider that nbn's proposed approach to including the MTM technologies in the SAU, i.e. adopting similar drafting to that proposed in 2016/17, but reflecting the addition of FTTC and the outcomes of the WBA4 negotiations is reasonable? Are there other matters relevant to the introduction of the MTM technologies that you consider should be included?

Service description

In 2016/17, nbn proposed amending the service description to incorporate the FTTN, FTTB and HFC network types, as well as *'any other telecommunications network or other network elements, platforms, systems and functions over which any product is supplied by Nbn Co'*. At the time, ACCAN agreed with the ACCC's view that the proposed broadening of the network definition to include *'any other telecommunications network'* in the SAU should be removed. ACCAN continues to hold this view as in the future, any technologies which nbn adds to the network should be the subject of a further variation and consideration by the ACCC.

Co-existence and Remediation

In nbn's previous SAU variation, nbn has proposed to include co-existence and remediation provisions. The co-existence period is the period after a FTTN or FTTB service area has been declared *'ready for service'* but before the pre-existing copper services in the area have been switched off. Co-existence provisions may not be necessary by the time the SAU variation is implemented, if this is the case it should be removed from the drafting.

A remediation period occurs where nbn is required to undertake reasonable action to ameliorate the line rate for services provided via FTTN or FTTB networks so that it is capable of achieving the Peak Information Rate (PIR) objective. During the period the clause proposed by nbn provides that until remediation is completed, the downlink line rate and uplink line rate at the User Network Interface (UNI) used in the premises may be significantly less than the downlink PIR and uplink PIR of the bandwidth profile ordered by the RSPs.

The WBA 4 required nbn to pay a rebate where a service is unable to achieve its PIR objective and nbn designates the service in remediation. The rebate is paid per month at a fixed amount that scales higher in proportion to the length of time since the trouble ticket was acknowledged for the service. ACCAN is unable to say whether the rebate paid is sufficient enough to ensure that services are placed out of remediation in a timely manner.

ACCAN considers that in the interest of end users nbn should provide information, publicly or to the ACCC, detailing areas, number of services that are in remediation, and the duration of remediation, as well as rebates paid, as there needs to be a level of oversight as to whether the rebates are providing nbn sufficient incentives to ensure that the remediation processes are not unnecessarily extended.

Recommendation 6: Nbn should report information, publicly or to the ACCC, on the location, duration and number of services that are in remediation, and rebates paid.

WBA 4 Service Standards

ACCAN does not consider that the SAU should entirely reflect the outcomes of the WBA 4 negotiations, specifically in regard to the service standards agreed upon within commercial negotiations. ACCAN does not believe that the service standards incorporated in the WBA 4 are delivering for end users. It is not adequate that the service levels and rebate mechanism is set by nbn.

The Government is currently consulting on a draft determination on standards, rules and benchmarks for Statutory Infrastructure Providers (SIPs).¹⁸ Our preference would be for appropriate service standards to be required via the Determination. However, as the outcome of that consultation is still uncertain, and if the determination does not deliver appropriate service standards, then the SAU should be considered as a suitable option to embed service standards in nbn's regulatory framework.

Performance and the reliability of services are fundamentally important. Thus, ACCAN would like to see strong incentives for performance, reporting of performance metrics (such as frequency and duration of outages) and an appropriate rebate scheme.

Fixed Wireless performance

As part of the WBA 4, nbn committed to paying a \$20 rebate for each month for each Fixed Wireless AVC TC-4 service that is supplied using a wireless network cell that is *persistently congested* during that month. Nbn defines persistently congested as the Wireless Network cell is connected to a Point of Interconnection by a transmission backhaul link that is reported by nbn as having an Average Busy Hour Link packet loss of 0.25% or more for the Last Link Packet Loss Reporting Period ending in that month, or the Average Downlink Throughput of that Wireless Network Cell is reported by nbn as being less than 6 Mbps for the last Downlink Throughput Reporting Period ending in that month.

ACCAN considers that the rebate for missing this speed performance should increase with every subsequent month for which the wireless speed underperforms to provide a greater incentive to nbn to rectify the issue as soon as possible. This would also acknowledge that the longer a consumer is subject to poor performance, the consumer will experience increasing amounts of harm and frustration.

Additionally, ACCAN considers the metric for measuring Fixed Wireless speed performance remains too low to provide an acceptable service standard. A consumer must be supplied a service via a wireless network cell that has an average downlink throughput of less than 6 Mbps over a month before nbn will intervene to address the speed performance and provide the rebate. This level of intervention is set too low, which is likely to result in consumer dissatisfaction.

