



Australian Government

**Department of Communications,
Information Technology and the Arts**

Metropolitan Broadband Connect

Program Guidelines

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1 INTRODUCTION

1.1 What is Metropolitan Broadband Connect?

Metropolitan Broadband Connect is a \$50 million, three-year program to address broadband blackspots in metropolitan areas where competitive market forces do not offer services to people at prices comparable to those available to the majority of Australians. Registration for the Program commences in March 2006.

Currently, it is not possible for all customers to access broadband services at equitable prices across metropolitan areas. Specifically, a significant number of people live and work in areas where Asymmetric Digital Subscriber Line (ADSL), Hybrid Fibre Coaxial (HFC) and wireless services are not available. The only form of broadband access available to such people is generally via satellite. The costs associated with delivering satellite services in metropolitan areas are generally higher than for terrestrial networks, and consequently access prices are also generally higher.

Metro Broadband Connect is consistent with the National Broadband Strategy (NBS), which was developed in response to the Regional Telecommunications Inquiry and the Government's Broadband Advisory Group. The NBS identifies that 'government has an important role to play both in enabling market driven broadband outcomes and in facilitating broadband access in areas where the market may not provide services at fair and reasonable prices within an acceptable timeframe'¹.

Metro Broadband Connect also forms part of the Government's \$1.1 billion Connect Australia package which builds on the \$242 million of funding already provided through the NBS.

Metro Broadband Connect has a number of key objectives in common with the Government's Broadband Connect program. These include support for the development of an efficient and competitive market for the supply of broadband services, a technologically neutral approach to service provision and the efficient use of public funds by effectively targeting support to areas of need.

Metro Broadband Connect is targeted at residential customers, Small Businesses and small Not-for-profit Organisations. The Program applies to the capital cities of Australia and adjacent designated high population centres.

The Australian Government Department of Communications, Information Technology and the Arts (DCITA) manages Metro Broadband Connect.

¹ *National Broadband Strategy*, page 3

2 OVERVIEW OF THE OPERATION OF METRO BROADBAND CONNECT

2.1 Purpose of the Program Guidelines

These Guidelines set out the rules for the operation of Metro Broadband Connect, including the customer eligibility requirements, the processes for registering Providers and Services, and for providing Customers with Services.

It should be noted, however, that these Guidelines do not constitute a legal framework for the Program. The Metro Broadband Connect operational rules will be legally enforced through Agreements between Providers and DCITA, and in the Terms and Conditions under the contracts that Providers enter into with their Customers. In the event of any inconsistency between the Agreement and these Guidelines, the Agreement will prevail.

Capitalised terms used in these Guidelines have the definitions given to them in the glossary at Section 8.

2.2 Period of the Program

Registration for Metro Broadband Connect commences in March 2006 and the Program ends 30 June 2008. These Guidelines may be materially changed to take into account the outcome of the Program's first review (early 2007). Services supplied via infrastructure deployed during the life of these Guidelines will continue to attract the listed Incentive Payments irrespective of any change to these Guidelines.

2.3 Metro Broadband Connect Area and Eligible Premises

Metro Broadband Connect operates in the Metro Broadband Connect Area and makes assistance available to Providers to offer Eligible Customers access to Services. These Services include both Threshold and Added Value Services and must meet specific pricing and performance criteria.

Premises with access to an Equivalent Service at the Start of the Program are not Eligible Premises, provided they retain access to an Equivalent Service.

2.4 Services

All Service Providers are required to register, offer and supply upon request a Threshold Service and an Added Value Service.

Service Providers may also register other Added Value Services with additional functionality or features, which are also eligible for Incentive Payments from DCITA under the Program.

2.5 Customers

Metro Broadband Connect is targeted at four Eligible Customer types: residential customers, Small Businesses, Not-for-profit Organisations, and Not-for-profit Organisations intending to provide new Public Access Internet Facilities. A customer

must attest that they are an Eligible Customer. These groups are described in more detail at Section 3.1. Services are provided to these Customers at Eligible Premises.

Where a Service Provider has Pre-existing Customers receiving a Higher Bandwidth Service which is equivalent to the Threshold Service except in terms of pricing, it must offer Metro Broadband Connect-compliant pricing to these Pre-existing Customers. To assist the Service Provider to do so, a Customer Transfer Payment will be made available.

2.6 Metro Broadband Connect Service Providers

A service provider who wishes to register for the purposes of the Program must apply to DCITA and be assessed in relation to corporate, technical and financial capabilities and sustainability. Service providers already registered under Broadband Connect may be able to access a streamlined application process for registration as Service Providers.

A Service Provider must agree to:

- (a) offer a Threshold Service;
- (b) offer at least one Added Value Service (see Section 4.4.7.1);
- (c) supply DCITA with service availability information, that is in a format acceptable to DCITA, showing its service areas and update this on a regular basis; and
- (d) supply DCITA with details of intended Commercial Investment and update this on a regular basis, to the extent that this is possible.

Service Providers who are approved for registration with Metro Broadband Connect are required to enter into an Agreement with DCITA. The Agreement binds the Service Provider to offer and supply its Services on the Terms and Conditions that it has proposed at the time of registration for a period of three years from the date that it begins serving each Customer.

The Agreement also requires the Service Provider to agree to bind itself to these Terms and Conditions with its Customers in its Customer contracts. The terms and conditions of the Customer contracts must be approved by DCITA and form a schedule to the Agreement.

In determining whether or not to enter into an Agreement with a service provider, DCITA may, at its discretion, require the service provider to submit additional information to that supplied in its application for registration under Metro Broadband Connect.

In determining whether or not to enter into an Agreement with a registered Service Provider in subsequent financial years, DCITA may, at its discretion, require the Service Provider to undergo a further or updated assessment which may be as extensive as a complete reassessment of the Service Provider's registration.

Service Providers must market and supply the Services that they have registered in their Service Areas. However, Service Providers may nominate only those Service Areas that suit their particular technology platform and/or business plan. Service Providers are not to announce their intention to supply Services to a particular area until they have

registered for the provision of Services to a particular Service Area and identified to DCITA the date from which Services will be offered.

2.7 Incentive Payments

Once a Service Provider has met all preconditions and has supplied a Service to a Customer, the Service Provider is able to claim an Incentive Payment from DCITA.

There are two categories of Incentive Payments:

- (a) Standard Cost, being \$500 (including GST), payable for Services registered as Standard Cost Services (see Section 4.13.5); and
- (b) High Cost, being \$1000 (including GST), payable for Services registered as High Cost Services (see Section 4.13.6).

Only one Incentive Payment can be claimed for each Service supplied and the Incentive Payments can only be claimed once supply of the Service has commenced to an Eligible Customer.

In claiming Incentive Payments, Service Providers and Infrastructure Providers are required to declare that the claims are legitimate and accurate.

In most situations, Service Providers may not be aware if premises are Eligible Premises. In these cases DCITA will assess claims for Incentive Payments from Service Providers for premises being supplied with a Service. DCITA's decision on eligibility will be based on service availability information submitted to DCITA by each Service Provider at the time that it registers, and by other providers and which will be updated on a regular basis.

There are two circumstances where Service Providers will be able to advise DCITA that a Service is being supplied to Eligible Premises. The first is where a Service is being supplied to a Customer listed on the Demand Register. In this case the Customer will have attested to having checked with all of the service providers nominated by the Online Service Locator, and that these providers were unable to supply a Service or Equivalent Service to the Customer's premises.

The second circumstance is where the Customer contacts a Service Provider directly and attests that it has checked with all other service providers nominated by the Online Service Locator, and all were unable to supply a Service or Equivalent Service to the Customer's premises.

Customer Transfer Payments, based on the two payment categories above, are determined upon application by Service Providers to DCITA to provide Pre-existing Customers with Threshold Services.

Payments DCITA makes to Providers are required to be audited, and any monies found to be not legitimately payable to the Provider under its Agreement must be repaid.

DCITA assumes that infrastructure providers would have continued to invest in extending the coverage of their broadband networks in the Metro Broadband Connect Area, albeit at a slower rate and not so extensively without assistance from the Program.

Therefore, as part of the registration process, DCITA will require infrastructure providers to demonstrate, to the extent that it is possible, that by receiving Australian Government assistance, their planned network coverage will be greater and will occur earlier than it otherwise would.

In assessing this information, DCITA will take into account the infrastructure provider's historical investment in extending its broadband network, and will review the outcomes of Metro Broadband Connect assistance when considering applications from Providers to continue to participate in the Program for subsequent financial years.

2.8 Metro Broadband Connect performance monitoring and compliance

Within 20 Working Days from the end of each quarter, each Provider must provide a performance report on key aspects of its Service delivery for that quarter, including Data Speed compliance, Network availability, Service availability, Allowable Costs and complaints received from Customers.

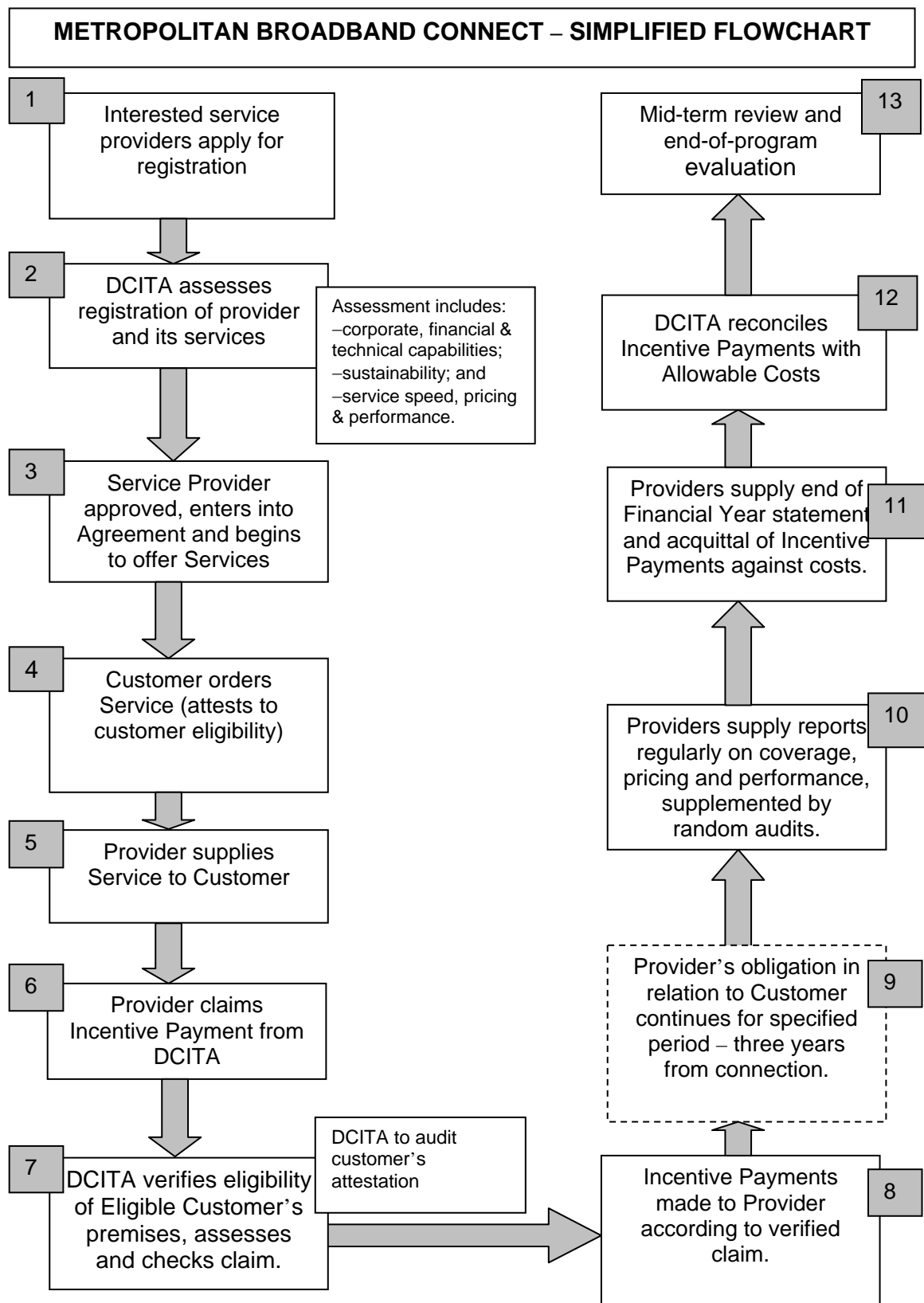
At the end of each financial year, each Provider must report to DCITA on its compliance with its obligations under Metro Broadband Connect, particularly the obligation to provide Services at the performance and pricing levels set out in its Agreement. Providers must also provide a financial report to DCITA at the end of each financial year. A summary of annual compliance reporting requirements common to all Providers is at Attachment 10.3. These reports are supplemented by random audits of Providers by DCITA throughout the financial year.

Providers must also advise DCITA if they become aware of any material change in their corporate standing or managerial capabilities which could affect their ongoing ability to meet their obligations under Metro Broadband Connect.

Providers who are found to be in breach of their obligations under their Agreement will be required to take remedial action and, in the event of continued or serious breaches, their Agreement may be terminated. DCITA and the TIO may investigate and take action against Providers failing to meet their obligations to Customers under the Terms and Conditions of their Customer contracts.

Customers who are dissatisfied with the performance of their Service or their Service Provider should direct their complaints to their Service Providers in the first instance. Customers who are not satisfied with the response from their Service Provider should then direct their complaints to the TIO.

The flowchart below provides an overview of Metro Broadband Connect’s operation.



3 CUSTOMER PARTICIPATION IN METRO BROADBAND CONNECT

3.1 Customer eligibility requirements

Services will only attract an Incentive Payment when provided to customers and premises where certain eligibility requirements are met. There are two key matters that need to be considered in assessing eligibility. These are:

- (a) the type of customer; and
- (b) the eligibility of the location of the premises to which the customer wants the service provided.

3.1.1 Types of customers eligible for Metro Broadband Connect assistance

Four categories of customers are eligible to be supplied with Services:

- (a) residential customers;
- (b) Small Businesses;
- (c) Not-for-profit Organisations with 20 or fewer permanent FTEs; and
- (d) Not-for-profit Organisations, where the service to be supplied by the organisation is a new Not-for-profit Public Access Internet Facility.

The Service Provider is responsible for ascertaining that the customer is of an eligible type by having the customer attest to its eligibility (see Section 3.5.4). The eligibility of the location of the premises may be determined either by the customer attesting that an Equivalent Service is not available or by DCITA checking the availability of an Equivalent Service at the time a Provider submits a claim for an Incentive Payment (see Section 3.2 and 4.13.5.1).

3.1.2 Residential customers

Subject to other eligibility requirements specified in Section 3.1, residential customers are eligible to be provided with Services.

A residential customer may also be supplied with a Service as a Small Business customer, subject to meeting eligibility requirements.

A residential Customer's premises do not need to be a person's sole or principal residence to be eligible under Metro Broadband Connect, but it must satisfy the definition of Eligible Premises. Thus a residential Customer may be supplied under Metro Broadband Connect with Services at both the principal place of residence and any other place of residence (for example, a weekend retreat or holiday home).

For the purposes of Metro Broadband Connect, a 'place of residence' is a self-contained and distinct place of residence and includes:

- (a) a distinct house or houses, including a 'granny flat' on a block of ground under a single title;
- (b) a flat or apartment in a block of flats or apartments;

- (c) houses, cottages or other dwellings on a farming property that are separate places of residence for the property owner and staff member/s;
- (d) self-contained and distinct places of residence within retirement villages and nursing homes²; and
- (e) a caravan that is permanently located at a caravan park and is a residence of the customer³.

Boats may be considered within the definition of Eligible Premises. However, Service Providers' technological capability may limit their ability to offer Services to Eligible Customers at Eligible Premises that are boats. Such customers are eligible for a Service in their nominated homeport, where that homeport is in the Metro Broadband Connect Area and where all other eligibility criteria are met.

Residents of places that are separate residential units within a complex of such units and are generally rented by the owner for occupancy by another person on a short-term basis are not eligible to be provided with a Metro Broadband Connect Service under Metro Broadband Connect. Such places include hotel rooms, serviced apartments, holiday apartments, boarders' rooms and dormitories.

3.1.3 Small Businesses

Small Businesses with 20 or fewer permanent FTEs at the time of application for a Service are eligible to be provided with Services, subject to other eligibility criteria being met.

In determining whether a Business has 20 or fewer FTEs, consideration is given to the total employment by the Business across Australia. Thus, although an organisation may have fewer than 20 FTEs at a particular site or office in the Metro Broadband Connect Area, if it has more than 20 FTEs nationally, then it would not be eligible under Metro Broadband Connect. Examples of Businesses excluded by this provision could include branches of banks, supermarkets, chain stores, and insurance companies.

Each Small Business is eligible to receive one Service at each of its places of Business that are Eligible Premises. Where multiple Businesses with common ownership and control share a single place of Business, then each of those Businesses is eligible to receive one Service only if the Business has:

- (a) a separate Australian Business Number from the Business or Businesses which share the same premises (that is, are co-located);
- (b) a unique trading name; and
- (c) a clearly identified separate work location within the shared building premises.

Where multiple separate Businesses are co-located, each Business is eligible for a Service.

² However, for the retirement village or nursing home itself to be eligible to be supplied with a Service (as distinct from a resident) it needs to be eligible under another category (e.g. Small Business or Not-for-profit Organisation).

³ However, for the caravan park business itself (as distinct from a resident) to be supplied with a service under Metro Broadband Connect, it needs to be eligible under another category (e.g. Small Business or Not-for-profit Organisation).

A franchisee with 20 or fewer FTEs will be eligible to receive a Service providing the franchisee is a separate legal entity from the franchisor and the franchisor is not in partnership with, or does not own all or part of, the franchisee.

3.1.4 Not-for-profit Organisations

Not-for-profit Organisations with 20 or fewer permanent FTEs at the time of application are eligible to be provided with Services, subject to other eligibility criteria being met. Volunteers are not considered as employees in determining the number of permanent FTEs for the purpose of an application under Metro Broadband Connect.

In determining whether a Not-for-profit Organisation has 20 or fewer FTEs, consideration is given to the total employment of the organisation across Australia. Thus, although an organisation may have fewer than 20 FTEs at a particular site or office, if it has more than 20 FTEs nationally, it would not be eligible under Metro Broadband Connect. Examples of Not-for-profit Organisations excluded by this provision may include local offices of national representative organisations.

Not-for-profit Organisation does not include Australian, State, Territory and local Governments or their agencies.

3.1.5 Not-for-profit Public Access Internet Facilities

For the purposes of this Section, a Not-for-profit Organisation is the same as described in Section 3.1.4, but without regard to the limit on the number of permanent FTEs.

Not-for-profit Organisations, regardless of their numbers of permanent FTEs, are eligible to be provided with Services under Metro Broadband Connect to provide new Not-for-profit Public Access Internet Facilities at Eligible Premises.

There is a limit of three Services per Eligible Premises (see Section 3.4.1). Metro Broadband Connect only supports Services for Public Access Internet Facilities that are New Services. Metro Broadband Connect does not provide Customer Transfer Payments to enable Not-for-profit Organisations already providing Higher Bandwidth Services by way of Public Access Internet Facilities to migrate these services to become Services.

As a Service supplied for a Not-for-profit Public Access Internet Facility may be shared among a number of users of the Service, it is not expected that end-users will necessarily experience Higher Bandwidth Service Data Speeds.

3.2 Premises to which Services can be provided

Premises are Eligible Premises if they are places of residence, of Business, or for the operation of a Not-for-profit Organisation as described in Section 3.1, and they are in the Metro Broadband Connect Area and:

- (a) did **not** have access to an Equivalent Service at the Start of the Program; or
- (b) did **not** have access to an Equivalent Service at any other time following the Start of the Program due to pre-existing capacity ceasing to be available.

Due to the presence of a number of different networks in the Metro Broadband Connect Area, DCITA will be responsible for assessing whether a Service is being delivered to Eligible Premises.

There are three methods of determining whether premises are Eligible Premises:

- (a) Customers may attest to the Service Provider that they have checked with all other providers nominated by the Online Service Locator, and were unable to be supplied with a Service or Equivalent Service;
- (b) Customers must attest when registering on the Demand Register that they have checked with the other service providers nominated by the Online Service Locator and were unable to be supplied with a Service or Equivalent Service; or
- (c) If neither of the above circumstances applies, Providers may submit claims to DCITA for Customers they are supplying with a Service, and DCITA will determine which of these Customers occupy Eligible Premises and therefore attract an Incentive Payment. Providers may also request DCITA to make a determination on the eligibility of a customer's premises prior to supplying the customer with a Service. This determination will be based on service availability information submitted to DCITA by each Provider at the time that it registers, as well as information from non-registered providers and which will be updated on a regular basis.

Except where otherwise explicitly provided for in these Guidelines, premises that are considered to be eligible at the Start of the Program remain Eligible Premises for the duration of these Guidelines until they are supplied a Service.

Premises remain eligible even if a service provider is able to offer them an Equivalent Service independent of Metro Broadband Connect support, as long as the service offered is not actually connected and was not available prior to the Start of the Program.

