

28 April 2017

Australian Competition and Consumer Commission

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ACCAN thanks the ACCC for the opportunity to contribute to its draft decision on the Variation to NBN Co Special Access Undertaking (SAU). ACCAN would like to provide comments on each element considered.

1 Service Description

ACCAN supports the ACCC's consideration that the proposed broadening of the network definition to include 'any other telecommunications network' in the SAU should be removed. Any and all technologies that nbn adds to its network should be the subject of a further variation and consideration by the ACCC. Furthermore, we support the ACCC's consideration that the provision specifying the network boundary point should not be removed. It is important that these elements of the network are clearly set out.

2 Co-existence and remediation

ACCAN supports the ACCC's consideration that the co-existence and remediation provisions (which allow for reduced service during periods where the network needs repair or the network is also being used to provide legacy services) are removed from module 2 and limited to a fixed period in module 1. It is not in the long term interest of end users to have one technology exempt from performing. ACCAN shares the ACCC's concerns that "remediation provisions would allow NBN Co to keep a line in remediation as an alternative to developing an appropriate solution for that line".¹

Nevertheless, ACCAN believes that in the interest of end users nbn should provide information, publically or to the ACCC, detailing areas and number of services which are affected by these provisions. This should also include the duration that the provisions have applied in areas. This would provide reassurance that the provisions are not being applied to large areas for extended periods.

3 Rollout information

ACCAN wishes to reiterate our previous submission that releasing the construction plan is of value and that the removal is detrimental to end users.² ACCAN uses this information in an online tool and in tailoring consumer information. Despite our efforts over the last month to obtain an updated

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² Our initial submission and subsequent submission outline ACCANs use of the information and the value that it provides to our organisation. <https://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/nbn-co-sau-variation/consultation-paper>

construction plan or alternative methods to access the data, we have been informed that we will not be given access to the information, due to our organisation not being a signatory to the Wholesale Broadband Agreement.

This information is not only useful to ACCAN. A number of government bodies have also expressed frustration about the three year construction plan no longer being released and the detrimental impact it is having on local planning and investment decisions. For example:

Queensland Government: *“However, the revised NBN Co. website does not provide a transparent, holistic rollout schedule for the state which could be analysed by jurisdictions. The lack of such information inhibits gap analysis, and future digital infrastructure planning and investment decisions.”*³

South Australian Government: *“Such larger scale information is important for State and Local Government to assist with planning and land division responsibilities. To date, requests for such information about the rollout from NBN Co has not been made available.”*⁴

ACCAN therefore continues to believe that this information should be required to be made available under the SAU. The ACCC should only accept the SAU on the condition that nbn reverts to providing information publically on its rollout.

4 Charges

4.1 Late cancellation and missed appointment charges

ACCAN disagrees with the \$75 charge for missed or late cancellation of appointments. While this may be consistent across the industry, no evidence has been presented indicating that end users are cancelling or missing appointments to a significant scale that is detrimentally impacting nbn. In fact, the evidence that we are aware of shows a high level of appointments missed or cancelled by nbn installers. A survey by the Better Internet for Regional, Rural and Remote group (BIRRR) indicate that 36% of end users had installation appointments cancelled, with up to 12 appointments cancelled and re-scheduled before installation was completed.⁵ Complaints in relation to delays in connection have also increased significantly, with 7,948 new complaint issues with NBN connections recorded in 2016 with the Telecommunications Industry Ombudsman (TIO).⁶ A case study presented by the TIO also highlights this occurrence; “Mr M had 13 connection orders rejected or cancelled”.⁷ This can be

³ Queensland Government submission to Joint Committee on nbn rollout. Submission 21. http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Broadband_Network/NBN/Sub_missions

⁴ South Australia Government submission to Joint Committee on the nbn rollout, Submission 102. http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Broadband_Network/NBN/Sub_missions

⁵ BIRRR submission to Joint Standing Committee, pg.17. <https://birrraus.files.wordpress.com/2017/04/birrr-nbn-joint-standing-committee-submission-final-for-submission.pdf>

⁶ TIO, 2016 Annual Report. http://annualreport2016.tio.com.au/#Trends_in_TIO_complaint_numbers

⁷ TIO, “Delays in NBN installation” case study. http://annualreport2016.tio.com.au/#Delays_in_NBN_installation

a significant inconvenience for end users, with loss of work time and potential cost. In the long term interest of end users, to promote efficiency and to signal to nbn not to miss appointments or to make cancellations late in the process, a penalty on nbn is appropriate.

4.2 Incorrect callout fee

ACCAN has concerns that the incorrect callout fee may impact the timely repair of services, due to RSPs delaying the reporting or ordering a callout due to concerns that this charge may be applied. The nbn network design may exacerbate the identification of faults. Many end users are unable to identify the cause of services not working. Recently, satellite RSPs indicated that their ability to trouble shoot issues with end users is more restricted now, compared to previous networks. They indicated that the information at the modem “is no longer available to an RSP”.⁸ Furthermore, they indicated that it can take nbn 10 days to investigate if there are issues. Therefore, fault resolution over nbn is both slower and more difficult. The inability of an RSP to identify faults themselves and the presence of an incorrect callout fee may reduce service level performance. Anecdotally, there have been stories that this fee is delaying some faults from being investigated.⁹ While we acknowledge that nbn have stated that they are currently not charging this fee¹⁰, there is little transparency over this and having the fee in itself may be sufficient deterrent to quick fault resolution for end users.

ACCAN believes that the ACCC should only allow these types of charges when 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 a significant detriment to the nbn business.