Recommendation 7: The Fixed Wireless speed performance rebate should increase with every subsequent month for which the wireless speed underperforms, and the performance metric for remediation of fixed wireless should be reconsidered.

¹⁸ Department of Infrastructure, Transport, Regional Development and Communications, *Public consultation on draft standards, rules and benchmarks for statutory infrastructure providers (SIPs)*, 2021, <https://www.communications.gov.au/have-your-say/public-consultation-draft-standards-rules-and-benchmarks-statutory-infrastructure-providers-sips>

Incorrect call out charges

In previous submissions to the SAU variation process,¹⁹ ACCAN has raised concerns about charges for incorrect call out fees by end users as these charges have not been supported by evidence of detriment to nbn's business model. These charges are retained within the WBA 4, for example an RSP can be charge \$420 where a truck roll was required but there was no fault found.²⁰ Incorrect callout fees may result in untimely repair of services due to RSPs delaying the reporting or ordering a callout due to concerns that this charge may be applied. Fees which result in slower fault resolution should not be included in the SAU.

ACCAN considers that these types of charges should only be imposed where evidence is presented demonstrating that the reason for these fees is that incorrect call outs are occurring on such a scale that they are causing significant detriment to the nbn business.

Recommendation 8: Evidence must be provided that incorrect call out charges are on a scale that causes significant business detriment to nbn before being applied.

Fault threshold

ACCAN has concerns regarding the amount of service interruptions (dropouts) required for nbn to deem a service to have a Service Fault. ACCAN understands that this threshold currently requires a service to experience 10 or more dropouts within a 24 hour period. ACCAN considers that this service fault threshold is too high to ensure a positive experience of the network. In addition, it is unclear to ACCAN what remedies are available to consumers experiencing below 10 dropouts per 24 hour period, who may be contending with regular service drop-outs and interruptions.

ACCAN has sought clarification from nbn about current fault repair service standards, but to date this has not been received. ACCAN will continue to engage with nbn to obtain a greater understanding of the impact of current fault thresholds on end users.

Do RSPs wish to have the opportunity to review and provide feedback on the details of the proposed SAU drafting that incorporates the MTM technologies prior to nbn formally lodging the SAU variation with the ACCC?

ACCAN considers that it is appropriate for RSPs and consumer groups to review and provide feedback on the details of the proposed SAU drafting that incorporates the MTM technologies prior to the nbn formally lodging the SAU variation with the ACCC.

¹⁹ ACCAN, 2017, <https://accan.org.au/files/Submissions/ACCAN%20submission%20to%20ACCC%20draft%20decision.pdf>

²⁰ Nbn Co, Wholesale Broadband Agreement 4, <https://www.nbnco.com.au/content/dam/nbn/documents/sell/wba/2021/sfaa-wba-nbn-ethernet-price-list-20210505.pdf> pg.15.

Other proposed SAU changes

Do RSPs consider that the changes to the SAU proposed above are reasonable, and appropriate to include in nbn's 2021 SAU Variation?

NBN has proposed the follow changes to the SAU:

- Correction to the Cumulative Inflation Factor (CIF) equation
- Minor changes to the Dispute Management arrangements to clarify, enhance and refine the existing provisions in the SAU.
- Withdrawal of Multicast (fibre) Services
- Withdrawal of Interim Satellite Services
- Removing TC-3 Offers from the SAU
- Updating the Labour Rate Price Index
- Minor changes to Product Development Forum requirements

ACCAN considers that these changes noted above are reasonable and appropriate to include in nbn's 2021 SAU Variation.

Are there any other changes to the SAU that RSPs consider necessary as part of the proposed 2021 SAU Variation?

Not accepting orders

Recent issues from nbn's change to a new workforce scheduling system meant RSPs were not able to place orders and make appointments, this highlighted a potential a weakness in the WBA 4 in that RSPs were not able to claim rebates if they had not placed the order in the first instance. This also highlights the need for there to be a failsafe mechanism to ensure that nbn can still accept orders if their scheduling system goes down. We consider it imperative that an essential piece of national infrastructure has the safeguards in place to ensure that consumers are at all times able to connect to the network upon request at all times and get service faults repaired.

