

Daniel Abraham
Director, Communications Market Taskforce
Department of Infrastructure, Transport, Regional Development and Communications
By email: [REDACTED]

Dear Daniel

Comment on Communications Alliance submission to ‘Exemption from the Telecommunications Industry Levy and Annual Carrier Licencing Charge’ consultation

Thank you for the opportunity for NSW Telco Authority (NSWTA) to provide comment on the Communications Alliance’s submission to the consultation on ‘Exemption from the Telecommunications Industry Levy and Annual Carrier Licencing Charge’.

NSWTA notes Communications Alliance’s objection to the draft Telecommunications (Participating Person Exemption—Public Safety) Determination 2022 (Determination) and its associated concerns about the appropriateness of NSWTA being exempted from the Telecommunications Industry Levy (TIL) and Annual Carrier Licence Charge (ACLC).

The information that Communications Alliance has relied upon to form its position about NSWTA’s services is largely incorrect and therefore does not support Communications Alliance’s conclusions in this regard.

Communications Alliance has not accurately articulated NSWTA’s functions or services. NSWTA does not compete in commercial telecommunications markets or provide services on a ‘commercial or for-profit basis’. NSWTA services are not available to the public and it is not a member of the telecommunications industry, for which the TIL and ACLC were established.

NSWTA operates the Public Safety Network (PSN) for ‘operational communications’ under the *Government Telecommunications Act 2018* (NSW, GT Act) for government sector agencies on a non-profit, cost-recovery basis. PSN access is also given, on a non-profit, cost-recovery basis, to strictly limited entities with roles in public safety and/or emergency management in NSW, including for radiocommunications interoperability with Emergency Services Organisations. Authority to use the PSN is assessed against the ‘operational communications’ criteria to ensure consistency of purpose.

operational communications means communications to facilitate the exercise of functions by a [NSW] government sector agency—
(a) in connection with preventing, preparing for, responding to or recovering from, an emergency, public safety incident or other incident posing a risk of harm to any person or property (including training activities in relation to the exercise of those functions), and
(b) in relation to the NSW Police Force—in connection with law enforcement and compliance,
but does not include communications of a kind prescribed by the regulations (GT Act, s 3 Definitions).

Communications Alliance's Point 1

The proposition that NSWTA 'increasingly offers services that compete with the telecommunications offerings of Carriers and Carriage Service Providers' is incorrect.

PSN services may be provided to non-government sector entities, but this is linked to 'operational communications' purposes. This includes entities with roles under the *State Emergency and Rescue Management Act 1989* (NSW), including Functional Areas such as Transport Services, Agricultural and Animal Services and Energy and Utility Services, and specific iconic venue users as part of national security incident risk mitigation, such as the Sydney Opera House and Sydney Cricket Ground where interoperable communications are identified as requirements for Emergency Services Organisations. Commonwealth agencies also use the PSN for operational communications purposes.

NSWTA's participation in both the Connecting Country Communities program and Mobile Black Spot Program (MBSP) is not as a commercial service provider. These programs are supported by the NSW Government (and Commonwealth for MBSP) in partnership with commercial carriers to address coverage gaps where commercial markets have not done so. The NSW Government provides funding, expertise and support to carriers who establish and then operate these communications sites and networks for these public interest programs to the commercial benefit of those carriers themselves. The carriers apply to participate in the programs and the resulting commercial services, described by Communications Alliance as 'mainstream broadband and mobile services', are fully delivered to end-users by the commercial carriers alone, being members of the Communications Alliance. NSWTA has no commercial relationship with end-users and receives no fees or income from these services. Hence, the Communications Alliance's proposition that NSWTA is 'offering mainstream broadband and mobile services' through these programs is misleading.

Communications Alliance's position on competition law, commercial neutrality and unfair competitive advantages is generally appropriate, however this does not apply to NSWTA's operations as it does not compete in any commercial markets.

Communications Alliance's Point 2

NSWTA is subject to the carrier licensing regime, and the related TIL and ACLC obligations, due only to the non-NSW government entities that use the PSN that are outside of its 'immediate circle'. The nature and functions of the PSN are otherwise unchanged, that it serves to protect the lives and property of the community. NSWTA is not a standard participant in the carrier licensing regime, which was established for the regulation of commercial telecommunications markets.

Both the TIL and ACLC are intended to cost-recover regulatory funding requirements from the commercial telecommunications industry, described by Communications Alliance as the 'mainstream services' markets that are regulated. For this reason, they are structured around 'eligible revenue' from commercial telecommunications markets.

