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| Consultation on revising the Broadband Speeds Claims – Industry Guidance |
| January 2022 |

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1. Introduction

In October 2020, when we updated the [Broadband Speed Claims – Industry Guidance](https://www.accc.gov.au/publications/broadband-speed-claims-industry-guidance) (the **Guidance**) to cover emerging retail products relying on wholesale services with download speeds over 100 Mbps (>100 Mbps Services), we stated that the Guidance would be reviewed periodically.

This review considers recent developments in the transparency of upload speeds information in retail broadband offers, and the growth of fixed wireless broadband products supplied over alternative fixed wireless access networks. It is important that consumers are provided with easy to understand information about the typical performance of the services they obtain, including any known limitations to the performance of those services.

Information about upload speeds has become less transparent since 2020. At the same time, upload speeds information has become more important to consumers who rely on upload speeds to undertake activities at home that were previously done in the workplace and place of education.

In addition, by 2021, fixed wireless broadband services become available from more retail service providers (RSPs) relying on a wider range of fixed wireless access networks, including on the NBN and other emerging alternative fixed wireless networks. These services provide broadband wirelessly from a base station directly to stationary reception equipment at consumers’ and small businesses’ premises.

This consultation paper explores these developments and invites submissions on issues to inform amendments to the Guidance that may be necessary. Amendments may be needed to ensure consumers are provided with easy to understand information about the typical performance of broadband services on offer, and any known limitations to these services.

1. Background
   1. History and principles of the Guidance

On 21 August 2017, we published the Guidance to provide RSPs with information on the best practice for advertising fixed-line broadband services. Publishing the Guidance came after extensive public consultation which is discussed in the [Broadband Speed Claims – Discussion Paper (July 2016)](https://consultation.accc.gov.au/communications-1/consultation-on-broadband-speed-claims/), [Broadband Speed Claims – Consultation outcomes report (February 2017)](https://www.accc.gov.au/regulated-infrastructure/communications/compliance-anti-competitive-conduct/broadband-speed-claims-information-papers/consultation-outcomes) and the [Broadband Speed Claims – Focused Consultation Outcomes Report (August 2018)](https://www.accc.gov.au/regulated-infrastructure/communications/compliance-anti-competitive-conduct/broadband-speed-claims-information-papers/industry-guidance).

The guidance was updated in 2019 to improve clarity, maintain accuracy and apply to services supplied over fixed wireless networks, and again in 2020 following the introduction of products with higher maximum download and upload wholesale access speeds.

The Guidance is based on six principles:

* Principle 1: Consumers should be provided with accurate information about typical busy period speeds that the average consumer on a broadband plan can expect to receive.
* Principle 2: Wholesale (access) network speeds or theoretical speeds taken from technical specifications should not be advertised without reference to typical busy period speeds.
* Principle 3: Information about the performance of promoted applications should be accurate and sufficiently prominent.
* Principle 4: Factors known to affect service performance should be disclosed to consumers.
* Principle 5: Performance information should be presented in a manner that is easily comparable by consumers.
* Principle 6: RSPs should have systems in place to diagnose and resolve broadband speed issues.

1. Responding to the consultation

We encourage all stakeholders to consider and respond to the issues and questions set out in this consultation paper. Responses can be made through our Consultation Hub here: [Consultation Hub - Broadband Speeds Claims Industry Guidance consultation](https://consultation.accc.gov.au/regulated-infrastructure/2021-broadband-speed-claims-guidance-consultation).

To provide a transparent public consultation process, we will consider all submissions as public and post them on the ACCC website. We may also publish a report that includes a summary of the responses received.

Responses to this consultation paper are due by 25 February 2022.

* 1. Confidentiality of responses

Parties who wish to make a submission should identify any material that is commercial-in-confidence by replacing the confidential material with an appropriate symbol or ‘**c-i-c**’.

We will treat confidential information responsibly and in accordance with the law. Where we are provided with confidential information, we will, to the extent reasonably possible, seek to protect the confidentiality of that information.

In some circumstances, we may be legally required to produce confidential information. For example, we may be required to disclose information that is subject to a confidentiality claim under a court order or subpoena. If this occurs, we will endeavour to notify and consult you about the proposed release of the information and any measures (such as confidentiality orders) that may be taken to protect that information.

We may also share confidential information internally with ACCC and AER staff, and with our external lawyers and consultants, in carrying out our statutory powers and functions.