Appendix A. Constructs wholesale charge comparison between May-22 Roadmap

The discussion paper provides the May-22 Roadmap estimated average wholesale charge per service. Based on the amount of CVC inclusions provided in the proposed May-22 Roadmap Bundles and the estimated average wholesale charge, ACCAN has calculated the estimated amount of overage that will need to be purchased. Using the same estimated CVC usage, we have compared the cost implications for the different constructs with the May-22 Roadmap prices below. Percentages in red indicate where the estimated wholesale charge for a service is higher than provided under the May-22 Roadmap. Actual wholesale charges will vary depending on how much provisioned CVC RSPs purchase.

Table 2 May-22 Roadmap Bundles, CVC inclusions and estimated CVC required

Speed Tiers	CVC Inclusions (Mbps)	Effective charge	Overage Fee	Estimated Wholesale Charge*	Estimated Overage (Mbps)**	Estimated CVC usage (Mbps)
12/1	0.15	\$ 22.50	\$8	\$30.00	0.94	1.09
b25 25/5	1.60	\$ 37.00	\$8	\$38.00	0.13	1.73
50/20	2.65	\$ 45.00	\$8	\$51.00	0.75	3.40
100/20	4.50	\$ 58.00	\$8	\$58.00	0.00	4.50
100/40	4.50	\$ 65.00	\$8	\$65.00	0.00	4.50
250/25	5.75	\$ 68.00	\$8	\$78.00	1.25	7.00
1000/50	7.00	\$ 80.00	\$8	\$95.00	1.88	8.88

*Estimated wholesale charge based on an average 3 Mbps of CVC weighted across speed tiers.²¹

**calculation for Estimated Overage = (Estimated Wholesale Charge - Effective charge)/Overage Fee

²¹ Nbn co, 2021, RMID1064 – nbn Special Access Undertaking Variation 2021 – Discussion Paper.

Table 3 Percentage difference between Construct 1 pricing and May-22 Roadmap pricing

Speed Tiers	Construct 1 CVC Inclusions (Mbps)	Construct 1 Effective Charge	Overage Fee	Construct 1 Estimated Wholesale Charge	Comparison between May-22 Roadmap Estimated Wholesale Charge
12/1	0.15	\$22.50	\$6	\$31.13	4%
b25 25/5	1.6	\$39.00	\$6	\$39.75	5%
50/20	2.65	\$48.00	\$6	\$52.50	3%
100/20	4.7	\$60.00	\$6	\$60.00	3%
100/40	4.7	\$67.00	\$6	\$67.00	3%
250/25	6.4	\$70.00	\$6	\$73.60	-6%
1000/50	7	\$82.00	\$6	\$93.25	-2%

Table 4 Percentage difference between Construct 2 pricing and May-22 Roadmap pricing

Speed Tiers	Construct 2 CVC Inclusions (Mbps)	Construct 2 Effective Charge	Overage Fee	Construct 2 Estimated Wholesale Charge	Comparison between May-22 Roadmap Estimated Wholesale Charge
12/1	0.15	\$22.50	\$8	\$30.00	0%
b25 25/5	1.6	\$37.00	\$8	\$38.00	0%
50/20	3	\$50.00	\$8	\$53.20	4%
100/20	-	\$60.00 - \$63.00	-	\$60.00 - \$63.00	3% - 9%
100/40	-	\$67.00 - \$68.00	-	\$67.00 - \$68.00	3% - 5%
250/25	-	\$70.00 - \$76.00	-	\$70.00 - \$76.00	-10% - -3%
1000/50	-	\$82.00 - \$100.00	-	\$82.00 - \$100.00	-14% - 5%

Table 5 Percentage difference between Construct 3 pricing and May-22 Roadmap pricing

Speed Tiers	Construct 3 CVC Inclusions	Construct 3 Effective Charge	Overage Fee	Construct 3 Estimated Wholesale Charge	Comparison between May-22 Roadmap Estimated Wholesale Charge
12/1	-	\$35.00	-	\$35.00	17%
b25 25/5	-	\$40.00 - \$45.00	-	\$40.00 - \$45.00	5% - 18%
50/20	-	\$51.00 - \$55.00	-	\$51.00 - \$55.00	0 - 8%
100/20	-	\$60.00 - \$63.00	-	\$60.00 - \$63.00	3% - 9%
100/40	-	\$67.00 - \$68.00	-	\$67.00 - \$68.00	3% - 5%
250/25	-	\$70.00 - \$76.00	-	\$70.00 - \$76.00	-10% - -3%
1000/50	-	\$82.00 - \$100.00	-	\$82.00 - \$100.00	-14% - 5%

Note: Table 5 shows the estimated wholesale charge and the effective charge as the same charge as this construct does not impose additional variable costs via the CVC charge.