

**COMMUNICATIONS
ALLIANCE LTD**



**ACCC CONSULTATION ON UPDATES TO THE
BROADBAND SPEED CLAIMS GUIDANCE**

COMMUNICATIONS ALLIANCE SUBMISSION
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INTRODUCTION AND EXECUTIVE SUMMARY

Communications Alliance welcomes the opportunity to provide this submission in response to the ACCC's consultation paper ("the Paper") on revising the **Broadband Speed Claims – Industry Guidance**.

The ACCC paper considers 2 key issues: whether the Guidance should be updated to:

- 1) require RSPs to clearly state 'typical busy period' upload speeds for services provided over both fixed line and fixed wireless access networks; and
- 2) reflect changes to the 'Services utilising fixed wireless technology', requiring RSPs to disclose to consumers the 'factors known, or [that] ought reasonably to be known, that would affect the download or upload speeds received by an end user'.

Communications Alliance and its members are supportive of the ACCC's overall objective – that the guidance to industry, the structure of the Measuring Broadband Australia program ("MBA") and the resulting data reported and made available to consumers are all up-to-date and tailored to provide value to consumers when they wish to choose a broadband provider.

The process should enable consumers to understand and compare offerings in a meaningful way, including factors that may affect service performance.

We recognise, therefore, the need to update the Guidance periodically, to reflect changes in the market, service offering and operating environment.

However, any new requirements to the Guidance must be of clear benefit to consumers – that is, they must address material issues in a user-friendly, easy-to-understand and meaningful manner. Importantly, any proposed additional process and reporting requirements must be commensurate with the regulatory burden imposed – i.e. they must conform with the Government's Best Practice Regulation principles.

As this submission explores, it is not at all clear that there is a material problem that needs solving. Further, many of the proposals are impractical and would be very costly to implement, and it is not clear that any new information would change customers' purchasing decisions.

Our working assumption – and we would be grateful for your confirmation of this - is that the ACCC will, therefore, undertake some form of cost-benefit analysis/regulation impact statement on any proposed changes and will validate the results of that analysis with industry before decisions are made to ensure there is a clear net benefit to consumers.

We look forward to further engagement with the ACCC before any decisions are made by the regulator.

About Communications Alliance

Communications Alliance is the primary communications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, platform providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to be the most influential association in Australian communications, co-operatively initiating programs that promote sustainable industry development, innovation and growth, while generating positive outcomes for customers and society.

The prime mission of Communications Alliance is to create a co-operative stakeholder environment that allows the industry to take the lead on initiatives which grow the Australian communications industry, enhance the connectivity of all Australians and foster the highest standards of business behaviour.

For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

Communications Alliance views on the key issues

Upload speeds – is there a problem?

The proposal in the Paper to require reporting of upload speeds (in busy hours) as an addition to the MBA reporting data set seems to rest on two propositions:

- that upload speeds have become more important to consumers' broadband experience in recent years, including because of the recent trends toward more common working and learning at home; and
- that information about upload speeds has become less transparent since 2020.

The ACCC has not sought in the Paper to quantify either of these propositions, nor whether their combined unquantified effect is causing any material disadvantage to consumers.

One way to assess whether upload speeds are a problem is to look at complaint data. Communications Alliance has attempted – and failed – to unearth any meaningful complaint data;

- Comms Alliance members advise that they are not aware of any significant volumes of customer complaints, directed to them, about upload speeds;
- the ACMA has advised it has no reliable or credible information on the issue;
- the TIO has declined to share any information that it may or may not have with Communications Alliance. Subsequent to our initial approach to the TIO, the Ombudsman has advised that if the TIO has useful complaint data on this topic, it will make it available to the ACCC as part of this consultation; and
- the ACCC, in response to our two requests, has said it is aware of some complaints on the topic, but has declined, at time of writing, to provide any empirical data re complaint volumes.

In the absence of evidence to the contrary, we believe there is a risk that the ACCC proposal is a **'solution in search of a problem'**.

Looking at the required upload speeds for most consumers (including those who are working or learning from home, but do not regularly have to upload very large files in a time-dependent way), also suggests that the upload speeds provided in all but, potentially, the minimum speed broadband plans, are not creating a problem.

Typically, an upload speed of only 1 Mbps is sufficient to support a high-quality one-on-one video stream. For platform wide applications – for example when users are engaged in a Zoom, Skype or Microsoft TEAMS meeting with work colleagues or with their school/university teacher/lecturer and class, they typically do not need more than 2.5 – 3Mbps in upload speed. The lowest speed NBN plans are 12/1 Mbps (download/upload) and 25/5 Mbps.