3.2.1 Application of Metro Broadband Connect to metropolitan areas and specified adjacent urban centres

Metro Broadband Connect applies to Eligible Premises in the defined Metro Broadband Connect Area, that is, Eligible Premises that are located within the Metropolitan Exclusion Area as defined under Broadband Connect.

A map showing the boundaries of the Metropolitan Exclusion Area is available on Metro Broadband Connect Online.

Where there is dispute about whether Eligible Premises are in the Metro Broadband Connect Area, DCITA will consider each claim on its merits and will make a determination based on available evidence.

3.2.2 Exclusion of premises with existing access to Equivalent Services

Generally, premises are not eligible under Metro Broadband Connect if they had access to an Equivalent Service at the Start of the Program. The process for determining whether premises are eligible under Metro Broadband Connect is described at Section 3.2.

3.2.2.1 Premises serviced by unidentified higher bandwidth providers

To protect the commercial interests of service providers already offering Equivalent Services at the Start of the Program, there is a special exclusion provision to cover any such service providers not identified by DCITA at the Start of the Program.

A service provider who believes that it was able to offer Eligible Premises access to an Equivalent Service at the Start of the Program may dispute the eligibility of such premises under Metro Broadband Connect. To do this, the service provider must contact DCITA in writing providing details of the services it was providing, the date from which it was providing those services, the prices of the services and the coverage area of the services. Where DCITA is satisfied that the premises in question should be considered ineligible, it will advise Providers and publicise the decision on Metro Broadband Connect Online.

DCITA would not seek to recover Incentive Payments paid in relation to Services provided to Eligible Premises which subsequently had been determined to be ineligible in these circumstances. Providers of those Services would continue to be obliged to provide those Services on the Terms and Conditions set out in their contracts with Customers.

3.2.3 Premises no longer eligible once provided with a Service or an Equivalent Service

Once Eligible Premises have been provided with a Service, the premises are no longer Eligible Premises.

A new customer moving to premises that have previously been provided with a Service is generally not eligible to receive a Service at the premises. This provision recognises that, in such circumstances, the infrastructure necessary to provide an Equivalent Service to the new resident will generally remain in place. The exception is where an Equivalent Service cannot be provided to the new customer at that premises unless a New Service is provided, for example where a two-way satellite service is the only means of providing an Equivalent Service to the new customer.

Premises also become ineligible under Metro Broadband Connect once they have been provided with an Equivalent Service or a service with Metro Broadband Connect-compliant Pricing where that service is provided by any service provider.

3.2.4 Premises that lose access to an Equivalent Service following the start of Metro Broadband Connect

If premises had access to an Equivalent Service prior to the Start of the Program but loses access to that service as a result of a service provider's capacity being exhausted, then the premises become Eligible Premises for Providers until such time as the premises' access to the pre-existing Equivalent Service is restored.

If Eligible Premises had access to a Service following the Start of the Program but lose access to the Service as a result of the Provider's capacity being exhausted, the premises will become Eligible Premises for Providers except for the Provider that was unable to provide the Service due to the capacity constraint for the remainder of the Program.

This is particularly relevant to instances where the available ports for ADSL enabled RIMs are exhausted during the course of the Program. The Provider that provides Services via this infrastructure will not be eligible for support for investing in providing additional capacity or for providing a Service via alternative infrastructure (for example, wireless or satellite) if it allows that capacity to become exhausted during the course of the Program.

3.2.5 Eligibility of premises constructed after the Start of the Program

Generally, premises constructed after the Start of the Program will be serviced with telecommunications infrastructure that is able to supply Equivalent Services, and hence will not be considered to be Eligible Premises. However, in circumstances where an Equivalent Service is unavailable following construction of the premises, DCITA will consider the eligibility of the premises as follows.

Premises constructed after the Start of the Program will be categorised as being either part of New Housing/Business Estates or Urban Infill.

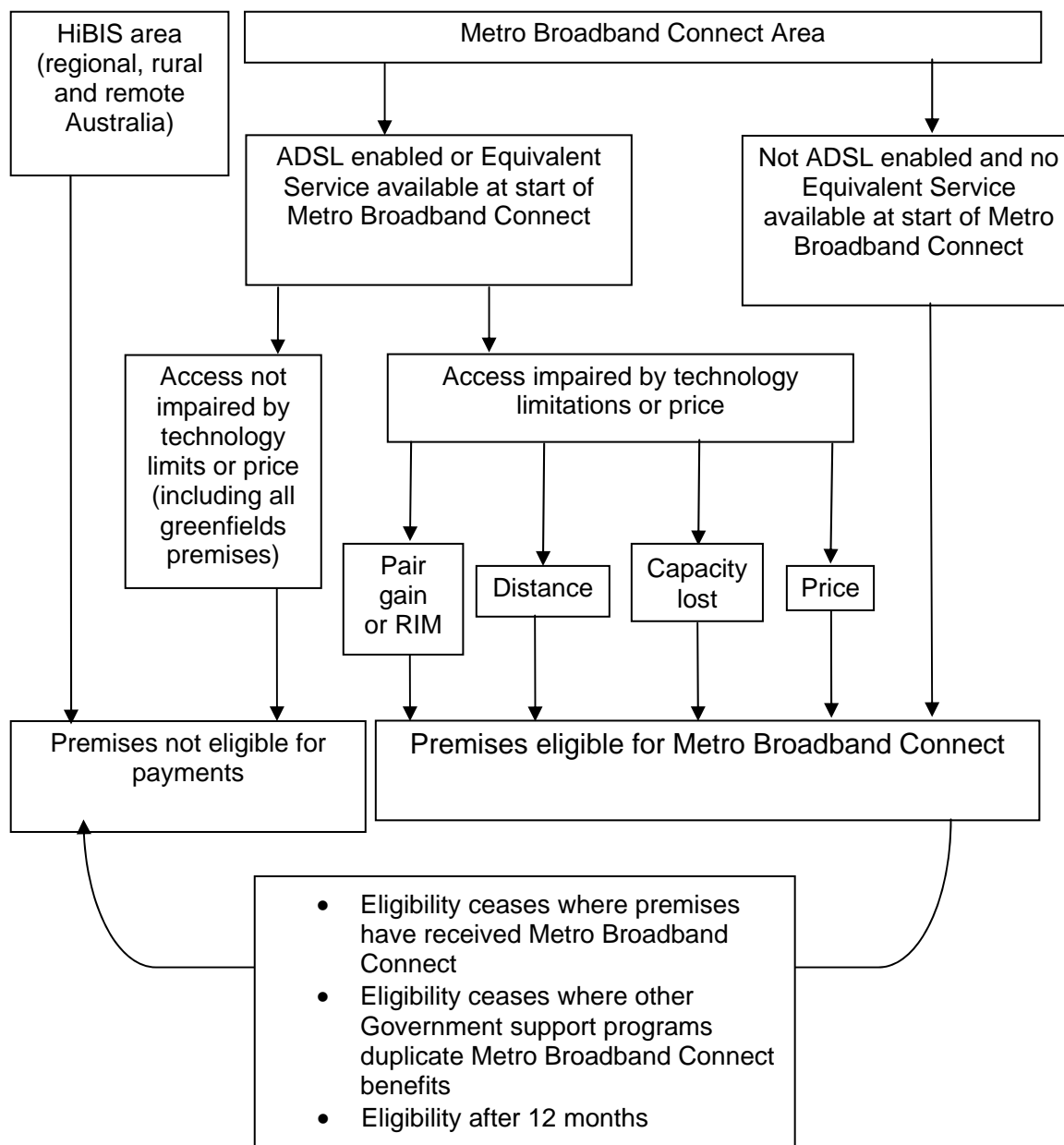
The approach for determining the eligibility of premises constructed after the Start of the Program is outlined below:

- (a) Premises in New Housing/Business Estates constructed after the Start of the Program, will generally not be considered to be Eligible Premises for any Provider. However, where premises in new estates are not able to access Equivalent Services, DCITA will determine eligibility under Metro Broadband Connect through six monthly reviews of broadband access to these new estates. Following these reviews DCITA reserves the right not to allow claims for Incentive Payments to new estates where a Provider should reasonably have been expected to provide access to Equivalent Services as part of the development of that estate.
- (b) In cases of Urban Infill where an Equivalent Service was not available to the location of the premises at the Start of the Program, these premises will be considered to be Eligible Premises.
- (c) In cases of Urban Infill where only one Equivalent Service was available at the Start of the Program but subsequently became unavailable to the newly constructed premises, for example due to the installation of some kind of broadband incompatible equipment, the provider responsible for the loss of the Equivalent Service will not be eligible to receive Incentive Payments for the supply of Services to these premises. However, other Providers that may be able to supply Services to these premises will be eligible for Incentive Payments.

As part of the registration process, DCITA will require Applicants to outline how they will address New Housing/Business Estates and Urban Infill.

3.2.6 Summary of eligibility arrangements relating to premises

Figure 1: Metro Broadband Connect Premises Eligibility



3.3 Other Government programs and eligibility under Metro Broadband Connect

3.3.1 Special Digital Data Service Obligation beneficiaries covered

Premises and/or customers that have received assistance to obtain a data service under the Special Digital Data Service Obligation (SDDSO) are eligible to receive a Service

only if DCITA, at its discretion, is satisfied that the Service is not comparable to the service provided under the SDDSO.

3.3.2 Other Government Support Programs

DCITA may identify other Australian, State, Territory or local Government programs that have a similar purpose and effect as Metro Broadband Connect. In these circumstances:

- (a) premises receiving Equivalent Services as a result of such programs would no longer be Eligible Premises;
- (b) providers able to offer access to Equivalent Services to particular premises as a result of those programs would not be eligible to provide Services to those particular premises; and
- (c) other Providers would be eligible to provide Services to those premises (see Section 4.4.3).

Programs will be considered on a case-by-case basis. This provision may apply to pre-existing programs and any future programs. Exclusion will be on a prospective basis only and will only come into force after DCITA takes reasonable steps to inform all Providers of the exclusion in writing and from a date specified in writing by DCITA.

If other Government support is limited and/or is considered to have an objective to provide additional benefits beyond the Metro Broadband Connect objectives, premises receiving those benefits and which would otherwise be Eligible Premises would remain Eligible Premises.

3.4 Service-related eligibility provisions

3.4.1 Number of Services provided to premises

With the exception of a Not-for-profit Organisation providing a new Not-for-profit Public Access Internet Facility, one Service may be provided to Eligible Premises at any one time for each type of Eligible Customer.

Where Eligible Premises are occupied by more than one type of Eligible Customer, one Service may be provided for each type of Eligible Customer, even if more than one type of Eligible Customer is represented by a single person, for example where a person is eligible as both a Small Business and a residential customer. Types of Eligible Customers are set out in Section 3.1.1.

Where the Eligible Customer is a Not-for-profit Organisation providing new Not-for-profit Public Access Internet Facilities, no more than three Services can be provided to the Eligible Customer at these premises, unless the customer has requested in writing, and obtained in advance, a written notice from DCITA specifying that a greater number of Services can be provided at these premises for that customer. In deciding whether to issue such a notice to an Eligible Customer, DCITA will require the customer to provide information regarding:

- (a) the number of existing and likely users of the Not-for-profit Public Access Internet Facility for which the approval is being sought;

- (b) the nature of the entity and its access to funding, other than through Metro Broadband Connect; and
- (c) any other matter DCITA considers relevant.

DCITA will also advise Providers when it gives approval for such a Customer to have access to more than three Services.

3.4.2 Customer transfers between Service Providers

Where a Customer receives a Service from one Service Provider at particular premises and then transfers to a different Service Provider to receive a Higher Bandwidth Service at those same premises, the new Service Provider is not eligible for an Incentive Payment in respect of that Higher Bandwidth Service.

However, where a Customer stops receiving a Service at particular premises through circumstances beyond their control, the Customer will be eligible to be supplied with another Service to those premises.

3.4.3 Metro Broadband Connect support for existing Customers

Pre-existing Customers who are already being supplied with a Higher Bandwidth Service in the Metro Broadband Connect Area by a Service Provider, but not an Equivalent Service, are eligible to receive a Service. Their Service Provider can claim a Customer Transfer Payment from DCITA to transfer the Pre-existing Customer from their existing service to a Service. This would generally be a reduced payment based on the appropriate portion of the full Incentive Payment.

Details of the Customer Transfer Payment payable for transferring Pre-existing Customers to a Service are at Section 4.13.10.

Where a Service Provider cannot offer a Service to a Pre-existing Customer, then the Pre-existing Customer is eligible to receive a Service from any Service Provider offering Services in the Service Area, and a full Incentive Payment applies.

Customers who are receiving a Higher Bandwidth Service which is not an Equivalent Service from a service provider who is not a Service Provider may be eligible to receive a Service from a Service Provider if an Equivalent Service was not available prior to the Start of the Program. Where an Equivalent Service was not available, a full Incentive Payment is payable.

3.4.4 When a Customer changes premises

3.4.4.1 Moves to Eligible Premises

If a Customer moves to Eligible Premises which have not previously been provided with a Service, the Customer is eligible to receive a Service at those premises.

If that Customer is able to transfer any relevant CPE and use that equipment to receive a Service, whether from its existing Provider or another Provider, a full Incentive Payment is still payable, but the cost of CPE for that Service may be deducted from the Provider's Allowable Costs (see Sections 4.13.11 and 4.13.12 for further information on Allowable Costs).

3.4.4.2 Moves to premises that are not eligible for Metro Broadband Connect

A Customer moving to premises that are not Eligible Premises is not eligible to receive a Service at the new premises.

3.5 Process for customers to obtain a Service

Potential customers may obtain a Service or Equivalent Service by contacting Service Providers, or service providers offering Equivalent Services, in their area. If after doing so, the customer is still unable to receive a Service or Equivalent Service, then the customer can access the Demand Register and register their interest in receiving a Service.

3.5.1 Online Service Locator

Potential customers may determine if their premises could access an Equivalent Service and/or Service by using the Online Service Locator on Metro Broadband Connect Online. If the customer is unable to access the Broadband Service Locator, then they can email DCITA at mbc@dcita.gov.au or call 1800 883 488.

After entering the street address and fixed-line telephone number of the premises into the Online Service Locator, the customer will receive a response indicating whether the premises are likely to be able to access an Equivalent Service and/or Service.

If the response identifies the premises as potentially being able to access a Service or Equivalent Service then the response will include a list of Service Providers or service providers that may be able to offer the customer a Service or Equivalent Service. The customer must contact the Service Providers or service providers to ascertain whether they can receive a Service or Equivalent Service **before** entering their details on the Demand Register.

If an Equivalent Service is not available from any of the service providers listed by the Online Service Locator or if the Online Service Locator does not identify any Service Providers that may be able to offer a Service, then the customer may enter their details on the Demand Register. The customer will be required to attest, if it is applicable, that they have contacted the service providers or Service Providers nominated by the Online Service Locator and that none of these service providers or Service Providers were able to supply an Equivalent Service or Service. Customers will also be required to attest on the Demand Register that they are an Eligible Customer (see Sections 3.1.1 – 3.1.5).

3.5.2 Direct Contact with a Registered Provider

Where the Online Service Locator directs the customer to a Service Provider that can provide the customer with a Service, the Service Provider will request the customer to:

- (a) attest that he/she is an Eligible Customer; and
- (b) provide his/her fixed-line telephone number, street address and postcode of the premises to which the Service is to be supplied to allow DCITA to assess whether the customer's premises are Eligible Premises.

In addition Service Providers may also provide the customer with the option to attest that they have checked with the other service provider/s nominated by the Online

Service Locator and were unable to be supplied with a Service or Equivalent Service. In this circumstance DCITA's determination on whether an Incentive Payment will be made will be based on an assessment as to whether the Service Provider was able to provide an Equivalent Service to the customer at the Start of the Program, and that the infrastructure used to provide the Service attracts an Incentive Payment.

3.5.3 Registering on the Demand Register

The Demand Register is maintained by DCITA, and accessed through Metro Broadband Connect Online. The Demand Register is independent of any other registers (such as the Broadband Connect demand register and Telstra's ADSL demand register).

3.5.3.1 Registering an interest in receiving a Service

To register interest in receiving a Service, the customer is required to enter their contact details and the phone number and location of the premises. All Service Providers will have access to the details of customers registered on the Demand Register. If any of these Service Providers is able to supply a Service to the customer, that Service Provider would then contact the customer directly and, following the provision of a Service to the customer, the customer will be removed from the Demand Register. The Service Provider will not be required to re-confirm that the customer is of an eligible type to receive a Service under the Program before claiming an Incentive Payment.

Service Providers must not contact a customer more than once in any 30 day period, to offer the same or similar Services, without the prior consent of the customer. Customer information must not be used by Service Providers for any purpose other than offering a Metro Broadband Connect Service to the customer.

3.5.3.2 Customers able to receive a High Cost Service after six months

If Eligible Customers are still not able to obtain a Service or Equivalent Service after six months from the date of registering on the Demand Register, then the location of their premises will be deemed eligible to receive a High Cost Service. DCITA will endeavour to confirm with these customers that they are still interested in receiving a Service before changing their status on the Demand Register to be eligible for a High Cost Service. In addition, if a Standard Cost Service subsequently becomes available to a customer who has been deemed eligible for a High Cost Service before that customer is supplied with a High Cost Service, the customer ceases to be eligible for a High Cost Service. Providers are able to register a High Cost Service and receive a High Cost Incentive Payment for supplying Customers with such a Service. Before submitting a claim for a High Cost Incentive Payment, Providers must attest that they cannot supply a Standard Cost Service to the Customer.

3.5.4 Customer Application Form and Attestation

Once a customer has identified a Service Provider or service provider that may be able to provide a Standard Cost Service or Equivalent Service to their premises, the customer should contact the Service Provider or service provider directly. Where at least one Service or Equivalent Service is available to the customer, the customer does not have the option of registering on the Demand Register.

Service Providers are required to have Customers attest to their eligibility in a standard format, in writing or another form acceptable to DCITA.

Customers also need to:

- (a) attest that the information provided in their application is accurate, to the best of their knowledge; and
- (b) acknowledge and accept the obligations on them under Metro Broadband Connect, including agreeing to provide information and to it being shared among appropriate organisations (subject to the provisions of the Privacy Act).

Customers should also note that, in applying for a Service, they are accepting various Terms and Conditions of supply from the Service Provider.

Where a Customer has previously had a Service but no longer has access to that Service due to circumstances beyond their control, the details of those circumstances must be forwarded to DCITA by the Service Provider.

For audit purposes, Customers must be able to produce relevant proof to support the information in their application, upon the request of DCITA or its representative.

The standard provisions of the Customer application and attestation form required by DCITA are at Attachment 10.2.

3.5.5 Use of Customer information by DCITA

Under the Privacy Act, DCITA requires Customers to agree to Service Providers supplying their Customer details to DCITA and potentially other appropriate agencies for the purposes of program administration, regulation and evaluation, and policy development.

Customers' personal information is handled in accordance with the provisions of the Privacy Act, which sets standards for the collection, storage, use and disclosure of personal information. Personal information is disclosed only as provided for in these Guidelines or with the permission of the individual to whom it relates or where the Privacy Act allows.

The information that Customers are asked to agree to allow to be disclosed includes information relating to their identity, their contact details, the Services they are having supplied and the premises to which the Service is being provided.

3.5.6 Service Terms and Conditions

Service Providers are required to enter into Terms and Conditions with their Customers in relation to their Services. Service Providers may use a Standard Form of Agreement for this purpose.

A Service Provider's Agreement with DCITA requires the Service Provider to include in its Terms and Conditions such commitments to deliver the Service performance and pricing levels as it has committed to in its Agreement with DCITA. Service Providers' Terms and Conditions and changes to Terms and Conditions must be approved by DCITA prior to their use. Where a Service Provider's Terms and Conditions makes provision for the use or introduction of an AUP, the AUP must be cleared by DCITA for consistency with these Guidelines prior to its use. Changes to any AUP must also be cleared by DCITA prior to their use.

Service Providers may not vary their Terms and Conditions without either the written agreement of DCITA or notification to the affected Customers of the variation in a manner approved by DCITA.

3.5.7 Upgrades by Customers of Services

A Customer may choose to upgrade its existing Service to a new, higher level of service. A Customer upgrading to a new service will be subject to the Service Provider's Terms and Conditions, including any additional charges the Service Provider requires.

If the new service is a registered Service, the Service Provider must provide the Service on the registered Terms and Conditions for that Service. It must also provide the new Service for the remainder of the three year period that commenced when the Customer's original Service was connected.

No further Incentive Payment is payable to the Service Provider for a Service Upgrade.

If the new service is not a Service under the Program then the Service Provider has no obligation to provide Terms and Conditions in relation to the service.

3.5.8 Customer termination of Service (and churning)

DCITA does not place any restrictions on a Customer's termination of a Service. The Customer is only bound by the Terms and Conditions set out in its contract with the Service Provider in this regard, as it would be with any other commercial arrangement. A Customer's termination of the supply of a Service does not affect the Incentive Payment that has been paid to the Service Provider.

Similarly, DCITA does not place restrictions on a Customer leaving one Service Provider for another service provider (that is, churning), whether to a Service Provider or otherwise. Where a Customer does this, no Incentive Payment will be payable to the new service provider, and there is no obligation on the new provider to offer Terms and Conditions to the Customer. (See Section 4.5.8, regarding a Provider's withdrawal from a Service Area or of a Service.)

