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Australian Competition and Consumer Commission

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ACCAN thanks the ACCC for the opportunity to contribute to its consultation on nbn Co.’s variation to the Special Access Undertaking (SAU).

ACCAN believes the SAU is fundamentally important in establishing a fair and supportive environment for the delivery of services over the monopoly nbn network to end users. ACCAN welcomes nbn’s changes to address the previous issues raised in relation the definition of the NBN network and the network boundary point. However, we are concerned that the regulatory settings are not sufficiently focused on delivering for end users. The SAU comes under the Competition and Consumer Act 2010, the objective of which is to promote the long term interests of end users. ACCAN remains unconvinced that some proposed changes by nbn are in the long term interest of end users. A number of the matters for consideration appear to be focused instead on protecting nbn and limiting its liability to provide reliable services to end users through Retail Service Providers (RSPs). Additionally, matters that ACCAN has raised, which are in the long term interest of end users, are not sufficiently addressed in the SAU.

# Co-existence and remediation

ACCAN welcomes the removal of the co-existence and remediation provisions from module 2. However, we continue to have concerns regarding the treatment of services that are affected by co-existence. nbn states that only a small percentage of consumers are affected by not being able to achieve 25/5Mbps (the objective Peak Information Rate (PIR) for services not in co-existence).[[1]](#footnote-1) ACCAN does not believe that the objective PIR is the basis to compare the service being delivered. nbn is selling speed ranges significantly higher than 12/1Mbps (the objective PIR for services experiencing co-existence). nbn appears to give no consideration to affected services at the higher speed ranges. There are reports that nbn will not examine faults raised against services that are experiencing slow services, but are achieving the minimum of 12Mbps.[[2]](#footnote-2) This may leave end users with faulty services and unable to seek assistance.

Co-existence can impact end users; reducing their service performance, removing their ability to get faults fixed and potentially charging them for higher than achievable speeds. Services experiencing reduced performance due to these conditions should automatically receive an appropriate level of discounted charges. Timeframes should be established in Module 1, which limit the period in which these provisions can be used – not on an overall network basis but on an individual line basis. This will ensure that end users are not affected for long periods without any end in sight. Additionally, greater public transparency over which services are affected and the extent of the effect is needed.

# SAU price terms to MTM services

ACCAN also supports a positive pricing outcome between nbn and its end users. Our previous submission raised a number of concerns in relation to pricing. ACCAN believes that the speed tier construct that nbn have developed for their Multi Technology Mix products will result in service variations. There is a significant difference to these end users who pay the same amount:

* Paying for a service that offers 100/40Mbps with guarantees that the services will achieve that speed (at least at a maximum level), and
* Paying for a service that offers 25-100/5-40Mbps which only guarantees 25/5Mbps is achievable.

While we understand the argument put forward that pricing products across the board allows for ease and certainty, we disagree that this is true for end users. For end users applying the same pricing model across all technologies allows for confusion, uncertainty and potential misrepresentation of the underlying service that is being offered.

# Rollout information

ACCAN wishes to reiterate our position in previous submissions that releasing information at an aggregate level is of value to the community. nbn’s measures to remove aggregate information disclosure is detrimental to end users.[[3]](#footnote-3) As mentioned in our previous submission, this information is not only useful to ACCAN, but also to state and local bodies.[[4]](#footnote-4) We therefore continue to believe that this information should be required to be made available under the SAU.

# Offers and Charges

In our previous submission we raised concerns about charges for late cancellation, missed appointments and incorrect call out fees by end users. These charges have neither been removed nor supported by evidence of detriment resulting to the nbn business model; therefore our objections to them remain. There appears to be no reason to establish them in the SAU other than to establish wider avenues to raise revenue. ACCAN is strongly against establishing these charges against end users for the next 23 years.

Additionally, we raised concerns about vulnerable consumers being charged for professional HFC installations ($150) as they may be unable to complete migration without assistance. These charges are significant, particularly where these end users have no option but to pay for additional assistance if they want to continue to have fixed services. Furthermore, we note that end users over other technologies are not charged for this service. ACCAN objects to this charge.

# Service target performance incentives and service level agreements

ACCAN continues to have concerns about a lack of performance incentives on nbn and minimum standards for end users. There have been a number of issues reported about the reliability of services and appointment keeping.[[5]](#footnote-5)

Taking Sky Muster satellite service as an example: a number of end users have had multiple appointments cancelled and experienced long periods without any working service or intermittent services.[[6]](#footnote-6) NBN publically stated that there was ‘*an "exorbitant" rate of failures for its Sky Muster satellite service… the satellite service had not met anyone's expectations.”[[7]](#footnote-7)* Despite this, nbn have confirmed that there have been no payments of compensation to RSPs through the Service Level Agreements (SLAs).[[8]](#footnote-8) There is a clear deficiency in the current arrangement that is to the detriment of end users. ACCAN believes that urgent action is required to ensure that service levels are examined and robust performance metrics and compensation mechanisms are established.

Yours faithfully



Rachel Thomas

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1. Point 33 of page 7 of nbn’s supporting submission. [↑](#footnote-ref-1)
2. Issue discussed at ACCC Market Study Forum, 3rd – 4th July 2017. [↑](#footnote-ref-2)
3. 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> [↑](#footnote-ref-3)
4. ACCAN, Submission to SAU Variation, April 2017. <http://accan.org.au/our-work/submissions/1389-nbn-special-access-undertaking> [↑](#footnote-ref-4)
5. nbn estimate that 10% of appointments are missed, equating to 82,552 missed appointments in 2016. Bill Morrow, 15th June 2017 Senate hearing. <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;db=COMMITTEES;id=committees%2Festimate%2Fea6f86d4-fca8-459c-b755-e93051a99d64%2F0003;orderBy=priority,doc_date-rev;page=0;query=Dataset%3Aestimate;rec=1;resCount=Default> [↑](#footnote-ref-5)
6. For example: Better Internet for Regional, Rural and Remote, 2017 Sky Muster survey. <https://birrraus.files.wordpress.com/2017/04/birrr-skymuster-2017-survey-results-published.pdf> [↑](#footnote-ref-6)
7. <https://www.itnews.com.au/tools/print.aspx?ciid=452965> [↑](#footnote-ref-7)
8. Senate Estimates Question on Notice. Question No: 202. Hansard Ref: Page 62, 25/05/2017 [↑](#footnote-ref-8)