Further, those professionals who need regular, rapid upload of very large files (e.g. film editors, graphic designers etc), will, in our view, almost certainly be conversant with what their requirements translate to, in terms of necessary upload speeds, including in the busy hours. They can be expected, therefore, to have chosen a higher end plan that will meet their needs.

Aggregate traffic spikes above the purchased CVC bandwidth can cause dropouts, jitter, packet loss and latency. However, as already observed, it is not clear that this a problem. Further, we note that despite networks not necessarily being configured for upload, as the bulk of traffic is from download, Additional CVC, purchased to meet peak download requirements, is typically symmetrical for download and upload capacity, but the quantity of

download traffic is generally many multiples greater than upload traffic. This means that there is ample CVC capacity to avoid any noticeable upload congestion.

Put simply, if upload speed is a problem (and it is not clear that this is the case), it is likely to be caused by performance factors other than supplier provisioning.

Busy periods – and measuring upload speeds

The paper states that: the most substantive change to the Guidance currently under consideration 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. The paper also asks whether there are impediments to RSPs providing typical busy period upload speed information.

A key issue in formulating our views on this topic is – as the Paper points out – the need to understand when the busy period is, for uploading (and whether it matches that for downloading) and the impact that the busy hours have on the upload speeds experienced by consumers.

A key impediment to this proposal is that it is not easy to define 'typical busy period'. Some Comms Alliance members observe that there is a strong correlation between the upload and download busy hours, but this is not uniform across the RSP base; peaks can vary substantially across different brands, and some RSPs may see a number of small peaks throughout the day.

In addition, several of Communication Alliance's members advise that they would have significant difficulty providing meaningful measurements of upload speeds; it would be extremely costly to develop and implement a testing regime, and for the reasons noted above, it is not clear how meaningful, comparable data about upload speeds could be defined.

It is important to note that the upload data demand in the busy hours does not 'spike' to anywhere near the same degree as the spike observed in demand for download capacity during the established busy hours. This characteristic is predictable, because there is a large body of consumers who upload little or no content at all during an average day.

This characteristic is significant because it means that consumers are less likely to be affected by slow upload speeds or congestion, as compared to downloads. It therefore lowers the criticality of comprehensive, regulated reporting of upload speeds under the MBA, with all the attendant costs that would impose on service providers (and, ultimately, consumers).

Further, defining a different period for upload and download peak times would unnecessarily complicate the information that needs to be presented in customer marketing material, making it more difficult for consumers to digest. This is further explored below.

Is additional guidance required?

The Paper goes on to look in detail about what guidance on upload speeds might be imposed (Q1-6).

In summary, Communications Alliance and its members do not believe a strong case has yet been made for prescriptive requirements about upload speed data in advertising. The ACMA already has prescriptive requirements about numerous other aspects of product advertising. For example, there are general requirements in the Australian Consumer Law, as well as telecommunication standards, such as the ACMA's Consumer Information Standard - <https://www.acma.gov.au/information-nbn-telcos-must-give-you>. There are also extensive

enforceable provisions relating to communication with customers contained in the *Telecommunication Consumer Protections* industry code.

There is, in our view, a real risk of creating confusion for consumers and information overload – particularly if providers need to report and communicate against busy hours that vary from provider to provider.

Communications Alliance suggests, therefore, that there should be no prescriptive requirements to provide information on upload speeds. Rather, RSPs should be encouraged to include any relevant information on upload speeds in their longer form marketing, or on their website.

Changes to ‘services utilising fixed wireless technology’

The ACCC proposes updating the guidance for ‘Services utilising fixed wireless technology’, requiring RSPs to disclose to consumers the ‘factors known, or [that] ought reasonably to be known, that would affect the download or upload speeds received by an end user’.

Communications Alliance assumes that the fixed wireless technology referred to is nbn fixed wireless technology

Communications Alliance agrees that the additional factors listed by the ACCC in its paper are relevant to fixed wireless performance. We question, however, whether it is meaningful to list every potential factor, as a number of factors are not assessable by a consumer, or out of their control (weather, sources of interference). We also note that two listed factors – use of external antenna and professional or self-installation – are irrelevant; both the use of external antenna and professional installation are mandatory.

For these reasons, Communications Alliance suggests that detailed information about factors affecting upload speeds and performance for nbn fixed wireless technology be listed in longer-form material, or on a website FAQ.



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