3.5.9 Terms and Conditions are for a three year period

Service Providers are required to supply Services to their Customers on the Terms and Conditions and at or below the prices in their initial Customer contract for three years from connection of the Service.

The Australian Government cannot give any assurances to Customers that Terms and Conditions will be maintained after this period.

4 PROVIDER PARTICIPATION IN METRO BROADBAND CONNECT

4.1 Metro Broadband Connect Online

To assist DCITA and Providers with the administration of Metro Broadband Connect, DCITA has established Metro Broadband Connect Online. For Providers, the information at Metro Broadband Connect Online includes:

- (a) information and maps indicating the geographic areas that are covered by Metro Broadband Connect;
- (b) information on the allocation and remaining availability of funds under Metro Broadband Connect in a financial year;
- (c) details of customers listed on the Demand Register (Service Providers will only have access to the details of customers registered on the Demand Register for the purpose of offering them Services); and
- (d) information on the overall number of customers on the Demand Register on a postcode basis.

Providers are to use Metro Broadband Connect Online to lodge claims for Incentive Payments for Services provided under Metro Broadband Connect. As part of lodging a claim, Providers will supply Customer data to allow DCITA to determine eligibility of the Customer's premises.

If Metro Broadband Connect Online is not fully operational at any time during the Program's operation, DCITA will institute alternative management arrangements.

4.2 Provider eligibility under Metro Broadband Connect

All retail and wholesale Internet service providers are eligible to apply for registration under Metro Broadband Connect and to receive Incentive Payments from DCITA.

4.3 Retailer-infrastructure provider arrangements

If an Applicant proposes to provide a Service by reselling a service provided by an Infrastructure Provider, then the Applicant must seek to agree with the Infrastructure Provider whether the Incentive Payment will be shared and, if so, then what proportion each will receive. This also applies where a Service Provider that has already commenced offering Services wishes to offer additional Services by commencing to resell an Infrastructure Provider's services. If the Applicant and the Infrastructure Provider cannot reach an agreement then the Applicant must accept DCITA's determination of how Incentive Payments are to be shared (see Section 4.3.1), otherwise the Applicant will not be registered under the Program.

If an infrastructure provider seeks to register under the Program to provide a Wholesale Service to a Service Provider already reselling their non-registered wholesale services, then the infrastructure provider must submit an application to register under the Program subject to the specific Infrastructure Provider prerequisites outlined in Section 4.4.2 and the overall assessment process described in Section 4.5. If the Infrastructure

Provider becomes registered under the Program, then the Infrastructure Provider and the Service Provider must seek to agree what proportion of the Incentive Payment each will receive. If such agreement cannot be reached then both parties must accept DCITA's determination of how Incentive Payments are to be shared (see Section 4.3.1).

The Service Provider and the Infrastructure Provider are required to establish contractual arrangements to reflect the arrangements for sharing Incentive Payments. DCITA does not specify the form which such agreements should take.

DCITA will pay amounts that the reselling Service Provider agrees to be passed on to the Infrastructure Provider directly to the Infrastructure Provider.

The information required in relation to Infrastructure Provider arrangements from service providers applying to be registered under the Program is:

- (a) the identity of the Infrastructure Provider/s; and
- (b) the details of the agreement between the Applicant and the Infrastructure Provider/s, including the share of each Incentive Payment to be paid to the Infrastructure Provider, being a proportion of the Incentive Payment or a dollar amount.

4.3.1 Arrangements where the Infrastructure Provider and Service Provider, or an Applicant, cannot agree to share Incentive Payments

Where an Infrastructure Provider either:

- (a) supplies a Wholesale Service to a Service Provider and this Wholesale Service is used to supply a Service; or
- (b) proposes to supply a Wholesale Service to a service provider applying to be registered under the Program,

and the two parties cannot agree as to how the Incentive Payment should be shared, DCITA will determine the size of the partial Incentive Payment for each party. The method for making this determination will be as follows:

- (a) where some but not all of the Infrastructure Provider's resellers are Service Providers:
 - (i) the partial Incentive Payment to the Infrastructure Provider for the supply of Wholesale Services will be calculated as the average of the Infrastructure Provider's share in its agreements with Service Providers; and
 - (ii) the partial Incentive Payment to the Service Provider or Applicant for the supply of Services will be the full Incentive Payment less the Infrastructure Provider's partial Incentive Payment as calculated in (i) above;
- (b) where none of the Infrastructure Provider's other resellers are Service Providers, the partial Incentive Payments will be calculated by DCITA at its discretion.

4.3.2 Partial Incentive Payments to the Infrastructure Provider where the retailer is not registered

Where an Infrastructure Provider supplies a Wholesale Service to an Internet service provider who is not registered under the Program and the Internet service provider uses the Wholesale Service to supply a Higher Bandwidth Service to Eligible Premises, the Infrastructure Provider will be entitled to claim a lower level of Incentive Payment than it could have otherwise claimed had the Internet service provider been registered.

This Incentive Payment to the Infrastructure Provider will be lower because the Infrastructure Provider will not be able to guarantee that the service being supplied to the customer meets the Service criteria for performance, pricing, contract period or whether the customer is eligible.

In these circumstances, DCITA will determine the amount of the Incentive Payment at its discretion. In general, the partial Incentive Payment to be paid to the Infrastructure Provider in these circumstances will be 70 per cent of the full Incentive Payment. However, the level of the partial Incentive Payment may be varied to the extent that the Infrastructure Provider can guarantee that the service to the end user will meet the criteria for performance, pricing and contract period as set out in these Guidelines.

At a minimum, the Infrastructure Provider will be required to supply sufficient information to DCITA to allow it to determine:

- (a) the eligibility of the location of the Customer's premises; and
- (b) that a Higher Bandwidth Service is being supplied to the Customer's premises.

4.4 Applying for Provider registration

Before participating in Metro Broadband Connect, Applicants are required to register themselves and each service they propose to provide under the Program, and to sign an Agreement with DCITA. Services that offer different functionality (for example, bandwidth) and are offered at different prices will be considered as separate services for the purposes of Metro Broadband Connect.

4.4.1 Requirements for registration of Internet service providers as Service Providers

Application for registration under Metro Broadband Connect as a Service Provider is open to all Internet service providers. Registration is subject to Applicants being assessed and found to meet the requirements for registration, including their corporate standing and managerial capabilities (see Section 4.5).

At the time of initial application for registration, Applicants must apply to register:

- (a) at least one Standard Cost Threshold Service or one High Cost Threshold Service and be able to offer at least one of these Services to each customer to whom they offer a Service (see Sections 4.13.5 and 4.13.6);
- (b) at least one Added Value Service providing a peak Data Speed of at least 512 kbps to the Customer and 128 kbps from the Customer as well as a minimum

monthly usage allowance (download and upload) of at least 1 GB (see Section 4.4.7.1); and

- (c) each Service Solution the Service Provider proposes to use to provide the Services it proposes to register (see Section 4.4.7.5 for an overview of Service Solutions).

Where a Service Provider is already supplying a Higher Bandwidth Service to Pre-existing Customers and proposes to register the service under Metro Broadband Connect, the Service Provider must register Metro Broadband Connect-compliant Pricing for Pre-existing Customers. Pricing for a Pre-existing Customer generally attracts only a portion of the full Incentive Payment, referred to as a Customer Transfer Payment, for each Customer transferred to Metro Broadband Connect-compliant Pricing (see Section 4.13.10).

4.4.2 Requirements for registration as an Infrastructure Provider

It is a prerequisite for registration as an Infrastructure Provider that the infrastructure provider has established or intends to establish new infrastructure from the Start of the Program and/or has incurred other costs that can be directly attributed to the provision of Wholesale Services and included in Allowable Costs.

An Infrastructure Provider must register as a Service Provider if it also proposes to provide retail Services.

Registration is subject to infrastructure providers being assessed and found to meet the requirements for registration, including their corporate standing and managerial capabilities as identified under Section 4.5.

4.4.3 Provider eligibility and other funding programs

If DCITA identifies other Australian, State, Territory or local Government programs that have the same explicit purpose and effect as Metro Broadband Connect and if Providers are being supported by one or more of these other Government programs to provide certain services, DCITA may either exclude these service providers from Metro Broadband Connect eligibility in relation to those services or adjust the total Allowable Costs of benefiting Providers to reflect funds provided under those programs.

Such programs will be considered on a case-by-case basis. This provision applies to pre-existing programs and any future programs. Exclusion will be prospective only. DCITA will take reasonable steps to inform all Providers of exclusions in writing.

4.4.4 When applications can be made

A service provider can submit an application for registration at any time after the publication of these Guidelines up until the commencement of the mid term review. No applications will be accepted after 1 January 2007, unless DCITA subsequently varies this date and notifies the variation on Metro Broadband Connect Online.

4.4.5 The Metro Broadband Connect Agreement

Every successful Applicant will be required to sign an Agreement with DCITA to become a Provider.

The Agreement binds the Provider to comply with the requirements of Metro Broadband Connect and, where the Provider meets its contractual obligations, commits the Commonwealth to make payments to the Provider in accordance with the terms of the Agreement.

DCITA may also impose conditions for entry into an Agreement, such as requirements for Providers to provide financial or performance guarantees or securities, should DCITA consider such conditions necessary to protect the Commonwealth's rights and interests under the Agreement. The need for and extent of such conditions will be assessed on a case-by-case basis and will, in all cases where they are required, be additional to the requirements of the Agreement itself.

The standard Agreement is available separately on Metro Broadband Connect Online. Providers should note that DCITA makes no representations that it will enter into any Agreement in exactly the terms of this standard Agreement.

Prior to submitting an application under Metro Broadband Connect, both retail and infrastructure providers should fully apprise themselves of the details of the Agreement, obtaining independent legal advice where necessary.

Applicants are required to state in their applications that they have read the Agreement and are aware that they must sign it to receive Incentive Payments.

4.4.5.1 Duration of the Agreements under Metro Broadband Connect

Agreements under Metro Broadband Connect provide for Incentive Payments for only one financial year or part thereof; that is, the financial year in which they are signed. It should be noted that the Agreement will provide for the Service Provider's obligations to a Customer connected during that year to continue for three years from the date of the connection of that Customer, even though a new Agreement is entered into for Incentive Payments for Customers connected in the next financial year.

Before the start of each new financial year in which the Program operates, each registered Provider will be invited to enter into a new Agreement, subject to the Provider's satisfactory compliance with its obligations up to that time under Metro Broadband Connect, any relevant changes to the Program and any material changes in their circumstances that would render the Provider ineligible for registration under Metro Broadband Connect. DCITA may request further information for assessment. Such assessment may amount to a complete reassessment of the Provider's existing registration.

It is envisaged the invitation would be made on the basis of the Provider's existing Agreement in May-June 2006 and May-June 2007, following the introduction of the relevant appropriation legislation into the Parliament.

4.4.6 Commencement date for the supply of Services

Providers can choose the date from which they begin to offer their Services or Wholesale Services. The date must be specified in their application and set out in their Agreement or subsequently notified to DCITA under the arrangements in Section 4.4.7. The date may be any date on or after the Agreement comes into effect.

Where an Applicant applies for Metro Broadband Connect registration in advance of having arrangements in place to offer Services or Wholesale Services, its registration and its Agreement are based on the information provided in its application. If, before beginning to offer Services or Wholesale Services, the Provider becomes aware that it can no longer meet the terms and conditions agreed to in the Agreement, it must advise DCITA immediately. In order for DCITA to agree to a variation of the Agreement, it must be satisfied that any new terms and conditions the Provider proposes are compatible with the arrangements set out in the Agreement.

4.4.7 The registration application - Procedural matters

Applicants seeking registration of themselves and services must use the Service Provider or Infrastructure Provider registration application forms and Service or Wholesale Service registration application forms provided by DCITA. For Broadband Connect providers, DCITA will advise whether the Streamlined Application Form should be used. Copies of the forms can be downloaded from Metro Broadband Connect Online or requested from DCITA using the contact details in Section 9.

All applications must be completed in full and be accompanied by supporting documents specified in these Guidelines and in the registration forms. If the Applicant is an organisation, the applications must be signed by a duly-authorised person.

Applications will not be processed until the fully completed application, including all attachments and supporting documentation, has been received by DCITA. Where DCITA requests further information from an Applicant to enable DCITA to undertake or progress processing of an application and any part of the requested information has not been received by DCITA within three months, the application will be placed 'on hold' and no further processing undertaken until all requested information has been provided in full to DCITA. An application that remains 'on hold' for six months may be declined.

Applications are accepted in either hard copy or electronic format (Microsoft Word 97 {minimum requirement} or another word processing program that can be opened and displayed in its original format by the latest version of Microsoft Word).

Applications will be accepted in electronic format to allow initial processing of the Application. The original hard copy of the Application must be forwarded to DCITA within five (5) Working Days of the electronic submission. If the original hard copy is not received within the prescribed five (5) Working Days, processing of the Application will cease until the original hard copy documents are received.

The hard copy documents are to be forwarded to DCITA using the contact details in Section 9.

4.4.7.1 Requirements for registration of Service Providers

The initial application to become a Service Provider must:

- (a) seek registration of the Applicant and, for each Service Area in which the Applicant intends to operate, the registration of at least one:
 - (i) Threshold Service; and

- (ii) Added Value Service providing a peak Data Speed of at least 512 kbps to the Customer and 128 kbps from the Customer and a minimum monthly usage allowance (download and upload) of at least 1 GB;

applications for registration of more than one Threshold Service and Added Value Service in the same Service Area or different Service Areas can be made;

- (b) supply DCITA with service availability information, in a format acceptable to DCITA, showing the Applicant's service areas and undertake to update this information on a monthly basis, initial service availability information must be up-to-date as at the Start of the Program and at the time of lodging the application; and
- (c) provide details of the Applicant's intended Commercial Investments for the first six months of the funding period and undertake to update this information on a six-monthly basis. This will include planned infrastructure deployment to be undertaken independently of Metro Broadband Connect support. Further detail on reporting requirements for Commercial Investments is at Section 5.4.

4.4.7.2 Requirements for registration of Infrastructure Providers

The initial application to become an Infrastructure Provider must:

- (a) seek registration of the Applicant and, for each Service Area in which the Applicant intends to operate, the registration of a Wholesale Service that will allow for the supply of:
 - (i) Threshold Services; and
 - (ii) Added Value Services providing a peak Data Speed of at least 512 kbps to the Customer and 128 kbps from the Customer and a minimum monthly usage allowance (download and upload) of at least 1 GB;

applications for registration of more than one Wholesale Service in the same Service Area or different Service Areas can be made, and in all instances Wholesale Services must allow the supply of Threshold Services to meet the pricing and performance parameters specified in these Guidelines;

- (b) supply DCITA with service availability information, in a format acceptable to DCITA, showing the Applicant's service areas and undertake to update this information on a monthly basis, initial service availability information must be up-to-date as at the Start of the Program and at the time of lodging the application; and
- (c) provide details of the Applicant's intended Commercial Investments for the first six months of the funding period and undertake to update this information on a six monthly basis. This will include planned infrastructure deployment to be undertaken independently of Metro Broadband Connect support. Further detail on the reporting requirements for Commercial Investment is at Section 5.4.

4.4.7.3 Overview of Provider registration and assessment

An Applicant that is not a registered Broadband Connect provider is required to provide information on, and demonstrate:

- (a) its identity;

- (b) its corporate standing and managerial capabilities;
- (c) its technical and operational capabilities;
- (d) its existing network infrastructure and the number of customers being supplied a service from this infrastructure as at the Start of the Program and at the time of application;
- (e) its intended Commercial Investment to be undertaken for the next six months;
- (f) its planned infrastructure deployment to be undertaken with the assistance of Metro Broadband Connect for the next six months;
- (g) its financial standing;
- (h) its ability to identify and mitigate risk;
- (i) the ongoing operation and sustainability of its Business, particularly in regard to the Services proposed; and
- (j) its capacity to meet the requirements of these Guidelines.

DCITA requires different levels of information, and undertakes different levels of scrutiny, depending on the size and corporate standing of Applicants and their experience in providing Higher Bandwidth Services (see Section 4.5). Assessment criteria are set out in Sections 4.5.3 to 4.5.6 below.

Applicants that are registered Broadband Connect providers may access, at the discretion of DCITA, a streamlined registration process. An Applicant that is permitted to make use of the streamlined process is required to provide information on, and demonstrate:

- (a) its existing network infrastructure and the number of customers being supplied a service from this infrastructure as at the Start of the Program and at the time of application;
- (b) its intended Commercial Investment to be undertaken for the next six months;
- (c) its planned infrastructure deployment to be undertaken with the assistance of Metro Broadband Connect for the next six months;
- (d) its ability to identify and mitigate risk;
- (e) the ongoing operation and sustainability of its Business, particularly in regard to the Services proposed; and
- (f) its capacity to meet the requirements of these Guidelines.

Other information for administrative purposes (for example, estimated call on Metro Broadband Connect funds) is also required from Providers.

DCITA reserves the right to seek additional information to satisfy itself as to the suitability of an Applicant for registration.

As the decision to accept the lodgement of a streamlined application will be at the discretion of DCITA, Applicants should discuss this option with DCITA before preparing a streamlined application.

4.4.7.4 Overview of Service registration and assessment

All Applicants are required to register their Services, regardless of whether they are registered under Broadband Connect.

For each of the Applicant's proposed Threshold Services (Standard Cost and/or High Cost), the assessment covers eleven main areas:

- (a) the Data Speeds;
- (b) the pricing of the proposed Service, including the various price components;
- (c) other mandatory functionality and features;
- (d) the Service Area(s) in which the proposed Service will be offered;
- (e) the commencement date for supply of the proposed Service;
- (f) other nominated features of the proposed Service;
- (g) the marketing arrangements;
- (h) the Allowable Costs of providing the proposed Service;
- (i) the capability of the technology platform used to supply the proposed Service;
- (j) the appropriateness of the Incentive Payment (Standard Cost or High Cost) for the proposed Service; and
- (k) the various Service Solutions for supplying the proposed Service (for example, the construction and outfitting of a wireless transmission tower or the removal of an ADSL inhibitor), including the expected Allowable Costs associated with each.

Applications for Added Value Services are subject to similar scrutiny, but more flexible requirements apply in relation to pricing.

For each of the Applicant's proposed Wholesale Services, the assessment covers eight main areas:

- (a) the capacity to support the Services;
- (b) the pricing of the proposed Wholesale Service, including the various price components;
- (c) the Service Area(s) in which the proposed Wholesale Service will be offered;
- (d) the commencement date for supply of the proposed Wholesale Service;
- (e) the Allowable Costs of providing the proposed Wholesale Service;
- (f) the capability of the technology platform to supply the proposed Wholesale Service;
- (g) the appropriate Incentive Payment (Standard Cost or High Cost); and
- (h) the various technological approaches or Service Solutions for supplying the proposed Wholesale Service (for example, the construction and outfitting of a wireless transmission tower or the removal of an ADSL inhibitor), including the expected Allowable Costs associated with each.

4.4.7.5 Overview of Service Solution registration and assessment

The Service Solution is the particular category of work undertaken and/or infrastructure deployed to either extend an existing technology platform or deploy a new technology

platform to supply a Service or Wholesale Service. In other words, the means by which the Service or Wholesale Service is provided. Examples of Service Solutions might include:

- (a) the installation of ADSL DSLAMs;
- (b) transpositions of a service to a copper path able to support ADSL; and
- (c) the construction of wireless towers and transceiver equipment.

As part of the registration process, Providers are required to register each of their proposed Service Solutions for providing a particular Service or Wholesale Service. At least one Threshold Service and one mandatory Added Value Service must be registered for each Service Solution over which the Service Provider intends offering Services. Providers making claims for payment must identify the registered Service Solution used to supply the Service or Wholesale Service.

For each of the Applicant’s proposed Service Solutions, the assessment covers four main areas:

- (a) a description of the Service Solution and its capabilities to support the supply of Services;
- (b) whether the Allowable Costs of providing the proposed Service Solution are material with respect to the Incentive Payment;
- (c) whether there is a viable upgrade path that will enable the supply of higher quality services (such as higher data rates, increased data usage, symmetrical services and low latency); and
- (d) whether the Service Solution can be readily scaled to provide services to additional customers.

4.4.8 Confidentiality of Applicant information

Information provided in applications should be identified as confidential if the Applicant wishes it to be treated as such.

Documents containing personal information are handled and protected under the provisions of the Privacy Act, which sets standards for the collection, storage, use and disclosure of personal information. Personal information is disclosed only as provided for in these Guidelines or with the permission of the individual to whom it relates, or where the Privacy Act allows.

4.5 Assessing Service Providers and Infrastructure Providers

DCITA applies additional scrutiny to Applicants with a lower level of available business resources and with less experience in the provision of Higher Bandwidth Services. This additional scrutiny is intended to address the additional risk to the Australian Government of registering such Applicants. As a result, Applicants will be categorised for assessment as set out in Table 1.

Table 1: Categorisation of prospective Service Providers for application/registration purposes			
	Current number of Higher Bandwidth Services		
Gross revenue of	<1000	1,000 to 10,000	>10,000

business in previous financial year			
>\$50 million	Category C	Category B	Category A
\$1m to \$50m	Category C	Category B	Category B
<\$1m	Category D	Category D	Category D

Infrastructure Provider requirements are dealt with separately and identified by ‘I’ in Sections 4.5.3 to 4.5.6.

