



Broadband Speed Claims

Submission by the Australian Communications Consumer Action Network to the Australian Competition & Consumer Commission

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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 availability, accessibility and affordability of communications services for all Australians.

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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1. Introduction

ACCAN thanks the ACCC for the opportunity to contribute to its discussion paper on Broadband Speed Claims. This topic is one on which consumers and members regularly express frustration to us, with increased engagement in the last month since the discussion paper was released.¹ ACCAN would therefore like to make some general comments as well as comments relating to each of the eight issues identified in the discussion paper. These comments stem from both research we have undertaken and feedback from consumers and members on this issue. We are also keen to understand further the limitations of Retail Service Providers (RSPs) referred to in the discussion paper.

1.1. General comments

Claims made by RSPs in relation to speeds and performance are generally vague. This vagueness around the speed and performance that a service will deliver means that a range of ill-fitting purchasing decisions are made: consumers pay too much for services, buy services that do not suit their needs and ultimately end up disappointed with the services, or even fail to participate in the market. We believe this is demonstrated through the high number of complaints to Telecommunications Industry Ombudsman (TIO) on slow speeds.² Speeds that are delivered can vary significantly from the advertised level. For example, Ofcom found that the actual average broadband speed in 2011 was 6.2, significantly lower than the average advertised speed of 13.8Mbps.³ Additionally, consumers have contacted ACCAN about frustration over services that do not perform to advertised claims, difficulty in identifying problems and getting performance restored to advertised levels and difficulty in choosing a service.⁴

¹ Related posts on social media received the most engagement in the period and a number of consumers and members contacted ACCAN to relay their experiences, frustration and ideas for greater information disclosure.

² Complaints about internet slow data speeds are the top single issue area to the TIO. <https://www.tio.com.au/publications/media/lowest-telco-complaints-in-9-years>. Consumer cases studies in the TIO submission to the Productivity Commission inquiry into the USO. http://www.pc.gov.au/data/assets/pdf_file/0020/205490/sub052-telecommunications.pdf

³ Ofcom, 2011. UK fixed broadband speeds, November/December 2010. Published 2 March 2011.

⁴ For example, consumer 'S' who called ACCAN in August asking for advice on which provider had the best bandwidth over NBN which would meet his needs. He spent a number of weeks researching and indicated that he would wait further due to the vagueness of the information that is available.

2. Issues

2.1. Issue 1 – Network management and monitoring services delivered on Next Generation Networks

ACCAN recognises that RSPs face difficulties in presenting information on the performance levels of plans on offer. There are many factors which affect service performance, some of which are outside of the RSP's control. Additionally, plans are often sold nationally and on a technology neutral basis. For example, the same plans are offered over a range of underlying technologies (ADSL, cable, fixed wireless, fibre to the home etc.) and anywhere in Australia. Underlying technology type and its location, including cabling and specific equipment capacity, are among the factors that significantly affect the performance a specific service can achieve. RSPs are therefore taking advantage of the simplicity in uniform offers to consumers, when the service specific nature deriving from the varying technical, individual and geographic factors often results in service performance that varies significantly when actually delivered.

To further confound things, the same household with the same underlying infrastructure and geographical location often experiences completely different service performance from two different RSPs due to their differing overlaying infrastructure. Recognising that there is a range of challenging technical factors to consider, it is still possible to report on RSP infrastructure and performance in order to allow consumers to compare services. Consumers need more precise indicators of network capacity and RSP planned capacity upgrades as the absence of these results in an inability to compare infrastructure or estimate future performance.

A lack of distinction between 'broadband' and 'Internet' services is also adding to the confusion. In technical terms, 'broadband' merely refers to the bandwidth capacity of a particular link (network unit) being greater than 'narrowband' which traditionally meant bandwidths achievable via dial-up access links or other low capacity data communications. Thus a 'broadband service' means a link, or series of links. *Internet* services mean the provision of communications services that enable access to the *public Internet*, that is, the global public network of networks running the Internet Protocol incorporating the attendant infrastructure (the domain name system etc.).

Performance indicators for 'broadband access links' into an RSP⁵, could be measured and reported using data throughput measures such as average megabits per second, 'busy hour' megabits per second etc. While useful, these measures will not give a good indicator of Internet connectivity or Internet performance overall. Measures relevant to Internet performance will include things such as: the number and type of network 'peers' and connections, that is, the number and quality of connections into upstream service providers; connections into content distribution networks; adherence to best practice protocols; spam blacklisting; routing accuracy levels etc. Small businesses wishing to purchase private connections between their own offices would benefit from pure link based information, while the broader community will take assurances from a better understanding of the potential for good *Internet* performance.

