

**COMMUNICATIONS
ALLIANCE LTD**



**ACCC Broadband Speed Claims
Information Request, March 2017**
COMMUNICATIONS ALLIANCE SUBMISSION
APRIL 2017

TABLE OF CONTENTS

INTRODUCTION	2
SUMMARY	3
INFORMATION REQUESTS	4

INTRODUCTION

Communications Alliance welcomes the opportunity to provide this submission in response to the ACCC's Broadband Speed Claims Information Request, March 2017.

About Communications Alliance

Communications Alliance is the primary telecommunications 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, equipment vendors, IT companies, consultants and business groups.

Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance. For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

SUMMARY

Communications Alliance is pleased to have the opportunity to provide feedback on the proposed draft guidance for the ACCC's Broadband Speed Claims Principles.

Industry broadly supports ACCC's Speed Claim Principles, while recognising that work is needed to finalise the more detailed guidance that underlies the Principles.

We note the inclusion of guidance on communicating information on the range of factors contributing to consumer broadband performance experience, and look forward to communicating our Industry Broadband Education Package to support consumers with this information.

Industry has identified several important issues which 'could impede the ready adoption of the principles' as requested in the Information Request.¹ Industry is interested in engaging with the ACCC to ensure the guidance is technically robust and appropriate to support the Principles and consumer adoption of next generation broadband. The guidance must also be workable if it is to ensure the Principles are met.

In the interests of supporting the effective implementation of the Speed Claims Principles, Industry agrees on the importance of providing accurate and robust information to consumers that can be backed up with statistically robust data analysis. However, there is significant concern with Issue 3 in the Information Request, discussed under "*Information request for measuring typical speed*" below as we do not think the methodology will represent a typical experience for consumers.

Additionally, we noted the announcement today (7 April) of government funding for a broadband monitoring and reporting program. Industry is of the view that the ACCC cannot rely on this consultation to gather views on this separate program, as was mentioned in a previous conversation with the ACCC. We believe it is essential any further engagement on the detail of the monitoring program involve discussion with Industry members to ensure the Commission has the right information and is fully informed of the relevant technical and operational factors that must play into the implementation process, as to date there has not been adequate consultation with Industry.

We have prepared this response with the understanding that the Speed Claims guidance would apply to retail 'fixed broadband plans supplied over next generation access networks,'² and that this would not include fixed wireless, nor satellite-based services.

¹ Broadband Speed Claims Information Request March 2017 | Paragraph 1.3

² Ibid | Paragraph 5.6

INFORMATION REQUESTS

Information request for busy period measure

- (a) We consider it would be reasonable to adopt the period 7pm to 10pm, or 7pm to 11pm, as the busy period. We invite comment on which of these busy periods should be adopted.
- (b) If you consider neither of the proposed busy periods in (a) should be adopted, please provide views to support any alternative time period.

We agree that 7pm to 11pm is a reasonable busy period.

Information request for 'end to end' measure

- (a) Which network elements should be included in RSP measurements, to ensure RSP representations about typical speed reflect the speed at which the broadband service provides access to a location at which popular internet content is stored, and are prepared on a comparable basis across RSPs? The ACCC considers the speed should be measured from the modem in the consumer premise to a domestic data exchange at which RSPs access most popular internet content and applications.

We agree that the RSP's modem in the customer premises is the correct element for one point of the end to end measure.

However, Industry has concerns about the technical implementation of a third-party server as the other end, and is currently investigating alternative suggestions, which we look forward to discussing with the ACCC. We do agree that the solution will need to appropriately reflect the consumer's use and experience.

Information request for frequency of sampling

- (b) We seek views on whether it would be feasible to take observations more frequently than on an hourly cycle during the busy hour, e.g., at 30 minute intervals.

The appropriate frequency of observations will ultimately depend on the final sampling methodology and confidence intervals adopted. Within the correct methodology, hourly samples would likely be reasonable but more information is required.

Information request for measuring typical speed

- (c) We invite information about the implementation of the "80/80" measure as a statistical measure to be calculated for a given plan, and as a viable method for ensuring representations about typical speed are accurate. Particularly, we seek views about whether there are obstacles to implementing the proposed measure.

RSPs have significant concerns about the methodology proposed under Issue 3, specifically in paragraph 5.33. The methodology as currently proposed would not reflect a typical user experience.

Although the ACCC undertook consultations on the development of the Speed Claims Principles, the guidance in the Speed Claims Information Request was developed without Industry input. When similar programs were undertaken in the international examples

referenced throughout this process by the ACCC, the methodologies were developed in concert with Industry.

Determining an accepted method to measure and represent typical busy speeds to consumers is a complex issue with potentially significant impacts. Industry is eager to provide feedback and engage with the ACCC to develop an appropriate methodology.

A 'typical' speed representation should give the broadest range of consumers possible an accurate reflection of what their experience might be. Using one number may not be the most appropriate method to do so.

Additionally, the calculations as proposed would instead produce a number reflecting an atypical consumer experience.³

RSPs feel that more work needs to be undertaken to find an approach which can provide 'average' or 'typical' speed information to align with consumer expectations. Further, there also needs to be discussion about the uncertainty in the underlying data analysis, if the metric is to be useful for any purpose.