4.5.1 Assessment of the Applicant as a Provider

In the registration application, information is requested to allow DCITA to properly assess Applicants in specified areas. In all instances, Applicants must be prepared to provide, upon request, further documentation to substantiate claims made in their application form.

DCITA relies on the information provided by Applicants. However, it may undertake such background checks and due diligence as it considers necessary to confirm the accuracy and completeness of information provided by an Applicant and the acceptability of an Applicant for registration under Metro Broadband Connect. This may include checks of financial viability, criminality, corporate performance (past and present) and regulatory compliance. Applicants are required to provide such consent and information as is necessary for DCITA to conduct these checks.

4.5.2 Assessment of Provider is for Metro Broadband Connect purposes only

DCITA’s assessment of Applicants is primarily for the purpose of DCITA determining whether it is acceptable to DCITA that the Applicant should be registered as a Provider. DCITA may use the information and/or assessment for streamlining the registration process for Metro Broadband Connect.

DCITA’s assessment, including its assessment of financial information, is not to be taken by the Provider or any other person as a representation by DCITA as to that Provider’s financial viability. Accordingly, Providers and any third parties should not rely upon that assessment.

4.5.3 Applicant’s corporate standing and managerial capabilities

Applicants that are not registered under Broadband Connect are assessed to establish the extent to which their organisational and managerial capacity is adequate to provide Services or Wholesale Services. An Applicant’s capability will be assessed against the categorisation of the Applicant as set out in Table 1, and the specific criteria below.

SOLVENCY

Applicant category: A, B, C, D, I

Indicative Benchmark/s:

- (a) Solvent.
- (b) No knowledge of development that could change solvency status.

Information required/How assessed:

- (a) Where applicable to an Applicant, its:

- (i) profit and loss statements;
- (ii) balance sheets;
- (iii) cash flow statements; and
- (iv) public annual reports;

for the last one, two or three years, where available.

Where the documents in (a) above are not available for the Applicant (e.g. it is a start-up operation), reliance will be placed on the information required in the application. All information in the Application is subject to the statutory declaration covering the Application.

AUDIT STATUS

Applicant category: A, B, C, D, I

Indicative Benchmark/s: Unqualified audit report of financial position of the Applicant.

Information required/How assessed:

- (a) Where applicable, a copy of the audit report for the last annual financial statements.
- (b) As applicable, director's or principal's statutory declaration that no material events have occurred since the date of the audit report that would affect the overall accuracy of the audit report.
- (c) Where an Applicant is unaudited, full set of the last three years financial statements, including notes.
- (d) Where the documents in (a) to (c) above are not available for the Applicant (e.g. it is a start-up operation), reliance will be placed on the information required in the application. All information in the Application is subject to the statutory declaration covering the application.

REGULATORY STATUS

Applicant category: A, B, C, D, I

Indicative Benchmark/s: Up-to-date with statutory lodgement requirements.

Information required/How assessed:

- (a) Statement of being up-to-date with lodgements and other statutory requirements with: ASIC, the ATO, ASX, ACMA, ACCC and TIO⁴.
- (b) Statement identifying and giving the details of any alleged breaches of law being pursued by ASIC, the ATO, ACMA or ACCC at the time of Application (this is to be updated if anything changes prior to registration).

DIRECTORS' EXPERIENCE (IF APPLICABLE)

Applicant category: C and D

Indicative Benchmark/s: For the directors as a whole, six years minimum, combined industry experience at director or senior executive level.

⁴ That is, the Australian Securities and Investments Commission (ASIC), the Australian Taxation Office (ATO), the Australian Stock Exchange (ASX), the Australian Communications and Media Authority (ACMA), the Australian Competition and Consumer Commission (ACCC), and the Telecommunications Industry Ombudsman (TIO).

- (a) At least two directors with at least three years industry experience each at board or senior executive level.
- (b) No criminal convictions, charges pending or other serious breaches of professional rules that are relevant to Metro Broadband Connect operations.

Information required/How assessed:

- (a) Details of directors and their relevant experience.
- (b) In relation to criminal conviction, charges pending and other serious breaches, a State Name Check Certificate listing the criminal history (if any) across police jurisdictions of each director. (The certificate can be obtained from police in the State or Territory where the company/entity is registered).

CAPABILITY OF SENIOR MANAGEMENT

Applicant category: C and D

Indicative Benchmark/s: For the management team, six years minimum, combined industry experience at senior management level.

- (a) At least two managers with at least three years industry experience each at senior management level.
- (b) No criminal convictions or other serious breaches of professional rules, that are relevant to Metro Broadband Connect operations.

Information required/How assessed:

- (a) Details of organisational structure.
- (b) Details of senior managers including their roles, qualifications and relevant industry experience.
- (c) In relation to criminal convictions, charges pending and other serious breaches, directors' or principals' statutory declaration in cases of nil response; details where required.

4.5.4 Operational and technical capabilities

Applicants, Service Solutions and technology platforms will be assessed to establish their operational and technical capability to provide Services or Wholesale Services under Metro Broadband Connect, against the criteria set out below.

ROBUSTNESS OF TECHNOLOGY PLATFORM AND SERVICE SOLUTIONS

Applicant category: A, B, C, D, I (as relevant)

Indicative Benchmark/s:

- (a) Successful testing on an operational basis.
- (b) Capacity to increase scale of operations commensurate with Applicant's business plans.
- (c) Whether the platform is covered by documented technical standards.

Information required/How assessed:

- (a) Description of the platform and Service Solutions.
- (b) Information on testing results and operational deployment.
- (c) Details of standardisation.

SYSTEMS TO SUPPORT OPERATION UNDER METRO BROADBAND CONNECT

Applicant category: C and D

Indicative Benchmark/s:

- (a) In-house, outsourced or combination of operational support systems to support level of Higher Bandwidth Service to customers currently served and proposed.
- (b) Adequate arrangements in place by the commencement of Services or Wholesale Services.

Information required/How assessed:

Description of systems or arrangements (for example, plans and outsourcing).

RISK MANAGEMENT

Applicant category: A, B, C and D

Indicative Benchmark/s:

Awareness of key technical and operational risks and effective strategies to address them, particularly in Metro Broadband Connect context.

Information required/How assessed:

A Risk Management Plan:

- (a) identifying key technical and operational risks, including
 - (i) the Customer attestation process; and
 - (ii) the process for ensuring that, where a Service is supplied to a Customer, a connection has been established at the Customer's premises before an Incentive Payment is claimed.
- (b) incorporating strategies to mitigate those risks.

TECHNICAL CAPABILITY AND EXPERIENCE OF CHIEF TECHNOLOGY OFFICER (CTO) AND/OR CHIEF OPERATIONS OFFICER (COO)⁵

Applicant category: C and D

Indicative Benchmark/s:

- (a) Tertiary qualifications in information technology, communications engineering or other relevant discipline; or technical competence, otherwise demonstrated.
- (b) At least two years equivalent experience at a senior level.
- (c) Technical expertise provided in-house or outsourced.

Information required/How assessed:

- (a) Names of CTO and/or COO.
- (b) Statement of the CTO and/or COO's qualifications and experience, including recent relevant major projects.
- (c) Whether CTO/COO is/are on contract and, if so, date contract expires.

⁵ In small organisations without dedicated staff serving in these designations, this criterion relates to the person/s filling comparable roles, whether in-house or outsourced.

(d) Supporting documentation available upon request.

ADEQUACY AND QUALIFICATIONS OF TECHNICAL STAFF

Applicant category: C and D (infrastructure-based only)

Indicative Benchmark/s:

Industry qualified and/or experienced operational staff.

Information required/How assessed:

- (a) General statement of the level of qualification and experience required of technical staff on recruitment.
- (b) General statement on staffing levels to manage projected Customer base.

COMMERCIAL AVAILABILITY OF, AND SUPPORT FOR PROPOSED TECHNOLOGY

Applicant category: C and D (infrastructure-based only)

Indicative Benchmark/s:

Technology is commercially available and supported in Australia or well proven overseas.

Information required/How assessed:

Descriptive statement from Applicant of proposed technology and support arrangements.

4.5.5 Applicant's financial standing

Applicants that are not registered under Broadband Connect are assessed against the criteria set out below, to establish that their financial resources are sufficient to provide Services or Wholesale Services effectively under Metro Broadband Connect.

In addition to information required from Applicants, DCITA may seek information on financial standing from third parties, including credit rating agencies. Applicants need to provide written authorisations as required.

ONGOING ABILITY TO FUND METRO BROADBAND CONNECT COMMITMENTS

Applicant category: A, I

Indicative Benchmark/s:

Absence of material commitments that would call into question the Applicant's ability to sustain its Metro Broadband Connect operations.

Information required/How assessed:

- (a) Financial statements and annual reports as applicable.
- (b) Answers to questions on application form.
- (c) Director's statutory declaration.

PROVIDER'S ACCESS TO ADEQUATE FUNDS

Applicant category: B, C, D

Indicative Benchmark/s:

Access to sufficient funds to operate the Business while participating in Metro Broadband Connect.

Information required/How assessed:

- (a) Financial statements and annual reports as applicable.
- (b) Answers to questions on application form.
- (c) For C and D Applicants, a business plan that is to include a completed Metro Broadband Connect financial plan template.

FINANCIAL PERFORMANCE - PROFIT

Applicant category: B, C, D

Indicative Benchmark/s:

Profitable.

Information required/How assessed:

As for Provider's access to adequate funds above.

FINANCIAL PERFORMANCE – NET ASSETS

Applicant category: B, C, D

Indicative Benchmark/s:

Positive net assets.

Information required/How assessed:

As for Provider's access to adequate funds above.

FINANCIAL PERFORMANCE – NET CURRENT ASSETS

Applicant category: B, C, D

Indicative Benchmark/s:

Positive net current assets

Information required/How assessed:

As for Provider's access to adequate funds above

ASSETS AND FUTURE COMMITMENTS

Applicant category: B, C, D

Indicative Benchmark/s:

Material future commitments relative to net assets on the balance sheet at the Applicant's most recent financial year end.

Information required/How assessed:

As for Provider's access to adequate funds above.

4.5.6 The sustainability of the Applicant's proposed Metro Broadband Connect operation

In support of their applications for registration as Providers, Applicants not registered under Broadband Connect and that fall into Categories C and D are required to submit business planning information for their proposed Metro Broadband Connect operations. This is to assist DCITA assess their likely capacity to deliver Higher Bandwidth Services during and beyond the period of the Program. The business planning information must cover the matters identified below, and will be assessed as indicated.

OVERVIEW OF INTENDED METRO BROADBAND CONNECT BUSINESS

Applicant category: C and D

Indicative Benchmark/s:

- (a) Absolute scale and complexity of intended Metro Broadband Connect Business.
- (b) Scale of Metro Broadband Connect Business relative to Applicant's experience and other operations in the Business.

Information required/ How assessed:

Answers to questions in application form.

MARKETING AND SALES PLANS AND STRATEGIES

Applicant category: C and D

Indicative Benchmark/s:

- (a) Adequacy and likely effectiveness of arrangements to achieve Business objective.
- (b) Use of outsourcing where internal expertise is lacking.

Information required/ How assessed:

- (a) Answers to questions in application form.
- (b) Adequacy and likely effectiveness of arrangements to achieve Business objective.
- (c) Use of outsourcing where internal expertise is lacking.

CUSTOMER SERVICE STANDARDS

Applicant category: C and D

Indicative Benchmark/s:

- (a) Adequacy and likely effectiveness of arrangements to achieve Business objective.
- (b) Use of outsourcing where internal expertise is lacking.

Information required/ How assessed:

- (a) Answers to questions in application form.
- (b) Adequacy and likely effectiveness of arrangements to achieve Business objective.
- (c) Use of outsourcing where internal expertise is lacking.

BILLING ARRANGEMENTS

Applicant category: C and D

Indicative Benchmark/s:

- (a) Adequacy and likely effectiveness of arrangements to achieve Business objective.
- (b) Use of outsourcing where internal expertise is lacking.

Information required/ How assessed:

- (a) Answers to questions in application form.
- (b) Adequacy and likely effectiveness of arrangements to achieve Business objective.
- (c) Use of outsourcing where internal expertise is lacking.

REASONABLENESS OF FINANCIAL PLAN'S ASSUMPTIONS

Applicant category: C and D

Indicative Benchmark/s:

Assumptions in relation to:

- (i) total Higher Bandwidth Service demand in Australia;
- (ii) market share;
- (iii) pricing; and
- (iv) costs.

Information required/ How assessed:

- (a) Answers to questions in application form.
- (b) Financial Plan.

REASONABLENESS OF THE FINANCIAL PROJECTIONS

Applicant category: C and D

Indicative Benchmark/s:

Performance in terms of:

- (i) gross margin;
- (ii) shareholder funds;
- (iii) EBITDA⁶;
- (iv) funding and sales; and
- (v) long-term profitability.

Information required/ How assessed:

- (a) Answers to questions in application form.
- (b) Financial plan.

4.5.7 Provision of financial plans

Applicants not registered under Broadband Connect and that fall into Categories C and D are required to submit a business plan that is to include a completed Metro Broadband Connect financial plan template for their proposed Metro Broadband Connect Business operations in support of their applications. The Metro Broadband Connect financial plan template is available separately at Metro Broadband Connect Online.

The financial plan template contains a guide on its structure and operation. DCITA cannot assist Applicants in the preparation of their financial plans, beyond the general information provided in these Guidelines.

4.5.8 Arrangements for withdrawal of a Provider or Service

Each Applicant must set out an Exit Strategy it would follow if it decided to terminate its registration as a Provider or its registration of a Service or Wholesale Service.

A Provider must comply with the Exit Strategy included in its registration and set out in its Agreement.

⁶ EBITDA: Earnings before interest, tax, depreciation and amortisation.

The Exit Strategy must provide for the Provider to give DCITA and the Provider's Customers or registered resellers not less than 30 Working Days notice of its intention to withdraw itself or a Service or Wholesale Service from Metro Broadband Connect.

It must also set out details of how relevant aspects of Service or Wholesale Service withdrawal would be managed, including:

- (a) ownership of CPE; and
- (b) assistance with transferring Customers to comparable services.

Where a Provider is proposing to withdraw a Service or Wholesale Service but to continue to operate as a Provider, the Provider must offer to migrate Customers of the withdrawn Service or Wholesale Service to a comparable Service or Wholesale Service being offered, if one is available.

4.6 Assessment of an Applicant's Services

This Section focuses on the assessment for registration of Threshold Services. These arrangements also apply to Added Value Services except in the area of pricing.

4.6.1 Area in which the Service is to be offered

For a service to be registered as a Threshold Service, the Applicant must specify the area or areas in which it will offer and supply the Service, subject to normal technological and commercial limitations, upon request by an Eligible Customer. These areas will be the Service Area for the Service concerned. The Applicant has discretion to define its Service Area, within the provisions governing overall eligibility of the Metro Broadband Connect Area. The area can be as small or as large as the Provider wishes. For example, the area may be a discrete suburb, a local Government area or the whole Metro Broadband Connect Area.

The Service Area may also be defined by the locations to which it is technically or financially feasible to offer the proposed Service, rather than by a discrete geographic area. For example, a Provider providing Services via satellite may define its Service Area to include those Eligible Premises only serviceable by satellite solutions.

Providers must advise DCITA of expansions of their Service Area and its Service or Wholesale Service availability on a monthly basis. Providers must provide Service or Wholesale Service availability information in a format acceptable to DCITA.

DCITA reserves the right to reject any application which, in its view, indicates the Applicant has defined the Service Area to target a particular customer group, rather than all Eligible Customers able to receive the Service in a Service Area.

If a Provider ceases to offer Services or Wholesale Services in the Service Area due to its network capacity being exhausted, it must notify DCITA of this in writing within 15 Working Days. The notification is to contain sufficient information to allow DCITA to identify the location of the premises that are unable to access the Service because of the lack of capacity. Premises in the area affected by the capacity constraint that were unable to access an Equivalent Service before the Start of the Program are eligible to receive Services from any Provider except the one whose network capacity has been exhausted.

The Provider must notify DCITA within 15 Working Days once the capacity has been either in part or fully restored, and provide sufficient information to allow DCITA to identify the location of the premises that have been restored access to the Service or Equivalent Service.

4.6.2 Threshold Service Data Speeds

A Threshold Service must be able to meet the Data Speed requirements specified in the definition of Threshold Service (see Section 8).

Applicants may propose higher peak and/or average Data Speeds than the minimum required for a Threshold Service.

Added Value Services must also satisfy Data Speed requirements specified in the Applicant's description of the Service and be subject to testing. Average Data Speeds for Added Value Services are not required to be set at 60 per cent of peak Data Speeds, but an average Data Speed for each Added Value Service must be nominated, and actual performance must be tested against that nominated speed (according to DCITA's prescribed methodology). Customers must be informed of the nominated average Data Speed and actual performance against that speed.

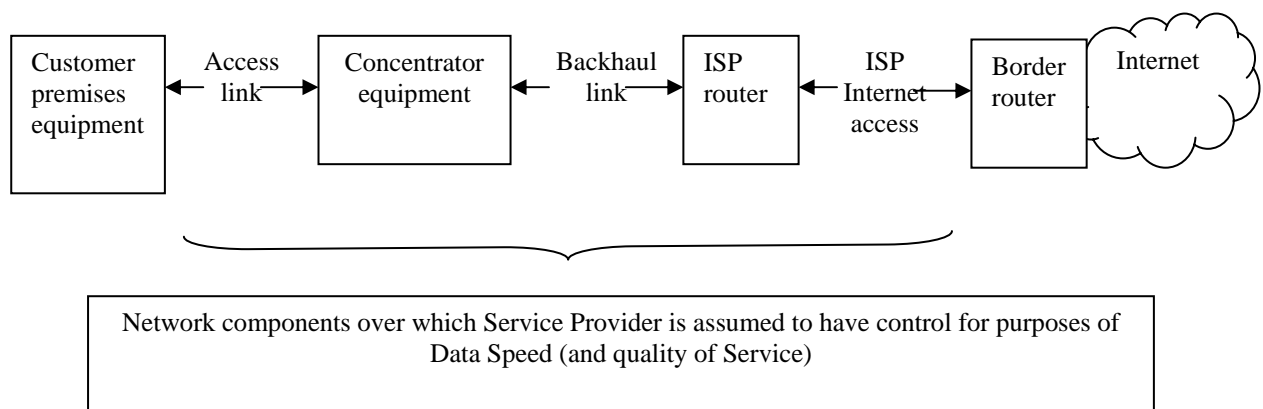
For Added Value Services, actual peak and average Data Speeds cannot be less than those required for Threshold Services.

The Applicant's proposed Services must be configured so that the peak Data Speeds are accurate and represent those that any end-user of the Service could achieve as a maximum peak level, with the exception of end-users of a Not-for-profit Public Access Internet Facility. The Provider's network must be configured so that the stipulated average Data Speeds for Services are achieved when measured in the manner specified by DCITA.

These Data Speeds are those attainable over those parts of the infrastructure within the Provider's control, specifically from the border between the Provider's network and the Internet to the border between the Provider's network and the CPE.

The Data Speeds do not refer to end-to-end Data Speeds across the Internet, which are subject to a range of factors beyond the Provider's control. Figure 2 shows the main components of an Internet network and those which are subject to the Data Speed requirements.

Figure 2: Basic Internet network components



Providers are not in breach of the Data Speed requirements of the Program if Data Speeds experienced by Customers fall below specified levels due to circumstances beyond the Provider's control. However, Providers are responsible for Service components within their control, including:

- (a) the access link to the Customer;
 - (b) the backhaul link from their concentrator equipment to their Internet service provider router; and
 - (c) the Internet service provider's Internet access link between its Internet service provider router and the border router,
- as shown in Figure 2 above.

Average Data Speeds must be measured independent of caching effects to measure the actual performance of the links identified above.

A Service Provider is responsible for ensuring that its contract with its infrastructure provider has terms and conditions that enable it to achieve these average Data Speeds on the Service it resells.

If, on the basis of reasonable evidence⁷, a Customer claims that its Provider is not providing the Data Speeds stipulated, the Provider is required to investigate and deal with the complaint. This may include reasonable efforts to assist the Customer to configure their computer to achieve the required Data Speeds (where this is identified as the constraining factor). Should a Customer consider that a complaint relating to Data Speeds has not been settled to their satisfaction, the Customer may refer the complaint to the TIO for investigation (see Section 4.6.2.2.1).

4.6.2.1 Data Speed information required at registration

In its application for registration of Services, an Applicant must provide evidence that it is able to achieve the peak and average Data Speeds required for Threshold Services and the peak and average Data Speeds proposed for Added Value Services.

In the case of peak Data Speeds, an Applicant must identify the peak Data Speeds of the proposed Service, show how they have been derived and demonstrate that they are a reliable indication of peak Data Speeds.

In the case of average Data Speeds, an Applicant must provide information to DCITA to demonstrate it can achieve the required or proposed average Data Speeds. To this end, DCITA requires the following information at registration:

- (a) an estimate of the maximum number of services to be supported by the proposed infrastructure;
- (b) the estimated service Data Speed mix if applicable – that is, the respective percentages of 256/64, 512/128, 1500/256 or other service Data Speeds;

⁷ In most instances, a Customer would be expected to have undertaken a sufficient number of tests, using a recommended test facility, to demonstrate that their Provider would likely fail the Data Speed test for that Service.