Further information on our approach to confidential material is in the ACCC’s Confidentiality Guideline on the [ACCC website](https://www.accc.gov.au/publications/communications-inquiries-submitting-confidential-material).

1. Recent developments
   1. Upload speeds information

When we first developed the Guidelines, we focused primarily on download speeds because, at the time, that was the primary performance measure that consumers were able to use to determine the best broadband service for their needs. Notwithstanding this, RSPs traditionally identified both download speeds and upload speeds in their broadband advertising.

This changed in 2020 when broadband providers increasingly stopped referring to the upload speeds available from their broadband products. Currently, most RSPs do not expressly state the upload speeds for their broadband offerings.

In addition, in May 2020, NBN Co introduced a wholesale product differentiated on the basis of upload speeds. NBN Co now offers two wholesale products with a specified maximum download speed of 100 Mbps, one with upload speeds of 20 Mbps and another with upload speeds of 40 Mbps.

At the same time, broadband upload speeds have become more important to consumers’ broadband experience as consumers have engaged in home based work and study more consistently than has historically been the case. Upload speeds are particularly relevant to video conferencing experience and the speed with which large files can be transferred to the workplace and education institution.

Given these developments, we are considering enhancing the Guidance to provide that upload speeds information should be made available to consumers in marketing material.

* 1. Emerging fixed wireless products

In 2021, fixed wireless broadband products became increasingly available from a greater range of fixed wireless access networks, including on the NBN and other emerging alternative fixed wireless access networks. As a result, differences in the service quality on each fixed wireless access network may be more apparent. This reinforces the importance of ensuring that service providers are transparent about the known limitations of the services they provide to consumers.

The Guidance was revised in May 2019 to include fixed wireless services with specific guidance provided in respect of fixed wireless services supplied over the NBN. The Guidance acknowledges that cell congestion, distance and clear line of sight to a base station are factors that may affect fixed wireless broadband performance. It also recognises that RSPs’ access to network information relevant to determining maximum attainable speed affects RSPs’ ability to provide typical busy period speeds information to consumers.

The Guidance currently provides that:

* RSPs that do not have maximum attainable speed information available from their network provider or from their own testing, may support consumers own testing. In such case, RSPs must accept the consumers’ results as accurately reflecting network performance.
* RSPs can exclude under-performing fixed wireless services from their typical busy period speed test base if the performance issues are outside the RSP’s control and other principles of the Guidance are followed. This is consistent with the approach to other fixed-line broadband services.
* An RSP that does not distinguish its offers by the underlying technology should have speed test samples in proportion to the technologies in their customer base. This reduces the risk of test results showing technology-specific problems disproportionately.
* Principle 4 of the Guidance encourages disclosures and disclaimers, and expressly deals with some limitations and service variability on fixed wireless infrastructure.

As fixed wireless broadband is increasingly supplied over more types of fixed wireless access networks, other performance issues may need to be recognised in the Guidance. Some of these issues are identified later in this paper, and we invite submissions on these issues to inform our views on any amendments to the Guidance that may be necessary.

1. Proposed changes

This section identifies the issues relevant to the presentation of consumer information about broadband speeds, with a particular focus on upload speeds. It sets out our initial understanding and views on the relevant issues, and provides questions seeking information about our proposed approach to enhancing the Guidance.

* 1. Busy periods
     1. Issue overview

The most substantive change to the Guidance we are currently considering is to clearly state that RSPs should provide typical busy period upload speeds information in their broadband marketing for services provided over both fixed line and fixed wireless access networks.

A key issue in finalising our views on this topic is when the busy period is for upload speeds and the impact that has on the upload speeds experienced by consumers.

Information currently available suggests the busy period for upload speeds is in line with the busy period for download speeds. However, we are interested in views on whether the busy period for upload speeds may be outside the 7pm-11pm busy hours referred to in the Guidance. This may be due to activities, such as video-conferencing for educational purposes, that generate more upload traffic during the day than at other times.

In respect of fixed wireless broadband, the busy period may also be earlier than the 7pm-11pm busy hours for some types of fixed wireless network. This is because in some situations, spectrum used to provide fixed wireless broadband services may also be used to provide other services, such as mobile services. In the case of mobile services, consumption generally increases during traditional commuting times before the 7pm-11pm busy hours referred to in the Guidance.[[1]](#footnote-1)

However, network operators and RSPs generally provision their networks for the peak load. As the peak load is the download period, it may be that there is sufficient capacity in the network to cover demand associated with upload traffic. This may mean the busy period does not noticeably impact upload speeds.

