



15th January 2016

Secretary
Environment and Communications Legislation Committee
The Senate
PO BOX 6100
Parliament House
Canberra ACT 2600
Via email: ec.sen@aph.gov.au

ACCAN welcomes the opportunity to contribute to the Senate Environment and Communications Legislation Committee's inquiry into the Telecommunications Legislation Amendment (Access Regime and NBN Companies) Bill 2015.

ACCAN is supportive of a number of the changes included in the Bill. ACCAN continues to support improvements in the telecommunications industry which are in the interest of consumers. We are guided by our four broadband principles:

- **Broadband for all.** Policies need to be developed to ensure high-quality, affordable broadband can be accessed by all Australians who want it. Industry and consumers should work together to address market shortcomings, particularly the needs of people with disabilities, and low-income and rural consumers.
- **No consumer should be worse off** during the transition and following the implementation of the National Broadband Network (NBN).
- **Robust consumer protections** and consumer engagement must be maintained.
- Services need to be provided in a **competitive and fair market**. The Australian Competition and Consumer Commission (ACCC) must actively and pre-emptively intervene as required to prevent the development of market power or unfair practices.

Some of the proposed amendments in the Bill will help to clarify and provide certainty to the industry which will ultimately benefit end users; and as such we are supportive of these measures.

However, a number of the proposed changes do not appear to add any benefit to consumers, the telecommunications industry or the regulatory process. These include:

- Introducing an exemption to NBN corporation's and other relevant carriers' non-discrimination obligations for the purpose of conducting pilots or trials of new eligible services or enhanced declared services (Part 3),
- Requiring the ACCC to take into account the method it uses to determine terms and conditions for nbn and others in the interest of achieving consistency of approach among access providers (Part 4),
- Requiring the ACCC to consult with such persons as the ACCC considers appropriate before making an interim access determination or a binding rule of conduct (Part 4),
- Requiring the ACCC to specify the changes it considers are necessary and desirable in order for it to accept new or varied special access undertakings (Part 5),



- Providing the person submitting a special access undertaking with flexibility as to how they respond to changes required by the ACCC (Part 5).

ACCAN is concerned that the proposed amendments in Part 3 may result in anti-competitive behaviour in the industry. The principal of non-discrimination is important and should be applied consistently to ensure that the market remains fair and competitive. While we recognise that innovation is in the interest of consumers in the long run the safeguards do not go far enough to ensure that the conduct will not have anti-competitive effects. There is no mechanism to object to the conduct or for the ACCC to insist that the non-discrimination obligations apply to trials or pilots which it would otherwise deem to be anti-competitive. ACCAN recommends that the Bill be amended to provide the ACCC with powers to reject the switching off of non-discrimination obligations for pilots and trials which it determines to be anti-competitive.

The ACCC's purpose is to 'make markets work for consumers'¹. The amendments posed in relation to the workings of the ACCC (Parts 4 and 5) appear to restrict its ability to carry out this role, instead ensuring that that markets work for service providers. ACCAN is not convinced that the problems triggering these proposed amendments currently, or will in the future, exist. The amendments are likely to add further complexity to the telecommunications regime and increase the amount of time it takes for the regulator to arrive at, and implement, decisions. ACCAN suggests removing the proposed measures under Parts 4 and 5.

If you have any queries on our submission, please contact Rachel Thomas

Sincerely

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¹ <https://www.accc.gov.au/about-us/australian-competition-consumer-commission/about-the-accc>