- (c) the total capacity to be provisioned in both the backhaul and Internet service provider Internet access links, as shown in Figure 2. These figures should be accompanied by a diagram to show where this capacity is located within the Applicant's proposed infrastructure;
- (d) the estimated activity rate per Service during the 16 hour period between 7:00 a.m. and 11:00 p.m. The activity rate is the proportion of time during this period that an end-user is assumed to be actually downloading data; and
- (e) any other information that the Applicant believes is relevant to demonstrating this performance.

These figures should be accompanied by the reasoning and calculations that show how the Applicant will ensure the specified average Data Speed for the proposed Service. If Applicants wish DCITA to consider a claim to treat this information as confidential information, it should be identified as such and reasons for such treatment provided.

DCITA may require further information from an Applicant demonstrating that its infrastructure is configured adequately to support the proposed Services. In particular, DCITA needs to be satisfied that the capacity provisioned and the resulting contention ratios will support the specified average Data Speeds stipulated for the Provider's Customers.

4.6.2.2 Monitoring and enforcement of Data Speed compliance

Compliance with average Data Speed requirements is subject to a three-tier monitoring and enforcement regime. The first tier is based on Customer complaints. The second tier is based on average Data Speed monitoring and reporting by Providers. The third tier is a process of random auditing by DCITA (or its nominated representatives). These arrangements apply to all Threshold Services and Added Value Services.

4.6.2.2.1 Complaints-based monitoring

Customers will be able to test their average Data Speeds at DCITA's online facility.

Once a Service Provider has received confirmation that the customer that they are supplying with a Service is a Customer, the Service Provider is required to supply that Customer with information about the Customer Data Speed testing facility, including the URL. Where testing undertaken by a Customer indicates that the Service is not performing at the required average Data Speed, the Customer should raise their concern with their Service Provider in the first instance. The Customer's testing needs to be reasonably consistent with the testing schedule specified in Section 4.6.2.2.5.

Customers also need to recognise that factors outside their Service Provider's control may cause such results and therefore they may not signify a breach of the Service Provider's obligations under Metro Broadband Connect.

If the Customer is not satisfied by the Service Provider's explanation, the Customer should take the matter to the TIO.

Where complaint data indicates possible systemic non-compliance by a Provider with its average Data Speed obligations, DCITA may require further formal testing, and, if necessary, rectification of the situation (see Section 4.6.2.2.5).

Data on Service complaints are also to be reported to DCITA by Providers and the TIO.

4.6.2.2.2 Inability to achieve the average Data Speed due to exceptional circumstances

After supplying a Service to a particular Customer, it may become apparent that a Provider is unable to provide the average Data Speed required because of exceptional circumstances relating to the supply of that particular Service. For example, the Service may be affected because it is being provided at the limit of the technical range of the platform being used, or the speed is inhibited by environmental features such as topography or vegetation.

In these circumstances, it may be impossible or extremely costly for the Provider to achieve the required average Data Speeds. Where such circumstances are identified, and where the Customer consents, the Provider may propose to DCITA that it withdraw the Customer's Service and repay the Incentive Payment for that Service to DCITA. The affected Customer would then be eligible to receive another Service.

A Service Provider may continue to provide a Service that is not achieving the required average Data Speed, provided that the Customer has been informed of their eligibility for another Service as described above, and elects to continue to receive the existing Service. In this circumstance the Provider would not have to repay the Incentive Payment to DCITA.

4.6.2.2.3 Data Speed monitoring and reporting by Providers

Providers are required to:

- (a) maintain test computers and services;
- (b) undertake and report on scheduled Data Speed (Phase 1) testing;
- (c) undertake follow-up (Phase 2) testing where initial test results are substandard; and
- (d) undertake further follow-up (Phase 3) testing within its own network where the Provider contends the Data Speed problem lies outside its network boundaries.

Where Phase 2 or 3 testing results indicate a Provider's systemic failure to meet its average Data Speed requirements, the Provider must rectify the situation within a reasonable period determined by DCITA. Where the Provider has failed to adequately address the problem, the Provider's Agreement may be terminated (see Section 5.2).

4.6.2.2.4 Test computers and services

Each Service Provider is required to have sufficient test computers to enable DCITA to properly assess whether Services are being provided to Customers at the required average Data Speeds. Testing needs to provide a representative view of the performance of a Service Provider's overall Metro Broadband Connect operations, including both Threshold Services and Added Value Services. The test computers must be connected to the Service Provider's Services in its Service Areas in the same manner that its Customers are connected to those Services.

As an alternative to setting up their own test computers, Service Providers may enter into arrangements with particular Customers in their Service Areas for those Customers' computers to be used for testing purposes. Such arrangements would need

to be on the basis that required tests could be undertaken in the manner specified by DCITA and that DCITA could have ready access to test computers for follow-up investigations and/or random audits as required.

Test computers are required to be configured in a manner specified by DCITA for testing purposes. The details of all test computers including their physical locations and network details (e.g. IP addresses) must be provided to DCITA.

DCITA will also consider the use of other testing processes Service Providers propose, which can be demonstrated to provide test results that are reliable and consistent with the two approaches indicated above. Such processes need to be approved in writing by DCITA.

Where two or more Services Providers are providing Services by reselling the Wholesale Services of the same infrastructure provider, and where the Service Providers' Services are essentially identical, DCITA will consider proposals for a single testing process for those Service Providers.

4.6.2.2.5 Data Speed testing regime and reporting

The Data Speed testing facility established by DCITA is used by test computers to download and upload a specified file to test average download and upload speeds.

The file is to be hosted on a server with high capacity access to the Internet so that speed restrictions within the Internet cloud are unlikely to significantly affect Data Speeds.

To determine that the required Data Speed is achieved at least 75 per cent of the time, test computers undertake data download and upload tests according to the following minimum testing schedule. On one specified day each calendar month, the test computer is required to download and upload the specified file at least once each hour, over the 16 hour period between 7:00 a.m. and 11:00 p.m. The test occurs at a time randomly chosen within each hour.

A Service Provider is taken to have met the 75 per cent availability requirement if at least 75 per cent of the test results (that is, 12 out of 16) show that a download and upload Data Speed of at least 60 per cent of the peak Data Speed has been achieved. This is phase 1 testing.

Where a Service Provider's Data Speed tests do not achieve the average Data Speeds required during this test, it is required to enter into a program of daily phase 2 testing. This means that for a period of five successive Working Days the testing schedule as described above must be carried out. If, after five successive Working Days testing, the results indicate the required average Data Speeds are still not being achieved, the Service Provider must notify DCITA of the overall test results, providing, if possible, an explanation and describing what remedial action, if any, it intends to take.

Where the Service Provider contends that its failure to meet the required average Data Speeds is due to factors beyond its control (such as factors arising on the Customer's side of the Service Provider interface or between its border router and the test server), the Service Provider must institute a program of phase 3 testing of at least five

successive Working Days. Phase 3 testing is to be undertaken within the Service Provider's network, between the CPE and the Service Provider's border router, or such other point as the Service Provider satisfies DCITA is appropriate given the configuration of its network.

4.6.2.2.6 Quarterly reporting and publication of Data Speeds

Service Providers are required to include their average Data Speed test results in their quarterly compliance reports to DCITA (see Section 2.8). Where DCITA scrutiny of the test results in the quarterly report identifies non-compliance that has not previously been advised to it, it may investigate the non-compliance further and take action, including possible termination of the Agreement with the Provider as per Section 5.2.

DCITA will publish each Provider's average Data Speed test results for each Service it is providing on Metro Broadband Connect Online at least quarterly.

4.6.2.2.7 Random audit of Data Speeds

In addition to the above requirements, average Data Speeds for Services are subject to random audits. This may involve DCITA (or its contractors) making arrangements directly with Customers or making site visits to Service Providers and making use of their facilities. Service Providers must comply with all reasonable requests in relation to such audits, including making facilities available.

4.6.3 Pricing requirements for the Threshold Service

Threshold Services supplied under Metro Broadband Connect must meet the pricing requirements specified in the definition of Threshold Service (see Section 8). Different pricing requirements apply to Added Value Services and are discussed in Section 4.6.11.

A Service Provider's prices for its Services are specified in its Agreement with DCITA and are binding on the Service Provider.

The pricing requirements for Threshold Services will be re-examined during the mid-term review of the Program scheduled for early 2007.

4.6.3.1 Additional pricing discounts

The price an Applicant proposes for a Threshold Service must be available for all Eligible Customers within its Service Area. However, Metro Broadband Connect does not preclude the Service Provider offering special discounts on the Service to particular groups of Eligible Customers on a commercial basis, subject to compliance with all other relevant laws.

4.6.3.2 Assessing pricing for Threshold Services

In assessing whether pricing for a service meets the prescribed pricing requirements for a Threshold Service, prices charged over three years for the following items will be taken into account:

- (a) hardware;
- (b) installation (excluding travel costs);
- (c) connection;

- (d) account establishment;
- (e) ongoing provision of the service, including provision of Internet access and a monthly usage allowance of at least 500 MB⁸; and
- (f) any other charges that DCITA decides to take into account.

A Service by definition includes Internet access, and where this is not proposed, the service will not be registered as a Service.

For the purpose of assessing the proposed pricing for a Threshold Service, it is assumed that ownership of CPE passes to the Customer within the three year period over which Metro Broadband Connect pricing is to apply. Where this is not the case, the Applicant's proposed pricing is subject to additional scrutiny to ensure the proposed pricing package reflects the pricing requirements for Threshold Services. Specifically, where the Service Provider retains ownership of the CPE, DCITA expects a pricing discount reflecting the residual value of the equipment to the Service Provider after three years.

For assessment purposes, the price of a Metro Broadband Connect Threshold Service as a package over three years is calculated as follows:

	hardware charges
+	installation (excluding travel charges)
+	connection (if applicable)
+	account establishment (if applicable)
+	monthly (usage) charges (x 36 months)
+	<u>any other relevant charges (x number required in the period)</u>
=	total package price

The pricing must be GST inclusive.

Applicants are required to provide all information relevant to this calculation in their application for registration of a Threshold Service.

4.6.3.3 Calculating credits for additional functionality, features or inclusions

To provide Applicants with some flexibility in how they structure their Threshold Services, Service Providers may propose Threshold Services which have additional features, functionality or inclusions, and which can be offered at a slightly higher price, up to an additional \$1000 over the three year package. Any additional price, up to \$1000, must be justified by reference to the value of additional features provided.

Applicants are able to propose features and inclusions that could be considered additional, and propose a valuation for them. DCITA will generally only consider as reasonable and acceptable valuations that are based on:

- (a) charges otherwise applied by the Applicant as part of its Metro Broadband Connect package; or
- (b) charges that the Applicant or other service providers charge in the market for the additional functionality or feature.

⁸ As the Threshold Service must include a 500 MB usage allowance, excess charges will not be considered, except in determining the value of any additional functionality claimed.

Additional functionality, features and inclusions, which could be valued for this purpose, are:

- (a) additional usage allowances (including unmetered usage);
- (b) additional Data Speed (that is, additional upload or download speed), where this can be objectively valued; and
- (c) additional security, data prioritisation or other elements that offer functionality that is clearly in addition to standard Services, and which offer identifiable value for customers.

Service Providers may propose other functionality, features or inclusions, but such proposals must be substantiated as described in this Section.

4.6.4 Bundling of the Threshold Service and other services

DCITA will not register a constructed service bundle as a Threshold Service, that is, a package of services, the constituents of which are generally sold separately (for example, mobile, higher bandwidth, telephony, pay TV) and the bundling of which is not inherent to the operation of the product.

However, services involving different platforms for data uploading and downloading (such as satellite download and an ISDN upload) are acceptable for Metro Broadband Connect registration.

Service Providers are able to offer as part of a service bundle a Service that is identical to their Threshold Service, provided that the Threshold Service is also offered separately as a stand-alone Service. Service Providers should note that bundling conduct is subject to compliance with all relevant laws including trade practices law.

4.6.5 Pricing packages for Pre-existing Customers

Where an Applicant or Service Provider is proposing to register a Service which is based on an existing commercial service for which it has Pre-existing Customers, it must offer these Pre-existing Customers access to this Service at the same prices that new Customers would pay for the Service. This requirement applies to both Threshold Services and Added Value Services.

DCITA will determine, upon application, a partial Incentive Payment for the provision of Services to Pre-existing Customers. Such payment is prospective only, and is based on the cost to the Service Provider of reducing the price to Pre-existing Customers for a three year period.

4.6.6 Period over which Metro Broadband Connect prices must be offered in the Provider's Service Area

Subject to any revision of the pricing requirements following the mid-term review, Service Providers are required to offer Services to new Customers at or below their registered prices for the period of their Agreement with DCITA. The registered price is specified in the Service Provider's Agreement.

Service Providers may change the constituent prices of Services, provided they do not exceed the total price for the Service that has been registered with DCITA. The Service Provider must advise DCITA in writing of any proposed changes to constituent prices at least 10 Working Days in advance. If DCITA does not approve of such a change, it must notify the Service Provider within the 10 Working Days to this effect and the Service Provider must not proceed with the change. If DCITA takes no action then it is taken to have agreed to the change.

4.6.6.1 Possible price changes following the mid-term review

Higher Bandwidth Service pricing generally, and the prescribed prices for Threshold Services in particular, will be considered in the review scheduled for early 2007. Among other things, the review will consider the prices and service features registered for Services, the market prices and features prevailing at that time in metropolitan markets, the costs of supplying Services and the extent to which access to Equivalent Services has improved.

If the mid-term review identifies that there have been material increases or decreases in the price of metropolitan Higher Bandwidth Services, DCITA will consider changing the Metro Broadband Connect Threshold Service and Added Value Service prices (and Incentive Payment levels) accordingly.

Registered Providers would then be:

- (a) allowed to seek registration of higher prices if the Threshold Service and Added Value Service prices are increased; and
- (b) required to seek registration of lower prices if the Threshold Service and Added Value Service prices are reduced.

Services would be required to be offered and supplied at the new prices to all new Eligible Customers who took up the Service on infrastructure deployed after DCITA issued new benchmark pricing.

The application of new Metro Broadband Connect prices to Customers will be considered at the time of the review. The general policy preference is that Customers should receive the benefit of any reductions in pricing, but the feasibility of this would need to be considered at the time.

4.6.7 Period over which registered Metro Broadband Connect prices must be maintained for Customers

A Service Provider must supply its Service to its Customers at or below the price registered and specified for the Service in the Service Provider's Agreement with DCITA for a minimum of three years from the date the Service is first supplied to the Customer, provided the Customer wishes to continue to receive the Service and renew the Terms and Conditions under its contract (see Section 4.6.8). It is a condition of Service Providers' Agreements that Service Providers include and maintain Terms and Conditions to this effect in their contracts with Customers.

A Service Provider may allow its Customers to migrate between different pricing plans it offers for Services, but the Service Provider must always ensure the Customer can return to the pricing plan it originally subscribed to, without penalty to the Customer.

4.6.8 Maximum contract period

Service Providers must offer their Customers the option of a maximum contract period of no longer than 18 months. The Service Provider may also offer longer contract periods, but only in addition to the option of a maximum contract period of 18 months.

This requirement does not affect the Service Provider's obligation to offer Metro Broadband Connect Terms and Conditions for at least three years.

4.6.9 Other commercial Terms and Conditions

Except to the extent they are inconsistent with the specific objectives and requirements of Metro Broadband Connect, a Service Provider may include in its Terms and Conditions with its Customers its usual terms and conditions relating to the supply of Services, including that:

- (a) it is not obliged to connect a Service unless the Customer is considered creditworthy;
- (b) the Customer must comply with the technical operating requirements of the Service; and
- (c) the Customer must comply with other reasonable conditions of use.

If, in the view of DCITA, the Terms and Conditions are inconsistent with the specific objectives and requirements of Metro Broadband Connect, DCITA may require the Terms and Conditions to be modified, as a condition of registering an Applicant and/or its proposed Service or maintaining that registration.

Where a Provider's Customer Terms and Conditions makes provision for the use or introduction of an AUP, the AUP must be cleared by DCITA for consistency with these Guidelines prior to its use. Changes to any AUP must also be cleared by DCITA prior to their use.

4.6.10 Post-Metro Broadband Connect pricing and technology upgrade

The assistance made available to Providers is expected to benefit them, their resellers and their customers beyond the period that each Provider is required to offer Services or Wholesale Services. This is because the operational life of new infrastructure will extend beyond the life of Service agreements with Customers.

To take this into account, Applicants must, as part of the registration process:

- (a) specify their intended policy in relation to the terms and conditions (including price) of the supply of its Wholesale Services or Services once the requirement to supply those Wholesale Services or Services on Metro Broadband Connect Terms and Conditions expires (that is, three years after connection);
- (b) demonstrate that the technology platform, Service Solutions and systems used to deliver Services or Wholesale Services:
 - (i) have a viable upgrade path that will enable the supply of higher quality services (such as higher data rates, increased data usage, symmetrical services, low latency); and

- (ii) can be readily scaled to provide services to additional customers.

The pricing policy and technology upgrade paths are not binding on Providers unless they wish to formally commit to them in their Agreements. However, the information must be realistic and in this regard DCITA reserves the right not to register Applicants that do not provide realistic and reliable information concerning this criterion.

Providers will be required to publish this information to enable resellers and Eligible Customers to take it into account in selecting a Provider.

4.6.11 Pricing of Services

When registering a Service or Wholesale Service, a Provider is required to demonstrate that it is appropriately taking into account the relevant Incentive Payment in setting the price of the Service or Wholesale Service.

Where the Incentive Payment is used, in full or in part, to reduce the price of the Service package, the Service Provider must demonstrate how the pricing for the Service reflects the allocation of the Incentive Payment against Allowable Costs. This will generally be done in reference to an equivalent commercial service on which the Service is based.

Where the Incentive Payment is used to fund a Service Solution rather than to reduce the price of an existing service, the Provider must demonstrate that the Incentive Payment is being used to offer Services at or below Metro Broadband Connect-compliant Pricing.

The price registered for a Service must be available for all Eligible Customers to whom the Service is offered within the registered Service Area. However, the Service Provider may offer additional discounts or special prices for the Service to particular Eligible Customer groups where particular commercial outcomes have been negotiated, subject to compliance with all relevant laws including trade practices law.

4.6.12 Mandatory requirements for functionality and features of Services

Services must include the following mandatory functionality and features to be registered as a Service.

Internet access capability

The Service must include an Internet access service, not just data carriage capability.

Fault reporting and helpdesk

As part of the Service, a Service Provider must provide:

- (a) free of charge, fault reporting arrangements that operate 24 hours, seven days a week; and
- (b) a staffed helpdesk, the hours of operation for which are approved by DCITA and published by the Service Provider.

Usage status information

As part of the Service, a Service Provider must provide an online means for Customers to check their usage, if usage limitations apply. Usage information should be updated at least once per day.

Billing

As part of the Service, a Service Provider must be able, at the Customer's request, to provide billing that shows the Customer's current usage and the associated charge to the Customer.

4.7 Other mandatory technical characteristics

Services must also meet the following mandatory technical requirements to be registered as a Service. These requirements are in addition to the peak and average Data Speed requirements set out in Section 4.6.2.

Customer premises equipment (CPE)

The Customer modem must provide user data access via an industry standard data port (for example, 10/100 Ethernet, USB, IEEE-1394 or PCMCIA).

Network availability

Network availability is the proportion of time that the network is available to originate or receive data over a given period. Network availability refers to the portion of the end-to-end Service under the control of the Provider (or their registered Infrastructure Provider), and broadly includes the links from the Internet border to the Customer equipment border (as per Data Speed performance assessment).

The network availability performance required for Services is 99 per cent for each three month reporting period for the Customer base on each technology platform the Provider operates (such as cable, DSL, satellite or wireless). Such platforms are determined at the time of registration.

Scheduled downtimes between midnight and 6 a.m. are excluded in assessing network availability performance.

Service Providers reselling the services of an infrastructure provider may make use of network availability data sourced from their infrastructure provider, to the extent it accurately reflects the network availability performance of the Service Provider's Services.

Infrastructure Providers supplying Wholesale Services to retailers that are not Metro Broadband Connect registered must supply information to DCITA that is sufficient to demonstrate their networks have the capacity to allow the delivery of Services.

4.8 Timeframes for service connection and restoration

For both Threshold Services and Added Value Services, an Applicant is required to nominate:

- (a) the period in hours or days in which it will undertake to connect a Service at Eligible Premises, except in exceptional circumstances or where a Customer requests or agrees to a longer timeframe; and

- (b) the period in hours or days in which it will undertake to restore a Service in the event of an outage for which it is responsible, except in exceptional circumstances or where a Customer requests or agrees to a longer timeframe.

Service Providers are not bound to the timeframes in the event of exceptional circumstances. Such circumstances need to be specified and agreed in advance by DCITA at the time of registration of the Service.

While the timeframes that Applicants propose are generally at their discretion, DCITA may not agree to proposals that are particularly at odds with industry norms or excessively qualified to the detriment of Customers. DCITA reserves the right to decline the registration of a Service where the timeframes are deemed to be unreasonable.