⁵ or concatenated paths across particular RSPs

2.2. Issue 2 - Presentation of speeds information to consumers

ACCAN is in the process of finalising a research paper on consumer knowledge which has identified a number of important points about how consumers understand contracts and information at the point of sale. This research recommends exercising caution in providing information in numerical format or written in legalistic language.⁶ It also advises against providing too much information to consumers as this may reduce comprehension.⁷ Information which is explanatory is found to be the most useful where it illustrates the relationship between the facts and how it will affect them.⁸ Furthermore, it concludes that consumers retain most information from a summary at the point of sale rather than from terms and conditions or critical information summaries.⁹ From this, ACCAN's view is that qualifying speed and performance in accompanying legal documents, as is currently done, is insufficient to inform consumers about likely service performance. Rather, the information should be made available at point of sale, or through a qualification process that applies further information about the network prior to contracting a service. Information should be descriptive, relating the performance level to the consumers' proposed use of the service.

Additionally, we would like to draw attention to consumer prior knowledge on service performance. Consumers may make assumptions which bias their understanding of the offers available in the market. Our research earlier this year found:

- 58% of respondents believed that you get the same speed as advertised in the plan, and
- 49% of respondents believed all providers offer the same level of service.¹⁰

These often incorrect assumptions affect consumer comprehension of any new information presented with service plans. Revised speed and performance claims should bear this bias in mind and clarify the likely performance a specific service will achieve.

Average speed and performance for an entire RSP, league tables or for specific third party services used across numerous RSP networks may be limited in effectiveness for informing consumers of the performance level to expect. Changes to application delivery software, changes to underlying network configuration as well as geographic and other individual

⁶ See Vahabi, M 2010, 'Verbal versus numerical probabilities: Does format presentation of probabilistic information regarding breast cancer screening affect women's comprehension?', *Health Education Journal*, vol. 69, no.2, pp. 150-163.

Zwijenberg, NC, Hendriks, M, Damman, OC, Bloemendal, E, Wendel, S, de Jong, JD and Rademakers, J 2012, 'Understanding and using comparative healthcare information; the effect of the amount of information and consumer characteristics and skills', *BMC Medical Informatics and Decision Making*, vol. 12, no.101, pp.1-11.

Stark, DP & Joplin, JM 2010, 'A cognitive and social psychological analysis of disclosure laws and call for mortgage counselling to prevent predatory lending', *Psychology, Public Policy and Law*, vol. 16, no. 1, pp. 85-131.

⁷ Amoriggi, H 2007, 'Information Literacy Overload and the Impact of Misinformation, Disinformation and Information on End-Users of Hard Copy and On-line Publications', *International Journal of the Book*, vol.5, issue 1, p1-4

⁸ Lim, KH & Benbasat, I 2002, 'The influence of Multimedia on Improving the Comprehension of Organizational Information', *Journal of Management Information Systems*, vol. 19, no.1, pp.99-127.

⁹ Harrison P, Hill, L & Gray, C 2016 to be published. Working title: Consumer Comprehension of Telecommunications Agreements.

¹⁰ ACCAN, 2016. *Broadband performance and consumer decision making*. <https://accan.org.au/our-work/research/1159-broadband-performance-consumer-decision-making>

attributes of service delivery mean that these averages are often unreflective of the service that will be obtained. For example, average speeds across Australia for Netflix or YouTube may not reflect what an RSP can offer consumers in *all* geographic areas, particularly regional or remote areas. Realistic performance for even these services for regional and remote consumers may be well outside the reported averages. In addition, average speeds based on a *particular* use may be a poor determinant of the overall broadband or internet service quality.¹¹ Similarly, ACCAN considers that online reviews of service performance may be limited in effectiveness for informing consumers of what to expect from their services for the same reasons. Consumers may turn to online reviews to inform their decisions in relation to other services and products, but the effectiveness in terms of broadband services may be limited, for similar reasons of variants that impact on services at an individual premises. Currently consumers have limited to no ability to determine in any practical way which providers might best suit their needs.

