Australian Government

Department of Communications and the Arts

Ms Christine McDonald
Committee Secretary
Senate Environment and Communications Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Ms McDonald

Thank you for your letter of 23 June 2017 to the Secretary of the Department of Communications and the Arts inviting a submission to the Committee's inquiry into the Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017 (the CC Bill) and Telecommunications (Regional and Broadband Scheme) Charge Bill 2017 (the RBS Bill). The Secretary has asked me to respond on her behalf.

The policy basis for the changes in the Bills was set forth in the Government's *Telecommunications Regulatory and Structural Reform Policy* released in December 2014, in response to the work of the National Broadband Network (NBN) panel of experts chaired by Dr Michael Vertigan AC.[1]

As extensive material on the Bills has been provided in their Explanatory Memoranda, this submission focuses on a number of key issues that may be of particular interest to the Committee. In all instances the Department is available to provide the Committee with such further assistance as may be helpful to the Committee in conducting its inquiry.

The Bills are an integrated three part package

The Bills implement three key measures that work together as an integrated package. Australia has an open and competitive telecommunications marketplace but this is being held back by excessive regulation. The proposed changes to the carrier separation rules address this. However, the growth of competition in the market place will put pressure on the ability of NBN Co Limited (nbn) to deliver fixed wireless and satellite services in regional areas. The proposed Regional Broadband Scheme responds to this. nbn is intended to provide access across Australia to better broadband and a platform for fairer and more effective retail competition. The proposed statutory infrastructure provider (SIP) arrangements provide certainty that this will happen. The Department does not consider any part of the package can be removed without detracting from the package as a whole.

[1] Australian Government, *Telecommunications Regulatory and Structural Reform Policy*, December 2014

Changes to the carrier separation rules will create competitive and commercial opportunities

Since 2011, telecommunications law has required new superfast fixed-line networks servicing residential and small business customers to be wholesale-only (nbn is subject to other similar laws.) This recognises that the costs of deploying fixed-line local access networks are generally such that there will usually be only one such network in a specific area. Even where there may be competing networks in a location, the network a consumer is connected to tends to act as a bottleneck on access for that consumer, for example, because of high connections costs. There is a risk that such bottleneck networks have the incentive and ability to restrict access to competing retail service providers. The proposed updated wholesale-only rules will promote access to these networks and thereby promote and create more competition. By contrast, exemptions in the present rules favour large existing networks over new entrants, limiting investment in alternative networks. As the rules can also impede competition, the CC Bill makes a number of changes to create new commercial and competitive opportunities and promote capital investment.

The key changes are:

- removing wholesale-only rules from networks servicing small business customers, on the basis there is usually strong infrastructure competition to service small business customers,

- enabling new superfast networks to operate a retail business on a functionally separated, non-discriminatory basis with the approval of the Australian Competition and Consumer Commission (ACCC), and

- enabling the ACCC to exempt small start-up networks from separation regulation.

As a consequence of the CC Bill, superfast fixed-line networks servicing residential customers will need to be wholesale-only or functionally separated, supporting retail competition in the mass market.

Removing the rules from networks servicing small business will create added incentives to invest in infrastructure for this market segment, noting that strong infrastructure competition should minimise access issues, and the ACCC will retain access regulation powers under existing Part XIC of the *Competition and Consumer Act 2010*.

Allowing network operators to also operate a retail business at arm's length will enable them to capture efficiency gains through vertical integration while also allowing other access seekers to share those gains through open, non-discriminatory access.

The ability for the ACCC to exempt small start-ups from the proposed carrier separation rules will enable new players to enter the market and establish a presence, but on the basis they will be subject to carrier separation rules once they grow larger, to promote retail level competition.

The proposed carrier separation rules have not been applied to wireless networks on the basis that barriers to entry into the wireless market are generally lower and access bottlenecks are not a concern at this time.

Statutory Infrastructure Provider (SIP) rules will provide certainty for stakeholders

Currently nbn is rolling out its network consistent with the Statement of Expectations issued to it in August 2016, however, there is no statutory requirement to connect any premises to the network and service them on an ongoing basis into the future. Under the CC Bill, SIPs will have an obligation to connect and service premises on reasonable request from a retail service provider. The new SIP regime will provide industry and consumers with certainty that premises in Australia will have access to infrastructure that supports the delivery of superfast broadband services.

Connection and repair timeframes
Consumers expect that they can be connected to a network and receive services within a reasonable timeframe. Given the level of detail such requirements involve and the need for them to be able to evolve over time, it is difficult to include specific requirements in statute. The CC Bill therefore creates powers for such timeframes and associated measures to be set in subordinate legislation by the Minister.