The timeframes that Applicants propose are included in their Agreements and in their Terms and Conditions with their Customers, and are enforceable in that regard. Service Providers are also required to include these timeframes, and any major qualifications, in the information they publish for comparative purposes.

4.9 Assessment of marketing proposals of Applicants

Each Applicant must provide a brief description of its marketing strategy, including its intentions in relation to:

- (a) marketing its Services broadly across its proposed Service Areas; and
- (b) Customer acquisition methods and channels.

DCITA needs to be satisfied that the arrangements each Applicant proposes are generally consistent with the effective marketing of Services to Eligible Customers. DCITA reserves the right to reject any application which, in its view, does not make appropriate provision for the marketing of proposed Services.

Service Providers must not engage in unreasonably intrusive marketing of their Services. Service Providers must comply with all federal and state legislation relating to marketing to Eligible Customers. In addition, Service Providers undertake not to contact an Eligible Customer more than once in any 30 day period, to offer the same or similar Services, without the prior consent of the Eligible Customer.

4.10 Other commitments nominated by the Applicant

Applicants are encouraged to nominate higher levels of functionality and additional features as part of their application for registration of their Threshold Service and Added Value Service. Such offerings are not assessed in deciding whether or not to register the proposed Service (except, if relevant, in relation to assessment of a service against the benchmark pricing requirements). Such nominations are included in the Service Provider's Agreement and Service Providers must identify them in the comparative information they publish (refer to Attachment 10.1).

Once registered, a Provider is able to seek variation of nominated commitments under its Agreement, but such variations only have effect on a prospective basis and Customers signed up under the previous Terms and Conditions must be serviced on those Terms and Conditions.

4.11 Provision of information for comparison

Each Service Provider must commit to provide, from the time its Service is offered, information about the Service to enable Customers to compare its Service with those of other Service Providers. The information to be made available is set out in Attachment 10.1 and is based on ACMA's ISP Guidelines, supplemented by Metro Broadband Connect-specific requirements. The information must be set out on the Service Provider's website, provided in a printed format upon request and included in the Service Provider's letter to Customers as described in Section 4.14.1.

4.12 Other aspects of the registration process

4.12.1 Process for assessing applications

Metro Broadband Connect applications are assessed by DCITA officers within the Metro Broadband Connect Section of the Telecommunications Competition and Consumer Branch, drawing as necessary on the expertise of other areas of DCITA and other departments and agencies of the Australian Government as appropriate (for example, ACMA and the ACCC). DCITA may use external consultants to assist it to assess applications.

Once the assessment of the Applicant has been made, it is submitted to the officer of the Senior Executive Service with immediate responsibility for the Program, with a recommendation for approval or otherwise, for the officer's consideration. The officer may consult as he/she sees fit before deciding whether to accept the recommendation of the assessment panel.

4.12.1.1 Applicant's right to reasons for refusal

Where an application for registration under Metro Broadband Connect:

- (a) as a Service Provider of Services;
- (b) as an Infrastructure Provider of Wholesale Service/s;
- (c) of subsequent Service/s; or
- (d) of a Service Solution/s or subsequent Service Solution/s;

has been unsuccessful, the Applicant may request DCITA to provide a full statement of its reasons for refusing the application.

4.12.1.2 Re-application by an unsuccessful Applicant

An unsuccessful Applicant may make a further application for registration under Metro Broadband Connect at any time, whether or not they have received a statement of reasons from DCITA, up to 31 December 2006 or at a later date if specified following conclusion of the mid-term review.

4.12.2 Variation of a Provider or Service registration

A registered Provider may seek, at any time, a variation to its registration as a Provider, or to any Wholesale Service or Service it has registered. In seeking a variation, the Provider must supply supporting information, in writing, consistent with the information that is required at the time of registration of a Provider, Wholesale Service or Service. Where DCITA accepts a proposed variation, the variation is given effect in a variation to the Provider's Agreement.

4.12.3 Material changes in a Service Provider's circumstances

A Service Provider must notify DCITA of any developments in relation to its corporate standing, financial standing, operational or technical capability, sustainability or any other factor that may affect its ability to supply Services on the Terms and Conditions required in its Agreement. DCITA must be notified of such developments as soon as the Service Provider becomes aware of them.

A Service Provider must also notify DCITA of any changes proposed to either its management, entity structure, or ownership prior to these changes being executed.

Where there is a change or proposal to change management, entity structure and/or ownership, DCITA may conduct financial or other assessments to confirm the Service Provider's ongoing viability to offer Services as a result of these changes, before executing an Agreement or novation (whichever is appropriate).

4.12.4 Material changes in an Infrastructure Provider's circumstances

An Infrastructure Provider must notify DCITA of any developments in relation to its corporate standing, financial standing, operational or technical capability, sustainability or any other factor that may affect its ability to supply Wholesale Services to a reseller. DCITA must be notified of such developments as soon as the Infrastructure Provider becomes aware of them.

4.13 Incentive Payments

4.13.1 Incentive Payments payable in relation to claims lodged

Incentive Payments become payable by DCITA upon receipt from a Provider of a valid claim for payment, and acceptance of that claim. A claim for payment should be made within 45 days of connecting a Service to a Customer.

4.13.2 Financial year funding allocation

A set amount of funding is available under the Program each financial year. Providers are asked for an estimation of their call on funds to assist DCITA in managing the Metro Broadband Connect funding allocation (see Section 4.13.13).

In the event that the funding available in a particular financial year becomes fully allocated, DCITA will notify Providers. Advice will be provided to all Providers when allocations remaining are at \$5 million, \$3 million, and \$1 million. An indication will also be provided as to approximately how many days of Customer registration activity the remaining funding represents, based on the level of activity at that time.

When the balance of available funding in a financial year reaches \$1 million, all Providers will be notified that they are no longer obliged under their Agreement to connect new Services or Wholesale Services under Metro Broadband Connect until such time as further funding becomes available. DCITA will advise Providers in writing if and when such funding becomes available.

In normal circumstances, further funding would become available in the new financial year.

When they are notified that remaining funds are at \$1 million, Providers are advised to consider whether they wish to hold orders or take other action pending the allocation of further funds to the Program in the new financial year.

4.13.3 Incentive Payments are for a 12 month period

Where a Service Provider has provided Eligible Premises with access to Services as a result of it establishing network coverage in a specific area, the Eligible Premises in that area will only attract Incentive Payments for that Provider for 12 months from the date that the first Service was supplied over the infrastructure deployed to extend the network.

4.13.4 Full Incentive Payments for new Customers

The Incentive Payments payable in relation to the supply of New Services to Eligible Customers are divided into two categories:

- (a) the Standard Incentive Payment of \$500 (including GST); and
- (b) the High Cost Incentive Payment of \$1000 (including GST).

These Incentive Payments are made to Providers as set out in Sections 4.13.5 to 4.13.8. An Incentive Payment is paid to a Provider for each Service provided to an Eligible Customer at Eligible Premises.

However, Incentive Payments for each Service:

- (a) may be lower (for example, in the case of Pre-existing Customers); or
- (b) may cease over time (for example, when Allowable Costs are exceeded see Sections 4.13.11 and 4.13.12); and
- (c) will cease to be available to a Provider after 12 months from when access to a Service is made available by establishing network coverage. The 12 month period will commence from the date that the first Service was supplied.

4.13.5 Standard Incentive Payment - \$500

A Standard Incentive Payment of \$500 applies for the supply of a registered Standard Cost Threshold Service or Standard Cost Added Value Service to an Eligible Customer at Eligible Premises.

4.13.5.1 Determining eligibility for Standard Incentive Payment

A Standard Incentive Payment will be made to Service Providers for supplying a Service to Customers that:

- (a) satisfy the Customer eligibility criteria (as defined in Section 3.1); and
- (b) are located in Eligible Premises within the Metro Broadband Connect Area where an Equivalent Service was not available at the Start of the Program or ceased to become available after the Start of the Program (see Section 3.2).

All Customers will be required to attest that they satisfy the Customer eligibility criteria before a Service Provider can qualify to receive a Standard Incentive Payment.

Service Providers may also ask the customer to attest that they have checked with the other service providers nominated by the Metro Broadband Connect Online Service Locator and that they were unable to be supplied with a Service or Equivalent Service.

Where the Customer attests to having undertaken this check and having been unable to be supplied with a Service or Equivalent Service by any other of the listed service providers, then DCITA will take this information into account when determining whether a Service is being supplied to Eligible Premises.

Providers may also submit claims directly to DCITA for Customers being supplied with a Service and DCITA will determine which of these are being supplied to Eligible Customers in Eligible Premises and therefore attract an Incentive Payment. Providers may also request DCITA to make a determination on the eligibility of a customer before supplying the customer with a Service. This determination will be based on service availability information submitted to DCITA by each Provider at the time that it registers, as well as information submitted by other providers, and updated on a regular basis.

Providers will lodge claims for Incentive Payments electronically to DCITA by Metro Broadband Connect Online. It is the Provider's responsibility to ensure that all details provided to DCITA in claims are correct. Should DCITA not process a claim due to one or more errors in the claim form, DCITA will advise Providers of the reasons for not processing the claim and it will be the Provider's responsibility to address the error(s).

The claims will include sufficient information to allow DCITA to determine the specific location of each Customer's premises for which a Standard Incentive Payment is being claimed. Information fields include:

- (a) fixed-line telephone number(s);
- (b) street address; and
- (c) postcode.

In assessing eligibility, DCITA will refer to:

- (a) comprehensive service availability information collected from Providers through the registration process and updated monthly (see Section 4.4.7.1);
- (b) infrastructure capacity constraint information, which must be supplied to DCITA by Providers as it becomes available (see Section 4.6.1); and
- (c) service availability information of service providers not registered under Metro Broadband Connect but offering Equivalent Services in the Metro Broadband Connect Area.

4.13.6 High Cost Incentive Payment - \$1000

A High Cost Incentive Payment of \$1000 applies for the supply of a registered High Cost Threshold Service or High Cost Added Value Service to an Eligible Customer located at High Cost premises. High Cost premises are those that have not been able to obtain an Equivalent Service or Standard Cost Threshold Service after six months from the date of registering on the Demand Register. High Cost Service Providers will only be able to access the details of customers eligible to be supplied with a High Cost

Service after the customer has been registered on the Demand register for six months. The earliest date at which a six month period on the Demand Register can be calculated from is the Start of the Program. Otherwise the customer eligibility and premises eligibility criteria described in Sections 3.1 and 3.2 apply. While Customers must attest to their own eligibility and the eligibility of their premises through the Demand Register, DCITA will conduct regular audits of these attestations.

If a Standard Cost Threshold Service becomes available to an Eligible Customer that has registered on the Demand Register, then that customer's details will be forwarded to the Service Provider/s that can supply that Service and the customer will be removed from the Demand Register. If the Standard Cost Threshold Service becomes available to an Eligible Customer that has been on the Demand Register for a period of more than six months but has not taken up a High Cost Service, then the Eligible Customer will no longer be able to access a High Cost Service.

4.13.7 Process for determining Standard Cost or High Cost Incentive Payments

A High Cost Incentive Payment is payable where an Eligible Customer has been listed on the Demand Register for six months without being able to access a Standard Cost Service. The customer is eligible to receive a High Cost Service from a Service Provider that has a High Cost Service registered, subject to the Service Provider attesting that it cannot provide the Eligible Customer with a Standard Cost Service.

4.13.8 Process for making Incentive Payments

Providers must lodge claims for Incentive Payments via Metro Broadband Connect Online. Providers are required to enter claims and details of new Customers as soon as practicable, but in all instances within 45 days of connection and supply of the Service to the Customer.

A claim for an Incentive Payment must not be lodged prior to the Service being supplied to the Customer.

At the end of each calendar month, DCITA will assess claims submitted in that month. DCITA will be responsible for determining which claims lodged by Providers will attract an Incentive Payment. This process is detailed in Section 4.13.5.1.

4.13.9 Options for managing Incentive Payments

DCITA may manage payment for accepted claims by either one or a combination of the following two methods:

- (a) on an on-going basis, where payments are made monthly following acceptance of lodged claims; or
- (b) on a prepaid basis, where funds are made available to a Provider at the commencement of its Agreement, and accepted claims are debited against these funds.

On-going basis

The total of each Provider's accepted claims for each month will be treated as the Provider's monthly invoice. Providers will be given the opportunity to confirm the total.

In the event of any discrepancy between the Provider's own records and DCITA's, the onus is on the Provider to demonstrate the error and to substantiate any request for correction. Providers must report to DCITA any discrepancy in Incentive Payments within 45 days such a discrepancy is identified.

Unless otherwise determined by DCITA in its discretion, this method will be used to provide Incentive Payments to Providers.

Prepaid basis

As part of the registration process and at subsequent renewals of Agreements a Provider is able to apply for funds to be provided to it by DCITA before lodging any claims for Incentive Payments during the funding period.

Applications for this method of payment can only be made for the purpose of deploying new infrastructure that enables the provision of Services that will attract a Standard Incentive Payment. Applications will be considered by DCITA on a case by case basis. Factors that will be considered in determining whether this method of payment may be used and the amount of funds that are to be made available will include:

- (a) the financial position of the Applicant;
- (b) the Applicant's estimates of the expected number of Services it will supply during the funding period;
- (c) the Applicant's intended Commercial Investment;
- (d) available funds (including the operation of funding caps); and
- (e) any other matter that DCITA considers relevant.

The amount of prepaid funding made available through this method of payment will be limited by the operation of two caps. These are:

- (a) the total amount of funds that can be made available on a prepaid basis to all Providers will not exceed 50 per cent of the total available funds for the respective funding period; and
- (b) the total amount of funds that can be made available on a prepaid basis to any one Provider will not exceed 50 per cent of the funding that the Provider expects to receive for supplying Services during the respective funding period.

Providers that are permitted to make use of this method of payment will be required to lodge all claims for payment for assessment by DCITA as discussed in Section 4.13.5.1. The claims that are accepted by DCITA will then be debited against the prepaid funds provided to the Provider at the commencement of their Agreement.

Once the prepaid funds provided to the Provider have been exhausted the Provider will then revert to receiving payments via the on-going basis method for the remainder of the funding period.

If funds provided to a Provider are not exhausted at the completion of the funding period then DCITA will determine whether the balance of the funds, as calculated by DCITA, will either be required to be returned, in full or in part, to DCITA within 30 Working Days of DCITA giving notice to the Provider of the amount, or will be carried

over into the Provider's next Agreement. It will be at DCITA's discretion as to which method will be adopted. Failure by the Provider to comply with DCITA's determination will result in automatic deregistration.

If the funds available for payment on the ongoing basis, are exhausted, then DCITA at its discretion has the right to require the balance, or part thereof, of all prepaid funds distributed to Providers to be returned to it within 30 Working Days.

Irrespective of payment methods, the Incentive Payments paid to Providers are subject to repayment if a claim is found to have been wrongly made or paid, regardless of the party at fault.

4.13.10 Customer Transfer Payments

Where a Service Provider transfers a Pre-existing Customer (see Section 4.6.5) to a Service, a Customer Transfer Payment may apply.

The Customer Transfer Payment made by DCITA in these circumstances is determined at the time of registration of the Service, and reflects the reasonable cost of providing the Service to Pre-existing Customers for a three-year period. In determining the payment, DCITA may take into account:

- (a) the administrative costs of migrating Pre-existing Customers to the new pricing package;
- (b) the difference between existing price levels and those required under Metro Broadband Connect; and
- (c) the extent to which the Service Provider has already recovered the cost of CPE and other capital costs from the Pre-existing Customer.

In cases where transferring the Pre-existing Customer's service to a Service requires significant replacement of equipment and/or other additional Allowable Costs, a full Incentive Payment may be determined to be appropriate.

4.13.11 Allocating Incentive Payments against Allowable Costs

Incentive Payments are intended to assist Providers to supply Services or Wholesale Services in metropolitan areas by contributing to the costs of providing these Services.

The Incentive Payments may be allocated against the Allowable Costs incurred in supplying Services or Wholesale Services.

There are three categories of Allowable Costs, all of which must be incurred after the Start of the Program and must be directly attributable to the cost of providing the Services or Wholesale Services. These categories are:

1. costs of Metro Broadband Connect compliance;
2. costs that are incurred in advance of implementing a Service Solution and signing up Customers; and
3. costs that are incurred for each Customer signed up.

These categories are outlined in more detail below.

1. Costs of Metro Broadband Connect compliance

These are the costs of participating in and complying with Metro Broadband Connect and include:

- (a) developing products and systems for performance testing;
- (b) developing systems to make it possible for the Provider to comply with the reporting requirements of Metro Broadband Connect; and
- (c) administrative costs of other arrangements that are specific to Metro Broadband Connect, and would not be incurred in the normal operation of the Business.

2. Costs that are incurred in advance of implementing a Service Solution and signing up Customers

These include up-front costs that are incurred to enable the Provider to sign up future Customers. These would typically be 'lumpy' costs and may include costs for:

- (a) planning approvals;
- (b) site acquisition;
- (c) building structures and enclosures to house equipment;
- (d) establishing an uninterrupted power supply;
- (e) purchasing and installing equipment such as switching equipment, where directly related to switching a Higher Bandwidth Service, DSLAM chassis, line cards and racks etc;
- (f) installing cabling and associated facilities for a local access network;
- (g) wireless towers, transceivers and repeaters;
- (h) replacing a blocking PGS or RIM with systems that can service more than one Customer;
- (i) terrestrial backhaul; and
- (j) satellite transponder capacity.

3. Costs that are incurred for each Customer signed up

These are costs that are incurred when connecting each new Customer to a Service. Key examples of these costs are the cost of items such as:

- (a) CPE and its installation;
- (b) one-off unbundled local loop connection fees; and
- (c) in the case of Service Providers providing a Service not based on a registered Wholesale Service, wholesale charges, as a reasonable proxy for other Allowable Costs identified in Category 2.

At the time of registration, Providers must estimate and report on category 2 and 3 Allowable Costs for each Service Solution.

Costs are only Allowable Costs if incurred to provide a Wholesale Service or Service. Hence, the cost of any items that are shared between Wholesale Services or Services and other services, like backhaul or transponder capacity, may only be included as

Allowable Costs to the extent that these costs are incurred in supplying the Wholesale Services or Services. Providers are required to justify the allocation of shared costs.

Costs that are excluded from Allowable Costs are the following:

- (a) general administrative costs of operating the Business, including staff costs, and corporate and business overheads, such as office rental, power, computing, insurance and travel;
- (b) general marketing costs unless particular marketing costs can be demonstrated to be additional to normal requirements, and relate to the special requirements of Metro Broadband Connect;
- (c) network and technical costs that are of a general nature and cannot be specifically or sufficiently identified and apportioned to the cost of providing Services or Wholesale Services; and
- (d) Staffing costs not associated with Categories 1-3 identified in this section. More general staffing costs that could be expected to be incurred in undertaking any general form of business supplying services to customers, and so not specific to Metro Broadband Connect, are not Allowable Costs.

Points (a-d) above do not represent an exhaustive list of exclusions from Allowable Costs. Where Providers are uncertain about whether a cost would be an Allowable Cost, they should contact DCITA for written confirmation. Copies of such written advice should be retained by the Provider if they subsequently include the relevant costs in their annual Allowable Costs reconciliation (see Section 4.13.12).

4.13.12 Process for reconciling Incentive Payments against Allowable Costs

At the time of registration and at the beginning of each financial year, each Provider must provide an Allowable Cost statement for each Service Solution, for the coming year. One statement of costs is required per Provider per Service Solution. The cost statement must provide details of estimated costs for the next financial year for each of the Allowable Cost categories. Unit costs and Customer numbers must be provided where appropriate to justify costs.

At the end of each financial year, an audited statement of Allowable Costs incurred in that year must be provided, which will be compared with the Incentive Payments the Provider received during the same year.

Where the Allowable Costs are greater in value than the value of the Incentive Payments the Provider received for supplying Wholesale Services or Services, the excess value of the Allowable Costs may be carried forward to Allowable Costs for the following financial year. Where the value of the Incentive Payments exceeds the value of the Allowable Costs, DCITA will assess the likelihood of the excess Incentive Payments being able to be offset against Allowable Costs in the following financial year and either:

- (a) allow the excess value of the Incentive Payments to be carried forward for Incentive Payments in the following financial year;

- (b) withhold further payment of Incentive Payments until such time as DCITA is satisfied that Allowable Costs are sufficiently in excess of Incentive Payments made, where it is determined that the value of the Incentive Payments is likely to continue to exceed the value of Allowable Costs. In these circumstances Incentive Payments withheld may be paid, up to the full amount due, to the Provider, once, and if, Allowable Costs are sufficiently in excess of Incentive Payments; or
- (c) deregister a Service Solution if the reported Allowable Costs for a Service Solution are considered by DCITA to be immaterial with respect to the size of the Incentive Payments received for Services delivered via that Service Solution.

At any time, if DCITA identifies that Incentive Payments are in excess of Allowable Costs and that it is not likely that further Allowable Costs will be incurred, DCITA may require the full repayment of excess Incentive Payments.