2.3. Issue 3 - Peak period demand

The majority of problems that consumers approach ACCAN with is in relation to slow peak hour performance. This is also seen in the TIO complaint statistics.¹² While there are a number of reasons why this might occur, where this is seen to be due to the specific provisioning by an RSP, consumers are reluctant to switch. In the TIO submission to the recent Productivity Commission USO Inquiry, a relevant consumer case study was outlined - consumer H, despite having persistently slow speeds, chose to remain with the service provider.¹³ A number of consumers have expressed this view to ACCAN, even if switching may be in their interest.¹⁴ This may be because they believe that all service providers are the same (bias from prior knowledge outlined in issue 2), the high cost, delays and inconvenience associated with switching providers or simply not knowing who to switch to. ACCAN ascertains that this is a failure of the market, as RSPs do not signal that they can meet the consumer's particular needs. Instead many consumers become frustrated and disenfranchised from the level of service in the market.

2.4. Issue 4 - Premium speed products

ACCAN believes that consumers do not understand that services offering higher 'up to' speeds do not yield greater minimum data throughput than lower speed plans delivered by the same RSP. All services offered by a provider will reduce to the same speed during busy periods over the same cabling and equipment. Many consumers purchase the higher speed tiers in order to get better performance during peak periods, rather than a requirement to use applications that are data intensive and only work at higher throughput levels. Choosing a service which slows to the same level as a basic plan during busy periods means that

¹¹ For example Netflix Speed Index and Google Video Reports which provide average speed by retail service provider for video streaming over these services (Netflix and YouTube).

¹² Complaints about internet slow data speeds are the top single issue area to the TIO.
<https://www.tio.com.au/publications/media/lowest-telco-complaints-in-9-years>.

¹³ Telecommunications Industry Ombudsman, 2016. Submission to the PC inquiry into the USO, case study 9, pg. 38.
http://www.pc.gov.au/_data/assets/pdf_file/0020/205490/sub052-telecommunications.pdf

¹⁴ ACCAN consumer contacts

consumers may spend hundreds of dollars more for higher speeds yet suffer the same congestion as lower speed services.

2.5. Issue 5 - Prioritisation of network traffic

Private and independent arrangements between RSPs and content providers may result in optimisation of specific services and/or applications. ACCAN strongly believes that these arrangements should be transparent to consumers as it may affect their choice of services and have an impact on the competitiveness of the market.

Likewise it is useful for consumers, the regulator and the market to understand if other services and applications are slower than expected because of network level service prioritisation or other connection arrangements. If consumers are unable to use third party services or common software applications (for example Voice over Internet Protocol) because an RSP has implemented network layer traffic prioritisation, it may affect the viability of that application altogether and is arguably a form of anti-competitive behaviour. Having information on what traffic is given prioritisation under what circumstances is essential to give visibility of such arrangements. It is pro-competition for consumers to see which providers have implemented specific network layer traffic performance management and what other arrangements they may have in place to prioritise specific traffic types or classes.

2.6. Issue 6 – Data intensive applications and services

It is likely in the near future that more data intensive applications and services will become available and that with the increase in uptake by consumers of higher access speeds there will be a corresponding uptake in more demanding applications. Data demand is expected to grow by 180% between 2014 and 2019.¹⁵ Historically, the cost of backhaul and international capacity in the Australian market has been a limiting factor in meeting increasing demands for data. Given that frequently plans are advertised with large amounts of data, indeed many over the average of 128GB a month and a significant number offering ‘unlimited’ data, as data demand increases over the coming years there is the potential that plans will not have scope to redesign their offers to recover the costs from this forecast increase in data usage.¹⁶ Limited or delayed reduction in the cost of backhaul (for example capacity costs over the NBN only decrease after usage increases)¹⁷, may induce a reduction in service speed and performance as RSPs try to balance increasing data demand against high capacity costs. For this reason, ACCAN believes that performance could become a more significant issue for consumers in the coming years. It is important that transparency around service performance is discussed and addressed now.

¹⁵ ACCC 2016. Competition in the Australian Telecommunications sector, p.g. 10.