* + 1. Proposed change

We are considering amending the Guidance to provide that RSPs should determine the four busiest hours on their relevant network for upload speeds and use those hours to determine their busy hour upload speed claims using the existing Guidance testing methodology.

This would provide RSPs with discretion to tailor their claims according to the busiest upload periods recorded on their networks, while being consistent with existing Guidance on how to accurately test speeds.

* + 1. Questions for comments

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| Questions   1. How does the busy period for upload speeds affect the service quality experienced by end-users, including on higher speed services? 2. Are there any significant barriers to RSPs providing typical busy period upload speed information for:    1. fixed-line broadband services,    2. fixed wireless broadband services? 3. What four-hour period in a 24 hour period is the busy period for upload speeds for:    1. fixed-line broadband services,    2. fixed wireless broadband services? 4. How many services should constitute a sample for testing upload speeds, noting that the Guidance currently suggests 75 services for download speeds. 5. What constraints on a line or cell affect upload speeds in a way that deteriorates service quality experienced by an end-user? 6. What additional amendments to the Guidance would assist RSPs to provide upload speed information about their fixed line and fixed wireless services to consumers? |

* 1. Fixed wireless broadband services
     1. Issue overview

Principle 4 and paragraphs 3.21 – 3.45 of the Guidance deal with disclosing factors known to affect speeds of fixed wireless services. These paragraphs refer to the distance or line of sight to a fixed wireless bases station and congestion in fixed wireless access network cells as factors that may affect the performance of fixed wireless services.

However, as noted above, the growth of fixed wireless services over non-NBN fixed wireless access networks, that is alternative fixed wireless access networks, raises other issues that may be relevant to the performance of fixed wireless services received by a consumer. In turn, this reinforces the importance of ensuring consumers are provided with clear information about all the relevant issues affecting the performance of those services.

Some of the issues raised by the growth of fixed wireless services on alternative fixed wireless access networks include service attributes such as availability or drop-outs, latency, frequency band used, cell congestion, line of sight to a base station, interference, weather, location-specific factors, the use of external antennas, professional or self- installation, and the location and quality of Wi-Fi modems.

Some of these issues are influenced by the network design and spectrum management arrangements of each network, which are commercial decisions for each network operator, and some of the issues are outside the control of a network operator or an RSP.

We therefore invite submissions on these issues and any amendments to the Guidance that may be necessary to promote additional transparency about factors that affect the performance of fixed wireless broadband services across fixed wireless access networks.

* + 1. Proposed change

We propose amending the Guidance section on ‘Services utilising fixed wireless technology” to provide further assistance to RSPs on the best practice for disclosing to consumers the factors known, or ought reasonably to be known, that would affect the download or upload speeds received by an end-user.

* + 1. Questions for comments

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| Questions   1. How are the following attributes, other than speeds, noticeably different to consumers on fixed line and fixed wireless broadband services, and between fixed wireless technologies? What other attributes are relevant?    1. availability and drop outs    2. latency. 2. How are the following factors likely to influence how a fixed wireless broadband service will operate in practice? What other factors are relevant?    1. frequency band used    2. distance and unobstructed line of sight to base station    3. fixed wireless access network cell congestion    4. sources of interference    5. weather    6. location- specific factors    7. use of external antenna    8. professional or self- installation    9. number of concurrent users    10. placement and quality of Wi-fi modem. 3. Are there any significant barriers to RSPs disclosing to consumers any of the factors above that may affect the speeds receive in fixed wireless broadband services? 4. Are there applications that are less well supported by fixed wireless broadband services on different fixed wireless access networks? If so, in what way? 5. To what extent do RSPs offer standalone plans on alternative fixed wireless access networks? 6. What additional amendments to the Guidance would assist RSPs to disclose to consumers factors that may affect the speeds, download and upload, they would expect to receive on fixed wireless broadband services? |

1. Next steps

We will consider all submissions received in order to inform our view on amendments that may be necessary to enhance the Guidance to cover the issues outlined.

We anticipate that we will communicate the outcomes of this consultation, which may include issuing an amended version of the Guidance, in 2022.

1. Congestion in a fixed wireless area (a ‘cell’) is already expressly addressed in the Guidance under Principle 4 and paragraphs 3.21 – 3.45 dealing with disclosing factors known to affect speeds of fixed wireless services. [↑](#footnote-ref-1)