By operating outside of the 'mainstream services' commercial markets, NSWTA does not require the level of operational regulation that commercial carriers do. NSWTA has no commercial end-users and the PSN is a radio network, whereas the majority of regulatory obligations relate to the commercial provision of mobile and landline phones and internet services.

NSWTA has no actual commercial income, only fees from cost-recovery activities which are, in the vast majority, sourced from NSW Government inter-agency transactions. While the Australian Communications and Media Authority's (ACMA) technical interpretation of 'eligible revenue' could potentially capture PSN fees, this is not the definition's intention, which is to re-invest a portion of telecommunications industry profits in funding telecommunications industry regulatory activities.

NSWTA's financial contributions include spectrum licence and apparatus licence fee payments to the ACMA. These contributions are appropriate to NSWTA's functions, whereas the TIL and ACLC are not.

It should be noted that the imposition of the TIL and ACLC on NSWTA would result in a cycle of cost-recovery between the Commonwealth and NSW. NSWTA would be required to recover these charges by increasing PSN user fees for non-NSW government entity PSN users, including Commonwealth agencies even though they are exempt from levy contributions under s 64 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth). This would effectively result in both the Commonwealth and NSW 'taxing' each other to facilitate the lawful use of the PSN by Commonwealth agencies and others.

Communications Alliance's Point 3

Communications Alliance misinterprets the financial information in NSWTA's 2021 annual report and makes incorrect assumptions.

NSWTA has two main revenue streams; PSN user charges and grants from government appropriations for the Critical Communications Enhancement Program (CCEP).

For PSN user charges, the revenue and expenditure are closely matched, meaning there is no profit as these fees are a cost-recovery mechanism and are used to operate and maintain the PSN. These charges appear in the Statement of Comprehensive Income as 'Revenue from contracts with customers' at \$92.022 million.

Government grants fund the construction of PSN sites under the CCEP for the expansion of the network. These grants are recorded as 'Revenue' under 'Grants and other contributions' on the Statement of Comprehensive Income at \$156.365 million. As this is progressively expended with CCEP site constructions, this CAPEX funding appears on the Balance Sheet under 'Assets under construction' and is paid to construction partners. The 'Additions' row contains approximately \$125 million, which is held but will be similarly expended as further PSN site projects are completed under the CCEP. This aligns with the 'Net result from continuing operations' in the Statement of Comprehensive Income and is not profit.

The remaining \$796,000 listed as 'Other income' includes interest, insurance claims and other miscellaneous items.

Therefore, NSWTA's PSN services are delivered 'wholly on a non-commercial basis or no-profit basis' in compliance with s 6(2)(b)(iii) of the draft Determination and contrary to Communications Alliance's reasoning.

Communications Alliance's Point 4

NSWTA seeks exemption for its own relevant circumstances and has no comment on other jurisdictions.

There is no 'unfair competitive advantage' to NSWTA from the proposed exemption as NSWTA is not competing in commercial markets.

Communications Alliance's Point 5

NSWTA is a statutory authority, not a government business enterprise operating for profit, and while NSWTA supports the principles, it is not directly subject to the Policy Statement on the Application of Competitive Neutrality.

NSWTA is not a commercial trading entity, does not compete in commercial markets and therefore holds no commercial advantage, hence the Communications Alliance's proposal for further consultation on competitive neutrality considerations is invalid, inefficient and unnecessary. This is particularly significant as the 'eligible revenue' reporting period draws nearer, noting that such an undertaking may require a temporary exemption for NSWTA if this is to occur, including in circumstances where any interim payment obligations are not funded.

Communications Alliance's interest in a holistic review of industry funding arrangements

Communications Alliance's interest in a 'holistic review of industry funding arrangements' is irrelevant to the Commonwealth's consideration of NSWTA's exemption status as a non-industry participant and the draft Determination's broader purposes. In this regard, the draft Determination is not a 'piecemeal' approach, as suggested by Communications Alliance, as it concerns distinct, non-industry considerations that result from unique circumstances outside of the 'mainstream' commercial service markets.

However, NSWTA has no objection to a separate, broader industry review, noting this would likely involve a significant consultation process in which we would be happy to participate.

If you would like to discuss these issues further, please contact Alanna Linn, A/Chief Strategy and Innovation Officer, NSW Telco Authority on [REDACTED] or [REDACTED].

Yours sincerely

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