The Government proposes to consider specific wholesale level connection and repair timeframes and associated measures during the intended review of the consumer safeguards framework.

Speeds
Under the proposed laws, SIPs will need to offer a broadband service providing peak download speeds of 25 Megabits per second (Mbps) and peak upload speeds of 5 Mbps. These are the speeds required in nbn's 2016 Statement of Expectations and can be supplied on all of nbn's technologies: fixed-line, fixed-wireless and satellite. SIPs can also supply faster services in response to consumer demand.

These speeds reflect anticipated consumer need for speed in the foreseeable future. In 2014, as part of the Vertigan cost-benefit analysis of the NBN, Communications Chambers was contracted to construct a bottom-up model of the 'technical' bandwidth required for the applications utilised by various types of household, and used this to estimate future demand.[2] Its report estimated that by 2023 the median Australian household will have 'technical' demand (that is, generated by actual application usage) for download bandwidth of 15 Mbps. Therefore, a 25 Mbps download service is considered to be a service that will actually support most applications that people will need for the foreseeable future. This conclusion is consistent with current usage on the NBN with 29 per cent of services being 12/1 Mbps and 55 percent being 25/5 Mbps.

Consistent with nbn's current Statement of Expectations, however, the proposed SIP legislation also sets out a further obligation on nbn that it take all reasonable endeavours to ensure that 90 per cent of premises in its fixed-line footprint can receive peak download speeds of at least 50 Mbps and peak upload speeds of at least 10 Mbps. This is on the basis that nbn's fixed-line network must be capable of connecting at least 92 per cent of premises in Australia. This will ensure even greater speeds are available to the majority of premises in Australia should these be required.

Voice
The CC Bill also provides that broadband services on SIPs' fixed-line and fixed-wireless networks should be able to support voice services. This reflects the view that if consumers want a fixed-line connection, they will most likely want to it be able to support broadband and voice functionalities and that such networks are capable of supporting voice as an application on broadband services. The requirement does not extend to broadband services provided using satellite because of the potential technical constraints of such services, particularly latency where voice calls are made involving two satellite hops. The Government's response to the Productivity Commission's Inquiry into the Universal Service Obligation will also consider the provision of voice services in NBN's satellite footprint in a technologically neutral manner.

[2] Communications' Chambers report Forecasting Australian Per-Household Bandwidth Demand – May 2014

Complaint handling

The SIP measures reflect the importance of improving the consumer experience when connecting to networks and receiving services. A key concern in the industry is effective coordination between wholesale and retail providers when an issue arises. Poor coordination causes frustration for consumers that is often exacerbated by a lack of clear information on what the problem is and how it can be resolved. The new SIP regime includes three new mechanisms to address these issues.

- A SIP will need to provide a timely notice to the retailer if it rejects a request to connect premises to the network. This notice will then have to be provided to the customer, enabling the customer to seek redress through the Telecommunications Industry Ombudsman (TIO) or the Australian Communications and Media Authority. This addresses the concern that consumers could lack visibility over why a request to connect is rejected and whether the rejection was caused by the action of a retail or wholesale service provider.
- The Minister can make standards, rules and benchmarks to further details the requirements on SIPs. Such rules could be for processes for resolving complaints about services supplied by a SIP to carriage service providers. Such rules can also deal with dispute resolution processes.
- The Minister would also have a general power to make service provider rules to deal with consumer issues like the handballing of disputes between wholesale and retail providers if required.

Further work on addressing complaints is being undertaken by the Department as part of its work on the NBN consumer experience, including through updating the Migration Assurance Framework and the intended review of the consumer safeguards framework.

The Government's August 2016 Statement of Expectations to nbn provides that nbn together with retailers should work to ensure a high quality end user experience through the migration and ongoing service periods, including working closely with retailers to proactively manage any complaints.

Regional Broadband Scheme (RBS) will fund ongoing delivery of better broadband in regional Australia

nbn's fixed wireless and satellite networks provide essential broadband services to rural, regional, rural and remote Australia. However, these networks are very expensive to build and operate, and, based on analysis undertaken by the Department's Bureau of Communications and Arts Research (BCAR) in 2016, are estimated to incur net costs of $9.8 billion over 30 years. Currently, these net costs are recovered through an opaque internal cross-subsidy from nbn's fixed-line networks. The Regional Broadband Scheme (RBS) would make this cross-subsidy transparent and require both nbn and other NBN-comparable fixed-line networks to contribute to the cost of funding broadband for regional Australia on a competitively neutral basis. Additionally, the RBS ensures there are adequate regional broadband networks in place for nbn to fulfil its SIP obligations and provide regional customers with ongoing access to high speed broadband services.