If Incentive Payments to an Infrastructure Provider cease because payments have exceeded Allowable Costs, then Service Providers who have agreements with that Infrastructure Provider in relation to sharing Incentive Payments, will continue to receive their agreed share of the Incentive Payment, subject to not exceeding their Allowable Costs.

4.13.13 Overall cap on Incentive Payments paid to individual Providers

If a Provider receives 60 per cent or more of the total amount of Metro Broadband Connect funds that are available in any one financial year or over the life of the Program (from both retail and wholesale sources), that Provider will generally become ineligible to receive any further Incentive Payments.

DCITA will publish the amount of the 60 per cent cap for each financial year after the relevant appropriation legislation is introduced into Parliament.

DCITA will monitor the status of Incentive Payments to Providers against individual caps. DCITA will notify Providers when accepted claims submitted to DCITA equal 70 per cent, 80 per cent, 90 per cent and 100 per cent of the individual funding cap. The individual funding cap is deemed to be reached when there are insufficient funds remaining available under the individual funding cap to pay an Incentive Payment. Once 100 per cent of the individual funding cap is reached DCITA is not obliged to pay a Provider any further funding. The exception to this is where DCITA has decided to make more funding available to a Provider in particular circumstances (see Section 4.13.13.1).

Where the Service Provider has reached the individual funding cap, it is not obliged to offer Services until such time as it again becomes eligible to receive Incentive Payments (for example, in a new financial year or following a decision by DCITA to make more funds available).

Where an Infrastructure Provider is no longer receiving a proportion of Incentive Payments because its individual cap has been reached, it nevertheless may be required to continue to provide Wholesale Services to resellers if its contracts with those resellers so require.

4.13.13.1 Application for variation of the individual funding cap

When a Provider is approaching or has reached its cap, it may seek access to additional Metro Broadband Connect funds. Generally, DCITA will only undertake an examination where the Provider is within 80 per cent or more of the 60 per cent cap (that is, 48 per cent of available funds in a period).

In considering whether to make further Metro Broadband Connect funds available to a Provider who is approaching or has reached its cap, DCITA will examine:

- (a) the amount of funding remaining in the relevant period;
- (b) the past and projected demand for Metro Broadband Connect funds from other Providers and whether their access to Metro Broadband Connect funding would be jeopardized;
- (c) the reasons why the Provider is approaching or has reached its cap;
- (d) the impact on customers of making or not making further Metro Broadband Connect funds available; and
- (e) whether Incentive Payments received by the Provider are likely to exceed the value of Allowable Costs.

Where DCITA makes such a decision, it will publish a written notice of its decision on the Metro Broadband Connect Online and advise each Provider of its decision. DCITA may specify the amount of additional Metro Broadband Connect funding which the Provider can access.

4.13.14 Taxation status of Incentive Payments

The Incentive Payments stated in these Guidelines are inclusive of GST. Providers are responsible for managing all taxation matters associated with the receipt of Incentive Payments.

4.13.15 Information on the locations that have attracted Incentive Payments

To assist Providers gain a better understanding of the location of Eligible Premises, DCITA will publish, and regularly update, on Metro Broadband Connect Online the locations of premises that have attracted an Incentive Payment. This information will be presented at a suitably disaggregated level (such as the postcodes of the locations) so that specific premises cannot be identified.

4.13.16 Possible changes to Incentive Payment levels following the mid-term review

The appropriateness of the level of the Standard Cost and High Cost Incentive Payment will be assessed in the mid-term review of Metro Broadband Connect scheduled for early 2007.

Issues that will be considered in determining the arrangements to apply for the 2007-08 financial year will include the extent to which networks have been excluded and the available funding.

Services provided to Eligible Customers through infrastructure deployed prior to 30 June 2007 will attract the Incentive Payments that were applicable at the time the infrastructure was deployed.

4.14 Acknowledgment of Metro Broadband Connect as an Australian Government initiative

Providers are required under their Agreement with DCITA to acknowledge, clearly and prominently, Metro Broadband Connect as an Australian Government initiative in all instances where the Provider is undertaking marketing of Services. This includes marketing in all forms of media.

The exact words of acknowledgment required to be used are as identified by DCITA and may change from time to time depending on Australian Government policy. The range of material on which such acknowledgment is required is as specified by DCITA and would normally include:

- (a) publicity brochures and other printed material for Services;
- (b) websites relating to Services;
- (c) events involving the promotion of Services;
- (d) speeches relating to Services; and
- (e) billing relating to Services for the duration that the Service is provided under Metro Broadband Connect Terms and Conditions (that is, three years).

Providers must be available to support Australian Government publicity associated with Metro Broadband Connect, as advised by DCITA. Providers are required to invite Australian Government officials to participate in publicity events they undertake relating to their Metro Broadband Connect activities.

Providers are also required to clear all forms of promotional or marketing material relating to their Services prior to its use or publication. This includes, but is not limited to, the examples of material outlined in points (a) to (e) in this section. If a Service Provider is uncertain whether certain materials or activities would require clearance, they are required to contact DCITA for advice before publishing the material or undertaking the activity.

Providers must also clear with DCITA promotional or marketing materials developed or published by entities affiliated with or subsidiary to the Provider where the materials relate to the Provider's Services.

4.14.1 Confirmation to Customers

Once a Service Provider has received confirmation that the customer they are supplying with a Service is a Customer, the Service Provider must write by post or email to that Customer, confirming the specific terms and conditions that the Provider has included in its Terms and Conditions with the Customer under the Service Provider's Agreement.

The text of the letter or email is required to be approved by DCITA when the Service Provider applies for registration under Metro Broadband Connect, and must include the following information:

- (a) acknowledgment of as an Australian Government initiative (see Section 4.14);
- (b) the specific amount of the Incentive Payment for which the Service Provider is eligible on provision of the Service;
- (c) the comparative information that the Provider is required to make available on its website in accordance with Section 4.11;
- (d) for Threshold Services, the Program's requirement for the Service to achieve average data download and upload speeds of at least 60 per cent of the Service's specified peak speeds at least 75 per cent of the time, as measured according to a prescribed testing schedule;
- (e) for Added Value Services, the requirement for the Service to achieve the specific average data download and upload speeds specified in the Service Provider's Agreement, as measured according to a prescribed testing schedule;
- (f) the website address for Metro Broadband Connect Online for the DCITA Data Speed measuring facility, and identification of this as the definitive tool for Customers to use to measure the speed of their Service;
- (g) the availability of monthly updated reports of DCITA's testing of the Service Provider's Service speeds performance on Metro Broadband Connect Online;
- (h) the Provider's own contact email or phone number for Customer complaints or queries;
- (i) DCITA's contact details, as provided in Section 9, for Customer complaints or queries;
- (j) a summary of the process for registering Customer complaints about their Service. Specifically, that: (1) the Customer should seek to resolve the issue with their Service Provider in the first instance; (2) if the Customer considers that their Service Provider's response has not been satisfactory, they should then contact the TIO for further action or investigation (the contact details of the TIO are to be included);
- (k) acknowledgment of the Metro Broadband Connect requirement for the Customer to experience network availability 99% of the time (see Section 4.7);
- (l) the timeframes for Service connection and restoration identified by the Service Provider in its application for Metro Broadband Connect registration (see Section 4.8);
- (m) where the Service Provider's Terms and Conditions makes provision for the application of an AUP, clear advice on the potential scope of the AUP and how it may be applied to Customers' Services (see Section 4.6.9);
- (n) the Service Provider's Exit Strategy, including its strategy for withdrawal of Service, as advised in its application for Metro Broadband Connect registration (see Section 4.5.8); and
- (o) the requirement for the Service Provider to continue to offer the Customer the same Threshold Service or Added Value Service at or below its registered price for a minimum of three years from the date the Service is first supplied to the Customer (see Section 4.6.7).

Changes to the text of the letter or email must be approved by DCITA prior to use. Service Providers must also publish this information on their website. The text of this website information is required to be cleared with DCITA prior to its publication, and prior to any subsequent amendment following DCITA's initial clearance.

4.15 Compliance with research and evaluation

Providers are required to comply with reasonable requests to participate in research into, and evaluation of, the operation and effectiveness of Metro Broadband Connect, by DCITA or other Australian Government agencies. Such compliance may include providing records, responding to questionnaires and assisting with Customer surveys.

5 RECORD-KEEPING, MONITORING AND REPORTING

This chapter sets out requirements for monitoring, reporting and enforcing compliance with Metro Broadband Connect.

5.1 Record keeping

Appropriate and adequate records must be maintained to enable a Provider to satisfy all Metro Broadband Connect claims, auditing, compliance reporting, and review and evaluation requirements.

This includes information relating to:

- (a) corporate standing and sustainability (as provided for in the registration process);
- (b) technical capability (as provided for in the registration process);
- (c) financial standing (as provided for in the registration process);
- (d) Services or Wholesale Services registered under Metro Broadband Connect;
- (e) Allowable Costs incurred in providing Services or Wholesale Services for each Service Solution;
- (f) marketing activities related to Services;
- (g) service performance for registered Services or Wholesale Services;
- (h) Customers provided with Services and their attestations of eligibility;
- (i) Incentive Payments claimed and received by the Provider; and
- (j) Customer complaints.

Information relating to participation in Metro Broadband Connect must be kept in a particular form, if specified by DCITA in writing.

Records in relation to each claim for an Incentive Payment must include, but are not limited to, the following information:

- (a) Customer application and attestation(s);
- (b) signed copy of the Terms and Conditions between the Service Provider and the Customer;
- (c) evidence of the Customer's acceptance of the Terms and Conditions;
- (d) evidence that the Terms and Conditions were communicated to the Customer prior to execution of the contract entered into by the Customer and the Service Provider; and
- (e) evidence that a connection to a Service was established.

5.1.1 Duration of record-keeping

A Provider must retain all records, as identified by DCITA, for no less than seven years after the end of Metro Broadband Connect.

5.2 Failure to comply with Agreement

As soon as a Provider becomes aware that it has failed to meet its obligations under its Agreement, it must report such failure to DCITA, and take immediate steps to rectify the failure.

Where DCITA notifies a Provider that the Provider is in breach of its obligations under its Agreement, the Provider must rectify the breach within 10 Working Days of receiving the notice. If the Provider fails to do so, DCITA may terminate its Agreement with the Provider.

5.3 Reporting service availability

Each Provider must provide DCITA with information regarding the availability of its services in the Metro Broadband Connect Area. The information must be in a format acceptable to DCITA and allow DCITA to identify the premises that have:

- (a) access to Equivalent Services before the Start of the Program;
- (b) access to Equivalent Services and Services at the time the Applicant registers; and
- (c) been provided access to Services during the period that the Provider is registered.

During the period that a Provider is registered, it will be required to submit information detailing any extension of the availability of its services within the Metro Broadband Connect Area to DCITA by the end of each calendar month.

5.4 Reporting of Commercial Investment

Providers must prepare, and lodge with DCITA, reports on their intended Commercial Investments, including planned infrastructure deployment to be undertaken independently of Metro Broadband Connect support, for the first six months of the funding period and undertake to update this information on a six-monthly basis.

After the first Commercial Investment report, which must be lodged with the initial application to become a Provider, subsequent reports must be lodged with DCITA:

- (a) by 30 November for Commercial Investment to be undertaken in the six months between the subsequent January and June; and
- (b) by 31 May for Commercial Investment to be undertaken in the six months between the subsequent July and December,

throughout the period that a Provider is registered.

Providers registering after these cut-off dates must provide details of Commercial Investment for the current or forthcoming period as part of their registration process.

6 VARIATION OF THE GUIDELINES

DCITA reserves the right to vary these Guidelines in light of changes to Australian Government policy and ongoing experience with Metro Broadband Connect.

Prior to any variation to these Guidelines, DCITA's policy will be to consult with Providers. DCITA will also consult more generally if the variations being considered will have a material effect on the wider community. The effect of any changes on the pre-existing interests of relevant parties will be taken into account.

DCITA will notify all Providers if these Guidelines are varied.

7 REVIEW AND EVALUATION OF METRO BROADBAND CONNECT

7.1 Mid-term review of Metro Broadband Connect

DCITA will undertake a mid-term review of the Metro Broadband Connect arrangements in early 2007. The Agreement between the registered Provider and DCITA requires the Provider to co-operate with reasonable requests in relation to the review, particularly in relation to the provision of information.

Any Provider that enters into an Agreement with DCITA will be subject to confidentiality requirements in relation to information provided under that Agreement.

The Agreement requires Providers to acknowledge that the review may lead to changes in the Program's design, operation, administration, and any other aspect of the Metro Broadband Connect. Any such changes will take into account the pre-existing interests of relevant parties.

7.2 End of Program evaluation

DCITA will initiate a final evaluation of Metro Broadband Connect within three months of the end of the Program.

Agreements between Providers and DCITA require Providers to co-operate with reasonable requests in relation to the evaluation, particularly in relation to the provision of information.

It is envisaged the evaluation will examine and report on such measures as:

- (a) the number of customers to have benefited directly or indirectly from the Program;
- (b) customer awareness of with Metro Broadband Connect;
- (c) Customer satisfaction with Metro Broadband Connect;
- (d) the effectiveness of Metro Broadband Connect in providing all metropolitan customers with access to Higher Bandwidth Services, at prices in line with the majority of metropolitan customers;
- (e) the effect of the Program on Higher Bandwidth Service prices in metropolitan Australia generally;
- (f) the extent to which Metro Broadband Connect has contributed to the roll-out of Higher Bandwidth Service infrastructure in areas without access to Higher Bandwidth Services in metropolitan Australia;
- (g) the effectiveness of Metro Broadband Connect in improving competition in the provision of Higher Bandwidth Services in metropolitan Australia;
- (h) the efficiency of Service Solutions provided under the Program; and
- (i) the effectiveness and efficiency of the administration of Metro Broadband Connect.

8 DEFINITIONS

These Guidelines include reference to a number of terms, some of which are specific to Metro Broadband Connect, and which are defined below. Where the Guidelines expand on the definition of a term contained in this section, the term has that expanded meaning.

A

ACCC means the Australian Competition and Consumer Commission.

ACMA means the Australian Communications and Media Authority.

Added Value Service means a Service registered for supply in a Service Area in which a Threshold Service has been registered and which provides actual peak and average Data Speeds not less than those required for the Threshold Service as well as additional functionality or features, over and above requirements (a) and (e) through to (i) of the Threshold Service.

Applicants must register at least one Added Value Service which is to be provided over the same Service Solution that delivers the Applicant's Threshold Service. This Added Value Service must provide a peak Data Speed of at least 512 kbps to the Customer and 128 kbps from the Customer and a minimum monthly usage allowance (download and upload) of at least 1 GB.

Added Value Services must satisfy Data Speed requirements specified in the Applicant's description of the Service. All Added Value Services will be subject to testing as described in Section 4.6.

ADSL means an Asymmetric Digital Subscriber Line.

Agreement means the legal agreement between DCITA and a Provider concerning the supply of Services or Wholesale Services under the Program.

Allowable Costs means that portion of costs a Provider incurs in providing Services or Wholesale Services against which Incentive Payments may be allocated. (See Sections 4.13.11 and 4.13.12 for further information on Allowable Costs).

Applicant means a retail or infrastructure provider who is applying to become a Provider.

AUP means Acceptable Usage Policy.

B

Broadband Connect means the Broadband Connect program.

Business means an activity undertaken as a commercial enterprise on an ongoing basis, or engaged in for the purpose of profit on a continuous and repetitive basis.

C

Commercial Investment means a Provider's infrastructure deployment that would have been undertaken without assistance under the Program.

CPE means customer premises equipment.

Customer means an Eligible Customer with whom a Provider has entered into Terms and Conditions to supply a Service.

Customer Transfer Payment means the Incentive Payment or part thereof made by DCITA to a Service Provider to assist it to provide a Service to a Pre-existing Customer.

D

Data Speed means the speed at which data bits, comprising both protocol headers and data payload, are carried by a service. This contrasts with throughput, which refers to the delivery of actual payload data bits (that is, the content useable to end-users), excluding protocol overheads. Data Speed is measured in kilobits per second, and is determined through the testing regime established by DCITA for Metro Broadband Connect.

DCITA means the Department of Communications, Information Technology and the Arts.

Demand Register means the demand register available at Metro Broadband Connect Online which allows Eligible Customers to register their interest in being supplied with a Service.

E

Eligible Customer means:

- (a) a residential customer;
- (b) a Small Business;
- (c) a Not-for-profit Organisation with 20 or fewer permanent FTEs at the time of application for a Service; or
- (d) a Not-for-profit Organisation where the Service to be supplied is for the provision by the organisation or agency of a Not-for-profit Public Access Internet Facility.

Eligible Premises means any premises in the Metro Broadband Connect Area that did not have access to an Equivalent Service at the Start of the Program or in exceptional circumstances described in Section 3.2. DCITA is the final arbiter of whether a customer's premises are considered to be Eligible Premises.

Equivalent Service means a Higher Bandwidth Service that provides access from the Internet at a peak Data Speed of at least 256 kbps and to the Internet at a peak Data Speed of at least 64 kbps, and 400 MB per month usage allowance, and has the following pricing:

- (a) a package including equipment, installation and monthly usage over three years at a price of up to \$2000; or
- (b) a package including equipment, installation and monthly usage over three years at a price of up to \$3000 where additional features or functionality of a value equal to or exceeding the additional price allowance are provided.

Exit Strategy means the arrangements by which a Provider manages its Customer base should it cease to provide Services or Wholesale Services. In particular it refers to actions to be taken by the Provider to ensure that there is minimal negative impact on its Customers or resellers if it ceases to provide Services or Wholesale Services.

F

FTE means full time equivalent employee, regardless of whether or not the employees are permanent employees, and includes the clarifications described in Sections 3.1.3 to 3.1.5.

G

Guidelines means the Program Guidelines as issued by DCITA.

GB means Gigabyte and is equal to 1000 Megabytes

H

HiBIS means the Higher Bandwidth Incentive Scheme.

High Cost has the meaning given to it in Section 2.7.

High Cost Incentive Payment has the meaning given in Section 4.13.4.

Higher Bandwidth Service means any Internet access service that provides access from the Internet at a peak Data Speed of at least 256 kbps and to the Internet at a peak Data Speed of at least 64 kbps.

I

Incentive Payment means either a Standard Incentive Payment or a High Cost Incentive Payment, or a portion thereof, that is paid by DCITA to a Provider, either after the Service Provider has supplied a Service to an Eligible Customer at Eligible Premises or, in the case of an Infrastructure Provider, after the supply of a Wholesale Service to a reseller that has used this Wholesale Service to supply a Higher Bandwidth Service to Eligible Premises.

Infrastructure Provider means a Provider who has registered with Metro Broadband Connect for the purposes of providing Wholesale Services and receiving a designated share of the Incentive Payment. An Infrastructure Provider must also register as a Service Provider if it provides retail services.

K

kbps means kilobits per second.

kilobit means 1000 bits.

kilobyte means 1000 bytes.

M

MB means Megabyte, and is equal to 1000 kilobytes.

Metro Broadband Connect means the Metropolitan Broadband Connect program.

Metro Broadband Connect Area means:

- (a) the capital cities of Canberra, Sydney, Melbourne, Brisbane, Adelaide, Perth, Hobart and Darwin; and
- (b) the adjacent high population centres of Wollongong, the Central Coast of NSW, Newcastle, Geelong, Palmerston and the Gold Coast including Tweed Heads,

the boundaries of which are defined by the relevant Urban Centre/Locality boundaries published by the Australian Bureau of Statistics as at 30 September 2002 in *2909.0 – Statistical Geography: Volume 3 – Australian Standard Geographical Classification (ASGC) Urban Centres/Localities* (Issue 2001 released 30 September 2002; ISBN 0 642 47821 X)⁹ and described in Section 3.2.1.

Metro Broadband Connect-compliant Pricing means pricing of a Higher Bandwidth Service supplied by a Service Provider that meets the price requirements of that Provider's Threshold Service or Added Value Service.

Metro Broadband Connect Online means the portion of the DCITA website dealing with the Program, and the information and program management tools provided at that site and which is located at www.dcita.gov.au/tel/mbc.

N

New Housing/Business Estates means construction of a large number of premises in an identified single or staged development within the Metro Broadband Connect Area.

New Service means a Service provided by a Service Provider to a Customer who was not previously receiving an Equivalent Service from a service provider.

Not-for-profit Organisation means an organisation or a corporation that is formed for social, recreational, educational, charitable, philanthropic or other lawful purposes where any profit earned can only be applied to the organisation as a whole and not to individual members of the organisation. It does not include any Australian, State, Territory or local Government agency.

Not-for-profit Public Access Internet Facility means a facility which allows one or more members of the public to access, or share access, to the Internet. For it to be

⁹ For further information see:

<http://www.abs.gov.au/ausstats/abs@.nsf/0/B03C37D9D89F7C19CA256AD4007F67F8?Open&Highlight=0,urban>

provided on a not-for-profit basis means that any revenue earned from the Service is applied only to the provision of the Service or the operation of the organisation.

O

Online Service Locator means the facility described in Section 3.5.1.

P

PGS means Pair Gain Systems.

Pre-existing Customer means a customer other than a Public Internet Access Facility customer who meets all the Program's eligibility requirements (i.e. premises and customer type), and who at the time of the registration of its Provider was receiving a Higher Bandwidth Service that was comparable, except in regard to price, to the Service Provider's registered Service (i.e. not an Equivalent Service).