¹⁶ ZDNet, April 2016. NBN users download more data per month than national average. <http://www.zdnet.com/article/nbn-users-download-more-data-per-month-than-national-average/> (accessed 25th August 2016)

¹⁷ NBN, 2016. ‘New discount-based pricing to encourage enhanced broadband experience’. <http://www.nbnco.com.au/corporate-information/media-centre/media-releases/New-discount-based-pricing-to-encourage-enhanced-broadband-experience.html> (accessed 25th August 2016)

2.7. Issue 7 – Managing isolated cases of poor service performance

Consumers who are facing immediate service problems find it very difficult to establish the root cause and to obtain the service levels they require. When complaining consumers are often told that speeds and performance achieved are within the provider's 'acceptable guidelines'. Consumers who contact ACCAN express frustration about so-called 'acceptable guidelines' as such a thing is typically not outlined at the point of sale.¹⁸ Any such guideline is usually internal to the RSP and in ACCAN's experience outlines an acceptable performance range substantially lower than the 'up to' speed sold to the consumer. This type of approach is potentially deceptive and misleading at best. A corresponding use case would be a consumer purchasing a 'kilogram of sugar' only to find they generally receive a mere 250g. A published, measured level of tolerance would be beneficial for consumer choice and promote transparency in the market.

Similarly, consumers and members express frustration to ACCAN about ascertaining whether a particular broadband service is 'fit for purpose'. When consumers approach the TIO about service faults, the TIO is willing to take into consideration factors which are outside the control of RSPs. When services do not meet standards it may be possible for consumers to be released from their contract or have charges reduced.¹⁹ However, it is not very clear how this works in practice.

ACCAN is keen to see a similar arrangement introduced locally to the UK, where consumers are able to cancel services without facing termination fees when a service consistently does not perform to the level expected and compensation for services that suffer outages, or have lower performance levels, is paid automatically.²⁰

2.8. Issue 8 – Mobile broadband speeds and representations

ACCAN is supportive of including mobile broadband speeds in this discussion. 21% of consumers are mobile only internet customers.²¹ If consumers are trying to determine if mobile internet is a suitable supplementary internet service for them it would be useful to have comparable performance information. For those who want to use, or are reliant on the use of, mobile broadband services, it would be useful to have systems of reporting to enable appropriate comparison for these services. In this event, performance of the radio network and the overall network dimensioning and interconnection architecture needs to be considered.

¹⁸ For example, consumer 'A' messaged ACCAN on Facebook in August expressing frustration that his ADSL2+ service, sold up to 20Mbps, could only achieve 3.6Mbps at best – 82% lower than the expected speed level.

¹⁹ Telecommunications Industry Ombudsman Faulty Services or Equipment position statement. <https://www.tio.com.au/about-us/position-statements/faulty-services-or-equipment> (accessed 22 August 2016)

²⁰ Ofcom, 2016. Automatic Compensation consultation. <http://stakeholders.ofcom.org.uk/consultations/automatic-compensation/>

²¹ ACMA, 2015. 'Australians get mobile'. <http://www.acma.gov.au/theACMA/engage-blogs/engage-blogs/Research-snapshots/Australians-get-mobile> (accessed 25th August 2016)

3. Conclusion

Greater information around broadband performance is important for three reasons:

1. To compare products and in order to choose the product that best suits consumer needs. Descriptions currently used, such as 'fast', or 'up to', do not offer the consumer the ability to compare actual performance and match their usage needs in a rational way. Greater information will help inform decision making, especially when considering switching products to obtain improved services.
2. To enable fault diagnosis when problems are encountered and to identify whether a fault is systemic to the home, access, or upstream network.
3. To seek recourse when the service does not meet expected standards and for easier compliance with ACL rights.

Further information made available to consumers on the speed and other performance claims of service providers should, ideally, meet these objectives. Also, in providing such information, the emphasis does not need to be on measuring exactly the technical performance of a service but via comparative standardised reporting and information disclosure across all service providers.

The term 'speed' is used synonymously to describe performance of the service. A number of issues that consumers encounter are often described as a 'speed' issue, the solution to which is often posed to be faster speeds. This, however, is not reflective of all issues with services encountered. Therefore, ACCAN believes that both information on the broadband service (average speed and peak speed) and the internet service (information related to network peers and connections) needs to be presented to consumers. Furthermore, information on any prioritisation that occurs should be presented to consumers.

ACCAN is supportive of the ACCC investigation into this area and believes that further guidelines to RSPs to improve advertising practices, with standardised comparable templates for consumer use, would be beneficial for consumers. The proposed Broadband Performance Monitoring and Reporting Program, which aims to test service performance, would also help to support and verify the claims made by RSPs.