4.3 HFC Standard Installation

An option other than a self-install should be offered for free in HFC areas. ACCAN fears that the professional installation will be required by vulnerable consumers who are unable to complete a self-installation. Self-installation to a large extent may be trouble free and easy to do; however, there are end users who will be unable to do this. The \$150 charge for this is extremely high, particularly where these end users have no option if they want to continue to have fixed services. In switching to HFC, and other technologies, ACCAN does not believe that end users should be made worse off by facing an nbn charge to switch.

⁸ Evidence to Joint Committee on nbn rollout by Mr van der End, Clear Networks and Mr Bundrock, Activ8me, 19 April 2017.

http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Broadband_Network/NBN/Public_Hearings

⁹ Productivity Commissioner Paul Lindwall indicated to the ACMA CCF in January 2017 that his service restoration was delayed; the RSPs said they could ask for investigation but if there was no fault then a charge would be levied.

¹⁰ Stated in submission and from conversations with nbn through the satellite round table consumer meetings.

5 SAU price terms to MTM services

ACCAN agrees in principal with the five factors outlined by the ACCC in its assessment of price terms for the MTM. However, the application of the prices under the SAU may not be fully achieving these five factors. We would like to make some general comments in relation to some of these arguments.

5.1 Price services efficiently in order to increase traffic and uptake of higher value services.

ACCAN has concerns in relation to the level of charges and the restrictions it may be placing on the take up and use of services. The Australian Digital Inclusion Index found that while the value of broadband services are increasing, overall there is an increasing expenditure on broadband services.¹¹ The latest ACCC report also shows that the cost of NBN services increased 4.4% in the year.¹² Despite the cost increasing for end users, the take up of the higher speed tiers is not occurring.¹³

The steps that nbn have taken to reduce prices (such as recent changes to CVC pricing) have been contingent on data usage increases, rather than to encourage a higher usage of services. This is resulting in the network capabilities not being used and poor services as provisioning is constrained.¹⁴ This is also counter intuitive to models which would suggest that when end users do not have a high demand for services the price should be low to encourage take up and use of the service.¹⁵ ACCAN is concerned that the pricing model in the SAU may not be increasing the take up of higher value services or supporting the level of traffic. Cost comparisons to legacy services are not sufficient measures of the ability to encourage greater use of services.

5.2 Pricing model based on the service an end-user receives, rather than the specific access technology

In relation to “pricing based on the service an end user receives”, ACCAN believes that there are differences in the AVCs offered across the MTM. In particular, AVCs which offer a speed range are not equivalent to AVCs which offer a set speed tier. It is unfair to end users to charge the same price when a different service is being delivered. 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. Likewise 25-50 / 5-20 Mbps AVC over FTTN/B is currently set at the same cost of the 50/20 Mbps plan on other technologies. But these speed range AVCs offer a reduced level of

¹¹ Australian Digital Inclusion Index. <http://digitalinclusionindex.org.au/wp-content/uploads/2016/08/Australian-Digital-Inclusion-Index-2016.pdf>

¹² ACCC, Telecommunications Report 2015-2016.

https://www.accc.gov.au/system/files/ACCC%20Telecommunications%20reports%202015%E2%80%9316_web.pdf

¹³ Over 80% of end users are on speeds of 25Mbps and lower. NBN HY2017 results.

<http://www.nbnco.com.au/content/dam/nbnco2/documents/nbn-financial-results-HY2017-presentation.pdf>

¹⁴ See for example: The Australian, Telstra admits nbn failings in WA.

<http://www.theaustralian.com.au/business/technology/telstra-admits-nbn-failings-in-wa/news-story/8794c39536464770f31d851590b6072a>

¹⁵ Ramsey’s Inter-temporal pricing

service. ACCAN believes that under this argument there is cause to charge different amounts over MTM technologies, to reflect the lower level of service that nbn is currently offering.

6 Service target performance incentives and service level agreements

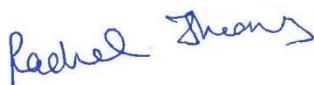
It is vital that the SAU pricing provisions do not restrict the ability to include service target performance incentives at a later date. While the Draft Decision does not refer to performance incentives ACCAN would like to provide some thoughts on these given how important performance of services is. ACCAN does not believe that the current arrangement is delivering for end users. It is not adequate that the service levels and rebate mechanism is set by nbn, either through the service level schedule or the SAU.

ACCAN notes that in 2012/2013 the provisions related to services levels were removed from the SAU, with ACCAN's support.¹⁶ A number of arguments were given for this, including;

- The proposed terms and conditions were not encouraging the economically efficient use of and investment in the infrastructure,
- In some instances the service levels set were at a lower rate than currently supplied,
- The ability to update the service levels,
- The limited scope of the rebate mechanism,
- Limited ability for access seekers to take enforcement action in the event of a failure of nbn to meet a service level,
- ACCCs inability to enforce service levels¹⁷

In the long term interest of end users the performance and the reliability of services are fundamentally important. ACCAN would like to see strong incentives for performance; reporting of performance metrics (such as frequency and duration of outages) and an incentivised performance scheme considered (where nbn can earn a benefit or penalty if their performance is superior or inferior to the targets/benchmarks).¹⁸ It is vital that service levels are examined and robust performance metrics are put in place. The pricing mechanism in the SAU should not restrict this.

Yours faithfully



Rachel Thomas
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¹⁶ ACCAN submission on SAU Draft Decision, May 2013.

<https://www.accc.gov.au/system/files/ACCAN%20submission%20-%20Letter%20to%20ACCC%3A%20Consultation%20Paper%20%E2%80%93%20variation%20of%20NBN%20Co%20Special%20Access%20Undertaking%20%282%20May%202013%29.pdf>

¹⁷ ACCC draft decision on the Special Access Undertaking lodged by NBN

¹⁸ ACCAN, *A guarantee for the future*, policy position statement. <https://accan.org.au/election-2016/1228-a-guarantee-for-the-future>