Privacy Act means the *Privacy Act 1988* (Cth).

Program means the Metropolitan Broadband Connect program.

Provider means a Service Provider or Infrastructure Provider.

Public Access Internet Facility means a facility which allows one or more members of the public to access, or share access, to the Internet.

R

RIM means Remote Integrated Multiplexer.

S

Service means an Internet service meeting the performance and pricing requirements of the services (described in Section 4.6) that is registered under the Program and included for supply by a Service Provider under its Agreement.

Service Area means the geographic area or areas that have been included in the Agreement of a Provider as the areas to which it will offer a particular Service or Wholesale Service.

Service Provider means a retail Internet service provider registered under the Program and with whom DCITA has an Agreement to offer Services to Eligible Customers under the Program.

Service Solution means the particular category of work undertaken to extend an existing technology platform or to deploy a new technology platform to supply a Service or Wholesale Service. Providers must identify the types of Service Solutions they are using as part of registering a Service or Wholesale Service. When making claims for Incentive Payments, Providers must identify the Service Solution used to supply the Service or Wholesale Service.

Service Upgrade means the arrangements by which a Customer changes from a lower level to a higher level of Service in terms of Service performance, quality of Service and/or any other feature or functionality.

Small Business means a Business with 20 or fewer FTEs.

Standard Cost has the meaning given to it in Section 2.7.

Standard Form of Agreement means a standard form of agreement under section 479(2)(b) of the *Telecommunications Act 1997* (Cth).

Standard Incentive Payment has the meaning given in Section 4.13.4.

Start of the Program means the time of the release of these Guidelines, being 8 March 2006.

Streamlined Application Form means the form that will be used by registered Broadband Connect providers to apply for registration as Providers.

T

Terms and Conditions means the terms and conditions on which a Service is supplied by a Service Provider to a Customer, including mandatory terms and conditions required under the Program.

Threshold Service means a Service that provides:

- (a) access to the Internet;
- (b) a peak Data Speed of at least 256 kbps to the Customer and 64 kbps from the Customer;
- (c) average data download and upload speeds of at least 60 per cent of these peak speeds at least 75 per cent of the time as measured according to a prescribed Metro Broadband Connect testing schedule for test computers located in different geographic regions described in Section 4.6.2.2;
- (d) a minimum monthly usage allowance (download and upload) of at least 500 MB;
- (e) availability 99 per cent of the time, averaged over a quarterly period;
- (f) free 24 hour fault reporting;
- (g) staffed helpdesk services as agreed between DCITA and the Service Provider;
- (h) where Customer data usage limits apply, Customer data usage information is to be updated at least once per day;
- (i) the ability, upon request of the Customer, to inform the Customer of current usage and any associated costs; and either:
 - (j) a Standard Cost package including equipment, installation and monthly usage over three years at a price of up to \$1500; or
 - (k) a High Cost package including equipment, installation and monthly usage over three years at a price of up to \$2000.

TIO means the Telecommunications Industry Ombudsman.

U

Urban Infill means premises built on vacant blocks, multi-dwelling units constructed where separate premises previously existed, and other incremental additions to the overall stock of premises within the Metro Broadband Connect Area.

W

Wholesale Service means a wholesale service registered under the Program capable of supporting the supply of a Service.

Working Day means a day other than:

- (a) a Saturday or a Sunday; or
- (b) a day that is a public holiday or an Australian Public Service holiday in the relevant place.

9 DCITA CONTACT DETAILS

Queries relating to these Guidelines or the ongoing operation of Metro Broadband Connect, and applications for registration under Metro Broadband Connect should be directed in writing to:

Manager, Metropolitan Broadband Connect
Telecommunications Competition and Consumer Branch
Telecommunications Division
Department of Communications, Information Technology and the Arts

Post: GPO Box 2154
Canberra ACT 2601

Email: MBC@dcita.gov.au

Phone: 1800 883 488

10 ATTACHMENTS AND OTHER DOCUMENTS

The following attachments are part of these Guidelines.

<u>Number</u>	<u>Attachment</u>	<u>Section where referenced</u>
10.1	Standard comparative information to be published for Customers	4.11
10.2	Standard Metro Broadband Connect provisions for the Customer application and attestation form	3.5.4
10.3	Summary of annual compliance reporting requirements common to all Metro Broadband Connect Providers	2.8

The following key documents are available on Metro Broadband Connect Online:

<u>Number</u>	<u>Document</u>	<u>Section where referenced</u>
1.	Standard Metro Broadband Connect Agreement	4.4.5
2.	Metro Broadband Connect Service Provider application form	4.4.7.1
3.	Metro Broadband Connect Service application form	4.4.7.4
4.	Metro Broadband Connect Infrastructure Provider application form	4.4.7.2
5.	Metro Broadband Connect Wholesale Service application form	4.4.7.2
6.	Metro Broadband Connect Financial Plan template (financial plan/projection of Applicants) and guide	4.5.7
7.	Metro Broadband Connect Service Area Extension form	4.6.1
8.	Metro Broadband Connect Streamlined Service Provider Application form	4.4.7.3
9.	Metro Broadband Connect Streamlined Infrastructure Provider application form	4.4.7.3

The following resources are available on the Metro Broadband Connect Online:

<u>Number</u>	<u>Resource</u>	<u>Section where referenced</u>
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Metro Broadband Connect Area

1.	Indicative maps of the Urban Centres/Localities boundaries for the Metro Broadband Connect Area	3.2.1 3.5.1
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Pre-existing access to Metro-Comparable Higher Bandwidth Services

2.	Indicative information of service availability coverage as at the Start of the Program in the Metro Broadband Connect Areas, and updated regularly	3.2.2.1
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10.1 Standard comparative information to be published for Customers

The requirements for comparative information to be provided by Providers are set out below in Table 2. These requirements are based on the Internet service provider (ISP) Guidelines prepared by the Australian Communications and Media Authority (ACMA), supplemented by additional requirements for Providers.

Items 2 and 8 from the ACMA Guidelines have been omitted as being inappropriate in a higher bandwidth environment or because they are covered by existing Metro Broadband Connect requirements.

Table 1: Comparative data requirements for Providers		
Data requirement	#	Purpose
ACMA ISP Guidelines		
Pricing plans	1.	The Provider must provide the following: (a) The price of each service is to be set out in a manner that makes clear all components of charging for the service. It should include up-front and recurrent prices, the relationship between the price and the quantity of service received (usually time online, the amount of data downloaded or the sum of data uploaded i.e. data sent to the Internet, and data downloaded). (b) Any limits on upload and/or download of data associated with the service and the costs of exceeding these limits. (c) Any limits on access applying to individual sessions, such as data or time limits. (d) The period of any contract between the Provider and a Customer. (e) The technology used to connect the Customer to the Provider. (f) Where the Internet service is bundled together with other products or services, this should be clearly stated and all elements of the bundled service should be listed.
Cancellation fees	2.	This enables the Customer to be aware of any fees payable in the event that the Customer chooses to terminate the service before the end of the contract period.
Service restrictions	3.	The Provider must provide a summary of restrictions affecting the availability of a service to Customers and, if necessary, a link or reference to a site where more detailed information about restrictions can be found.
Billing	4.	Information must be provided by Providers on the following: (a) billing frequency; (b) method of delivery of bills;

		<p>(c) payment options;</p> <p>(d) a brief description of the extent to which charges are itemised on the bill; and</p> <p>(e) whether particular components of the bill are calculated in advance or in arrears.</p>
Additional services	5.	The Provider must provide a list of services (other than Internet access) offered to the Customer i.e. web hosting, web design, programming, domain name registration, international access services or the ability for customers to set their own billing limits.
Disability statement	6.	A statement about any arrangements made by the Provider to make access easier for users with disabilities.
Help and installation	7.	<p>Providers should list:</p> <p>(a) The client operating systems the Provider will assist the Customer with;</p> <p>(b) contact points for Customers to report service faults;</p> <p>(c) contact points for Customer technical and other help;</p> <p>(d) the times that Customer technical help is available;</p> <p>(e) charging arrangements for technical help;</p> <p>(f) information about the types of assistance available with the initial service activation and the charging arrangements for this assistance;</p> <p>(g) a description of the impact of the effects of the disk on the user's system, if a set-up disk is used as part of the installation process; and</p> <p>(h) the location of any information available from the Provider which might assist Customers to set up their own equipment in a way which is likely to lead to the most efficient performance.</p>
Communication	8.	<p>Providers should identify the following:</p> <p>(a) contact numbers for administrative, account and billing inquiries;</p> <p>(b) the period of notice to be given by the Provider to the Customer in the event that the Provider suspends or terminates the Customer's Service OR information about how this information may be accessed online;</p> <p>(c) the period of notice to be given by the Customer to the Provider in the event that the Customer wishes to terminate the Service or provide information about how this information may be accessed online;</p> <p>(d) a description of what the Customer needs to do in order to terminate the Service;</p> <p>(e) any arrangements about the timing of reminder notices when pre-paid contracts are about to expire;</p> <p>(f) the period of notice to be given for informing Customers about any changes in prices, terms and</p>

		<p>conditions;</p> <p>(g) the methods of informing Customers about any changes in prices, terms and conditions¹;</p> <p>(h) where the contract involves limits on data, the Provider should state if, when and how warnings are sent to Customers when quantities of data are approaching contractual limits or provide information about how this information may be accessed online;</p> <p>(i) where any operating manuals, guidebooks or other information supplied by the Provider may be found;</p> <p>(j) any internal service standards that exist for answering and responding to Customer inquiries;</p> <p>(k) the period of notice to be given for informing Customers about planned outages;</p> <p>(l) the methods used to inform Customers about planned outages;</p> <p>(m) the methods used to inform Customers about unplanned outages;</p> <p>(n) a reference to the location of internal policies and processes about complaint handling and dispute resolution; and</p> <p>(o) a reference to the location of internal policies and processes about privacy.</p>
Security of Service	9.	<p>Providers should provide information about:</p> <p>(a) whether they back-up the data they hold. If so, Providers should explain the back-up services provided, in terms of the type of data backed up, the frequency of backups, retention periods and the cost and procedure for retrieval of information;</p> <p>(b) sources of advice offered to Customers about improving security services; and</p> <p>(c) whether and how the Customer is able to control use of the account by other parties.</p>
Other information	10.	<p>The Provider may identify:</p> <p>(a) its affiliations with industry organisations; and</p> <p>(b) its compliance with voluntary industry self-regulatory arrangements and industry standards.</p>
Additional information on the ACMA Guidelines can be found at www.acma.gov.au		
Supplementary Information - Metro Broadband Connect requirements		
Complaint handling arrangements	11.	<p>A brief description of the Provider's arrangements for dealing with complaints, and whether they are signatories to the Australian Communications Industry Forum's (ACIF) Complaint Handling code of practice (C547:2004).</p>

¹ Registered service providers under Metro Broadband Connect will be subject to stringent terms and conditions regarding changes in Terms and Conditions of the Service.

Use of data speed choke or throttle-back	12.	If not already covered under point 1(b) by the Provider, further information to enable customers to gauge whether download-pricing combinations are affected by reductions in speed.
Charging for data uploads and downloads	13.	If not already covered under point 1(a) or 1(b) by the Provider, further information to enable customers to evaluate the price of an offering in terms of whether they must pay for data uploads as well as downloads. Under Metro Broadband Connect, usage allowances are permitted to count both downloads and uploads.
Timeframe for service connection	14.	Providers must inform Customers of their maximum timeframes for connecting Customers. The timeframes are at the discretion of the Provider but must be reasonable. Timeframes out of step with industry norms may be declined by DCITA during registration.
Timeframe for service restoration	15.	Providers must inform Customers of their maximum time frames for restoring Services. The timeframes are at the discretion of the Provider but must be reasonable. Timeframes out of step with industry norms may be declined by DCITA during registration.
Other features and inclusions	16.	Providers may offer additional features and inclusions in their Service. Such features and inclusions should be clearly described, and any caveats associated with their use clearly indicated.
Network availability	17.	Providers must report quarterly on their compliance with the data speed and network availability requirements set out in sections 4.6.2.2.5, 4.6.2.2.6 and 4.7 of these Guidelines. DCITA will publish results on the Metro Broadband Connect website. Providers must include these results in their comparative information for Customers.
Service performance guarantees	18.	Providers must indicate whether they offer additional performance guarantees beyond those mandatory for all Providers.
Long term pricing policy for Services	19.	Providers must indicate their intentions in relation to the pricing and other terms and conditions of Services once their obligations under the program cease.

10.2 Standard Metro Broadband Connect provisions for the Customer application and attestation form

Section 1: Applicant details

Organisation name (if applicable):

ABN/ACN:

Postal Address:

Contact person:

Title: Given names:

Surname:

Telephone (b/h):

Telephone (a/h):

Mobile:

Fax:

Email:

Metro Broadband Connect Service Address/es:

This is where the Metro Broadband Connect Service/s will be connected. It must be a physical address, i.e. it cannot be a post office box number, etc.

Telephone number of Service Address:

Address Line 1:

Address Line 2:

Suburb/Town:

State:

Postcode:

*If there is more than one address, please expand form to include or attach a list to the back of this form.

Section 2: Attesting to Eligibility of Customer Type

I am a (please tick one):

Residential customer

Small business with fewer than 20 full-time employees

Not-for-profit organisation with fewer than 20 full-time employees

Not-for-profit organisation providing Public Access Internet Facilities

Section 3: Attesting to Eligibility of Premises

Customers are to complete this Section if asked to by the Service Provider.

Have you checked with all of the Internet service providers listed on the Metro Broadband Connect Online Service Locator as offering Metro Broadband Connect Services or Equivalent Services in your area, and were subsequently still unable to receive a broadband service?

YES / NO

*The Metro Broadband Connect Online Service Locator can be found at www.dcita.gov.au/tel/mbc.

In general, the Guidelines provide that any given Metro Broadband Connect Eligible Premises may have a Metro Broadband Connect Service connected to it only once. However, where a Metro Broadband Connect Customer stops receiving a Metro Broadband Connect Service at a particular Metro Broadband Connect Premises through circumstances beyond the Customer's control, the Customer may be eligible to be provided with another Metro Broadband Connect Service at that Premises.

Have you or your organisation previously received a Metro Broadband Connect service at the Metro Broadband Connect Service Address nominated above?

YES / NO

If YES, please state the name of previous Metro Broadband Connect Service Provider:

Please state the reason for the service no longer being available:

A new Metro Broadband Connect Service may also be provided to premises if a Metro Broadband Connect Customer moves to that premises and the Metro Broadband Connect Service previously supplied to those premises is no longer available (for whatever reason).

To the best of your knowledge, has the Metro Broadband Connect Premises nominated above been previously supplied with a Metro Broadband Connect Service but is no longer able to receive that Metro Broadband Connect Service?

YES / NO

If YES, please state the name of previous Metro Broadband Connect Provider (if known):

Please state the reason (if known) for the previous Metro Broadband Connect Service no longer being available at the address:

Section 4: Declaration

I attest that, to the best of my knowledge:

- the personal information I have provided is true and accurate; and
- I am an Eligible Customer under the Metro Broadband Connect Program Guidelines, and I have made such inquiries as are reasonable to confirm this attestation.

I agree to:

- DCITA making inquiries as necessary with any organisation or individual to verify any information I have provided;
- my Service Provider making available to DCITA any information concerning my application and participation in Metro Broadband Connect; and
- DCITA, as well as other Government agencies and/or my Service Provider, using my personal information for the purposes of Metro Broadband Connect program administration, evaluation, policy development and other related functions.

I understand that:

- I may be required to provide documents to substantiate my attestation;
- I may be asked to participate in Metro Broadband Connect evaluation activities; and
- it is a criminal offence under the *Crimes Act 1914* to deliberately make false or misleading statements.

Signed by the customer: **Date:** / /

Printed name:

Section 5: Additional Information

How did you hear about the Metro Broadband Connect Program?

Contact by Service Provider

Australian Government promotional material (e.g. posters, radio, television, newspapers)

State/local Government and/or community/industry organisations

Other

If you selected Other, please provide details:

Section 6: Office Use Only

Name of service:

Incentive Rate:

Reason why customer eligible:

Date service requested:

Date of claim to DCITA:

Telephone of Premises:

Date of connection:

Customer ID number:

10.3 Summary of annual compliance reporting requirements common to all Metro Broadband Connect Providers

Attachment 10.3 identifies the key matters that must be covered in annual compliance reports. Providers must also report on other matters they consider material to their participation under Metro Broadband Connect or otherwise relevant.

‘Actual’ means actual documents or performance data that are to be provided as part of the compliance report in relation to a requirement. This is in contrast to ‘confirmation’ and/or ‘description’, which do not require actual performance data.

Where DCITA has not specified a measurement or monitoring methodology, the report should briefly describe the methodology used by the provider. Data are subject to standardisation by DCITA.

Information required annually to reaffirm registration

The information specified must be provided by registered Providers according to their categorisation at the time of registration or as applicable at the time of the report.

For explanation of these requirements, see sections 2.8 and 4.5 of the Metro Broadband Connect Guidelines.

#	Information required	Category applicable
1.	Continued solvency.	All
2.	Unqualified audit reports.	All
3.	Lodgements and other statutory requirements with all relevant authorities are current.	All
4.	Directors continue to have adequate experience (minimum 6 years combined).	C, D
5.	Senior management continue to have adequate experience (minimum 6 years combined).	C, D
6.	Directors and senior management continue to be free from criminal convictions.	C, D
7.	Material changes in technology plans or technical staff.	C (infrastructure only) and D
8.	Changes in material commitments which may affect ability to sustain Metro Broadband Connect commitments.	A
9.	Capital to which provider has ongoing access, including the source and amount of financial capital available.	B, C, D
10.	Profitability, net assets, net current assets (i.e. Profit and Loss Statement and Balance Sheet).	B, C, D
11.	Ratio of material future commitments to net assets.	B, C, D
12.	Performance against initial financial plan, particularly in terms of Customer acquisitions and	C, D

	capital and operational expenditure.	
13.	Customer service performance – meeting scheduled performance levels.	C, D
14.	Billing – meeting scheduled performance levels.	C, D
15.	Performance against financial and business plans.	C, D

Obligations to DCITA

16. For fund management purposes, estimate of claims for Incentive Payments over the course of the coming financial year - actual.
17. Co-operation with financial and other audits, including instances and confirmation.
18. Acknowledgment of Metro Broadband Connect as an Australian Government initiative – confirmation and description of use.
19. Verification of customer’s eligibility – confirmation and description of processes.
20. Use of the Metro Broadband Connect Demand Register – description and confirmation of processes.
21. Confirmation of compliance with monthly, quarterly and six-monthly reporting obligations.

Obligations to consumers (especially service performance and delivery)

For each service registered under Metro Broadband Connect the provider must provide the following information in relation to compliance with the terms and conditions of the offer and supply of the service under its Agreement with DCITA.

Standard Customer contract

22. Copy of document or URL that is currently being provided to Customers.
23. Length of Metro Broadband Connect contract with Customers – description of contract period options.

Service Data Speeds

24. Peak access service Data Speeds provided – actual.
25. Minimum access service Data Speeds provided – actual.
26. Contention rate maintained – actual rate or range.

Pricing

27. Service prices at start of year – actual.
28. Service prices at end of year – actual.

Other mandatory functionality and features

29. Internet access capability – confirmation.
30. Fault reporting and helpdesk – confirmation and brief description.
31. Usage status information – confirmation and brief description.
32. Data Speed performance tools – confirmation and brief description of how Customers are provided with information about the Metro Broadband Connect Data Speed test facility.

33. Billing – confirmation and brief description of system, including accuracy of performance.

Other mandatory performance requirements

34. Network availability – actual annual average, including range per month.

Volunteered commitments

35. Connection timeframes – actual annual average, best connection time and slowest connection time.

36. Service restoration/fault repair timeframes – actual annual average, best restoration/fault repair timeframe and slowest restoration/fault repair timeframe.

37. Performance in relation to other volunteered commitments in Funding Deed.

Comparative information

38. Publication of information in accordance with ACMA’s ISP Guidelines – confirmation and URL (or hard copy) reference.

39. Publication of information supplementary to ACMA’s ISP Guidelines (see section 4.11 and Attachment 10.1 of these Guidelines) – confirmation and URL (or hard copy) reference.

Marketing

40. Offer of Metro Broadband Connect services to Pre-existing Customers – confirmation and process description.

41. Actual copies of all marketing material used and description of marketing and promotional activities that did not include the use of printed material.

Complaints

42. Customer complaints – confirmation of processes, brief description, Metro Broadband Connect complaint numbers by major categories and Customer postcode.

43. Participation in the Telecommunications Industry Ombudsman (TIO) scheme – confirmation and Metro Broadband Connect complaint numbers to TIO, including description of complaints and outcomes.

Metro Broadband Connect Customers and incentives

44. New and converted Customers during the year – by Customer type, Service type, Customer postcode, Metro Broadband Connect incentive claimed.

45. Incentive Payments received (must be independently audited).

46. Allowable Costs under the Funding Agreement (must be independently audited).

Items (44) and (45) will be used to verify monthly claims throughout the year. Discrepancies will be investigated. Overpayments will be subject to repayment.

Industry feedback

47. Provider comments on program, including areas for improvement.