In early discussions, we have identified that potentially using a range of results (for example, from the 20th percentile – 80th percentile) or an interquartile or trimmed mean may provide information more accurately reflecting user experience.

In any statistical sampling exercise, the analysis of variance should lead to confidence intervals (error bars) for all results. ACCC did provide such confidence intervals with its previous trial report based on a busy hour average speed approach. However, with the proposed 80/80 rule, Industry believes ACCC needs to quote confidence intervals with a sound statistical basis which differs substantially from the central limit theorem approach used by SamKnows in the previous trial.

We think the ACCC should be transparent in providing Industry with its statistical basis for confidence intervals and statistical significance of any comparisons between RSPs using the 80/80 rule. There is concern that comparisons using results with overlapping confidence intervals could be misleading.

If there is to be a methodology recommended by the ACCC, RSPs insist that opportunity be provided for further consultation to ensure consumers are provided with accurate information.

Information request for consumer information template

(d) We seek views about whether there are any impediments to providing the information in the consumer information template set out above.

There is no Industry agreement as to the necessity or desirability of a consumer information template or speed labels.

However, it is important to note that Industry does not consider advertising and marketing broadband services in the *absence* of a template to necessarily be misleading, which could be implied by the ACCC's explicit request for such a template.

If there is to be a common information template, it would be more appropriate for it to be Industry-developed. This particular guidance appears to be an unwarranted level of

³ Noting that the reference to "80th percentile" in paragraph 5.33 was intended to reference what is commonly accepted as the 20th percentile, per clarification from the ACCC.

regulation from the ACCC. Industry questions the appropriateness of this and believes, if required, we would be able to develop more effective information templates through currently existing workgroups at Communications Alliance. This would also allow for updates as needed to take account of changes in technology. There is precedent for Industry undertaking similar work through these processes.

Care should be taken that a customer information template does not impact RSPs' ability to market in a simple and consumer friendly manner. This will be particularly important where the additional information introduces unnecessary complexity to marketing bundles that feature other services not related to the fixed internet speed and so could lead to consumer confusion.

Additionally, there is no information provided with respect to how and when the information in the template would be provided to the consumer. Industry seeks clarification of the intended use of any developed consumer information template. If further details on the proposed use of a template are provided, Industry may have additional feedback.

Information request for speed labels

(e) We seek views about whether there are any impediments to applying the proposed speed labels, including any issues regarding the download speed ranges they represent.

RSPs strongly oppose the use of speed labels in advertising. Given that RSP speed performance [80/80 or whatever is appropriate] is likely to change over time, the ACCC risks placing RSPs in a position where they inadvertently provide misleading information or have to pull expensive national marketing campaigns should underlying speed performance fluctuate from month to month.

While Industry agrees that the ACCC has a role in setting industry-consistent rules on how RSPs describe broadband products, we do not believe that this should be extended to dictating actual advertising terms, and/or names of specific broadband plans. Consequently, RSPs disagree with the proposal to mandate uniform speed labels. The proposal would likely be counter to the intent of any broadband speed monitoring programme (should one be implemented), and would likely increase confusion among consumers.

It is claimed in the Information Request that the use of the common speed label will help address misconceptions that all plans over next generation networks (NGNs) operate at speeds greater than speeds commonly experienced over legacy networks. Industry does not agree; the prominent use of average busy period broadband speeds is likely to address these concerns. There would appear little incremental benefit from mandating language that can be used in advertising.

If the ACCC chooses to implement speed labels despite RSP's significant concerns, it would only be appropriate to do so following Industry consultation.

Information request: Implementation timetable

We note that following publication of the Industry Guidance, we will be monitoring steps taken by RSPs to apply the guidance principles and meet their existing obligations under the ACL. Given the principles are based on existing obligations, and we understand that RSPs already undertake speed testing for their own business purposes, we consider the timeframes set out above would be a sufficient timeframe for RSPs to implement the principles.

(f) Please provide any information about practical impediments to implementing the guidance principles in line with this timetable, including evidence in support of feedback.

The achievability of any timetable at this point in time will largely depend upon the final guidance, and so it is not possible to provide any meaningful feedback with respect to an implementation timetable.

Once the guidance has been finalised and Industry has had the opportunity to thoroughly consider and plan implementation, further discussions between the ACCC and Industry on timelines would be welcomed.

Information request: Other information

Respondents are invited to provide other information and evidence they consider to be materially relevant to this Information Request.

Some RSPs are concerned about the impact of the guidance in the section "Reliance by resellers on wholesale data" on smaller RSPs, particularly paragraph 5.38. This guidance does not consider the impact on providers of varied sizes, and we would request further consultation on this point.



Published by:
COMMUNICATIONS
ALLIANCE LTD

Level 12
75 Miller Street
North Sydney
NSW 2060 Australia

Correspondence
PO Box 444
Milsons Point
NSW 1565

T 61 2 9959 9111
F 61 2 9954 6136
E info@commsalliance.com.au
www.commsalliance.com.au
ABN 56 078 026 507