Under the RBS, carriers would pay a charge of around $7.10 per premises where a high speed broadband service is provided over their fixed-line networks. It is intended that the charge would apply to all premises serviced by fibre to the premises (FTTP), fibre to the node (FTTN), fibre to the basement (FTTB), fibre to the curb (FTTC) and hybrid-fibre coaxial (HFC) networks.

The first annual reporting period for the RBS is proposed to be from 1 July 2018 to 30 June 2019 and the first carrier payments expected to be collected by the Australian Communications and Media Authority (ACMA) in late 2019. The due date for the initial payment will be 31 December 2019, although this may be extended by ACMA to not later than 28 February 2020.

Once the NBN rollout is complete, it is expected that nbn will have around 95 per cent of the fixed-line market, which means it will continue funding the bulk of the cost for providing broadband to regional Australia. Customers on nbn's networks will not experience price rises as the charge is already embedded in nbn's pricing. For the remaining carriers, it will be up to these networks to decide whether some or all of the charge is passed on.

To ensure the charge remains sufficient to meet the reasonable net costs associated with nbn's fixed-wireless and satellite networks, the RBS includes a requirement for the ACCC to review the base and administrative cost components at least once every five years and give the Minister advice. It is expected that the ACCC will consult with NBN-comparable providers as it prepares its advice.

Measures to assist smaller carrier transition to the RBS
Following consultation by the Department with smaller carriers, a number of measures have been included in the RBS to reduce the impact on them in the transition to the RBS, including:

- creating a concession period so that all carriers will have the first 25,000 residential and small business premises on their networks exempt for the first five years of the RBS;
- implementing a charge cap so that the monthly charge amount cannot be raised above $10, indexed annually to the CPI;
- removing the Minister's ability to require bonds and guarantees from carriers with a charge liability; and
- creating a statutory requirement for a policy review within the first four years of the Scheme, providing assurance to industry that the Government will assess the scope of the Scheme in light of changes to technology and market conditions.

It is expected that these measures will cushion smaller carriers from the full effect of the charge and give them a sufficient period of time in which to adjust their business models to accommodate the charge.

Additionally, the ACCC's recent decision on broadband pricing allows carriers other than nbn to pass on the charge above their regulated prices if required.[3] These networks are expected to represent 5 per cent of the market in 2020 and whether they choose to pass on the charge is a commercial decision for them and their retail service providers.

Expected contribution from smaller carriers during the five year concession period
The concession is expected to substantially reduce the charge liability of smaller carriers. The table below shows the expected impact on ten of the largest smaller carriers during this period. If these smaller carriers do not significantly increase in size, the concession would operate to entirely exempt these carriers from the charge for the first five years. For those carriers that do

[3] ACCC, 'Superfast Broadband Access Service and Local Bitstream Access Service Final Access Determination joint inquiry final decision report' 26 May 2017.

grow their networks above 25,000 premises, the effective charge rate per premises will start low and then slowly increase as their networks grow. The threshold of 25,000 has been selected because it preserves the revenue base and ensures that small carriers are not initially caught by the charge but will progressively contribute as their businesses grow. It ensures that small carriers will not be disproportionately affected by the charge and provides a smooth transition for small carriers if they grow their businesses above 25,000 premises over the first five years of the RBS. The table below illustrates the effective monthly contribution per premises.

Charge Amount: $7:10 per month		
Concession threshold: first 25,000 residential and small business premises		
Network size (premises)	**Effective monthly contribution per premises**	**Total Contribution per annum**
<2000	$0	$0
2001 - 5000	$0	$0
5001 - 10,000	$0	$0
10,001 - 15,000	$0	$0
15,001 - 20,000	$0	$0
20,001 - 25,000	$0	$0
25,001 - 30,000	$0.00 - $1.18	$0 - $426,000
30,001 - 40,000	$1.18 - $2.66	$426,000 - $1,278,000
40,001 - 50,000	$2.66 - $3.55	$1,278,000 - $2,130,000

Ensuring the RBS meets its objectives

To ensure the charge amount remains fit for purpose over time, the Minister can adjust the charge having regard to the advice of the ACCC and subject to the cap. As the RBS operates over a long period, the ability to adjust the monthly charge amount ensures that it remains at an appropriate level to fund the net costs of nbn's fixed wireless and satellite networks.

Additionally, the Government has committed to reviewing the RBS on a regular basis, and the legislation includes a statutory requirement to conduct a review within the first four years of the RBS's operation. At that stage, the Government may consider whether the charge base needs to change in light of technological advancements in the market.

I hope this information is of assistance.

Yours sincerely

Ian Robinson
Deputy Secretary
Infrastructure and Consumer

14 July 2017