

20 June 2022



TO: InfrastructureandAccess@infrastructure.gov.au

Dear Sir/Madam,

RE: Consultation: Exemption from the Telecommunications Industry Levy and Annual Carrier Licencing Charge

Thank you for the opportunity to provide feedback on the draft instrument that is designed to exempt a class of 'participating persons' from the Telecommunications Industry Levy and Annual Carrier Licencing Charge (ACLC) for three years, starting from the 2021-22 financial year.

The following comments represent the views of major Carrier members of Communications Alliance.

Summary

We do not believe that an adequate case has been made for the exemptions proposed under the draft instrument. Any continued exemption must be considered on the facts at hand and where there is evidence that grounds for exemption no longer exist (such as an organisation supplying services on a commercial or for-profit basis), even if such an instrument is in place, an exemption should not be granted.

It is not clear to us that the NSW Telecommunications Authority (NSWTA) would be entitled to or should be eligible for any continuation of an exemption from obligations to contribute to industry funding.

The reasoning behind our views include that:

1. NSWTA increasingly offers services that compete with the telecommunications offerings of Australian Carriers and Carriage Service Providers (C/CSPs). The range of customers being serviced by NSWTA includes private entities such as Transdev Sydney Ferries, the parent company of which is a French-based international private-sector company which operates public transport. It has operations in approximately 17 countries and territories around the world.

NSWTA has expanded to provide services to other entities such as the RSPCA, Sydney Opera House and Sydney Cricket Ground – customers that have historically sourced their communications needs from Carriers that contribute to the Annual Carrier Licencing Charge and Telecommunications Industry Levy.

Further, through its **Connecting Country Communities** program and **Mobile Black Spot** activity, NSWTA is offering mainstream broadband and mobile Services.

We are not arguing that such competition – between Government-owned providers and privately or publicly owned services providers – should be prohibited,

However, we firmly believe that exempting licenced Carrier entities such as NSWTA from the normal industry sector obligations runs counter to the principles of Australian competition law and competitive neutrality, and offers an unfair competitive advantage to the exempted entities.

2. In the Government's own words, the purpose of the ACLC is that those entities creating the need for the Government activities, such as regulation, meet the cost of those activities.

We believe that entities such as the NSWTA do, in fact, generate Government activity and will increasingly do so. This could include:

- activity associated with the monitoring of compliance with law and regulation, where mainstream services are being provided;
 - activity associated with radiofrequency spectrum allocation; and
 - the need for such entities to rely on the work of the ITU, for which Australia's contribution is funded via the ACLC.
3. It is not clear to us that the proposed exemption instrument would qualify NSWTA for an exemption.

The draft instrument states at clause 6(2)(b)(iii) that exemptions would apply to an entity if each carriage service it supplies is: "wholly on a non-commercial basis or no-profit basis."

The 2020-21 Annual Report of the NSWTA states that in the relevant period it incurred expenses of \$123.7 million and generated revenues of \$249.2 million, leaving the entity with Comprehensive Income of \$133.9 million. It would appear very difficult to characterise such a financial outcome as 'non-commercial' or no-profit'.

4. The eventual scope of the draft instrument, if created, is not clear, but would likely encompass a range of State or Territory-operated entities across Australia and encourage Governments to increase their communications service provision activities over time, while enjoying an apparently unfair competitive advantage.
5. If the Government wishes to pursue the concept of the draft instrument further, we believe it should at least be subject to a comprehensive Regulation Impact Statement, developed in cooperation with the Office of Best Practice Regulation and stakeholders (including industry) to seek to determine whether the regulatory proposal would generate a net benefit and would not constitute a breach of competitive neutrality principles and policies.

It is worth noting that the NSW Government is a signatory to COAG's Competition and Infrastructure Reform Agreement (CIRA). Under Clause 6.1 the parties agreed to "enhance the application of competitive neutrality principles to government business enterprises engaged in significant business activities in competition with the private sector".

The competitive neutrality principles aim to promote efficient competition between public and private businesses. Specifically, they seek to ensure that government businesses do not enjoy competitive advantages over their private sector competitors by virtue of their public sector ownership.

The NSW Government's Policy Statement on the Application of Competitive Neutrality notes that: "*The application of competitive neutrality principles is aimed at eliminating*

any net competitive advantages accruing to government businesses as a result of their public sector ownership. Such action removes potential market distortions and promotes an efficient allocation of resources between public and private businesses."

How funding and contributions to the Annual Carrier License Charges / Telecommunications Industry Levy are determined is of critical interest to telecommunications carriers, given concerns about the long-term sustainability of the industry. CA members are aware of other commercial/for-profit entities that believe that they should be exempt from industry funding obligations.

CA members consider that instead of making exemptions and considering such issues on a piecemeal basis, there should be a holistic review of industry funding arrangements to put in place a fair and transparent framework for industry funding contributions going forward.

If you have any questions about the content of this submission, please do not hesitate to contact me.

Yours sincerely,

John Stanton
Chief Executive Officer