Regional Telecommunications Review 2021

ACCC submission

September 2021

Contents

1. Introduction

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to provide a submission to the Regional Telecommunications Independent Review Committee (the Committee) 2021.

This review is being undertaken at a critical time.

COVID-19 has underscored the importance of communications services in regional communities. Commercial activities, education, health and government services are all dependent on being able to access effective, reliable and capable telecommunications services. Importantly, access to reliable and resilient communications services is also essential for safety, particularly during natural disasters and emergencies

With the internet of things, smart devices, digital agriculture and on-farm connectivity increasingly becoming enablers of economic growth in agricultural areas, the importance of modern, reliable regional telecommunications services will not diminish.

The key issues confronting regional areas are well recognised. Previous RTIRC reviews have identified these issues, and suggested solutions that have seen incremental improvements. The ACCC also recognised the concerns of regional communities about the inadequacy of mobile services in its report on *Measures to Address Regional Mobile Issues (2018)*.

We encourage the Committee to consider innovative solutions to these problems. Measures that will promote competition and maximise choice for regional communities will deliver long-term and lasting benefits.

We consider that changes in some key areas could deliver considerable benefits to regional communities. These changes will enhance the quality of life in regional areas and deliver economic growth over the long term.

Mobile networks in regional Australia

The regulation of a domestic mobile roaming service will not resolve coverage gaps in regional Australia. However, in limited and well-defined circumstances such as during a natural disaster or an emergency, roaming might provide an important safety measure that would not impact the overall competitive dynamics in the market. The ACCC would support initiatives by governments or industry to explore the feasibility of mobile roaming during emergencies and natural disasters.

Co-contribution programs at both federal and state levels still play an important role in delivering telecommunications in regional areas where there is a net benefit in doing so. However, the focus of these programs should be on a neutral host model or an active sharing model to deliver better competitive outcomes and efficient use of infrastructure.

Improved transparency of network performance

More transparency of coverage maps, real world performance data, the speeds capable on different technologies, and the service quality offered at different prices will help the consumer choose a product that meets their needs. Examining models that can deliver this transparency will promote competition and provide new incentives for service providers to differentiate their services. This will also enhance the regulatory work the ACCC is doing to provide more data to consumers, businesses and policy makers.

Improving the reliability and capability of networks

NBN Co is a critical partner for regional Australia. The NBN provides 2.1 million services in regional Australia through its fixed line, fixed wireless and satellite networks. Its enhanced Wireless Plus and Sky Muster Plus services have addressed many of the early problems of the fixed wireless and satellite services, but there is scope to improve on the reliability and capability of both networks and their service quality.

There will remain areas, particularly in remote regions, where the commercial incentives are too low to justify further investment. In these areas, government intervention will be required to ensure that legacy services are maintained to a standard that supports connection. Further, government intervention will also be required in non-commercial areas to deliver other communication technologies or to close coverage gaps and increase connectivity.

Importantly, any government intervention, including public funding, must balance universal service commitments and deliver a net benefit.

A stronger and more effective consumer safeguard framework

Underlying these measures is the need for a more effective consumer safeguard framework. Many aspects of the current safeguard framework do not reflect the essential nature of telecommunications services nor the potential harm to consumers and communities of non-compliance. The ACCC took action against Telstra in 2020 for the sale of telecommunications services in indigenous communities in the Northern Territory, Western Australia and South Australia that was found to be unconscionable. This was an important case, and highlighted the vulnerability of many regional communities. Low digital literacy and the difficulties in raising complaints or resolving issues without access to reliable services undermines the existing safeguards. A strong and effective safeguard framework that incentivises compliance is necessary. It must include minimum conditions of entry and participation when providing essential telecommunications services. Those minimum conditions must include a suitability criteria and being able to demonstrate a capability to meet the existing consumer safeguards.

As we continue our work on regional telecommunications issues, we would be happy to provide further information and updates if it would assist the Committee. Please contact Clare O’Reilly, General Manager, on (02) 9230 3854 or clare.o'reilly@accc.gov.au to discuss further.

2. Role of the ACCC

The Australian Competition and Consumer Commission (ACCC) is an independent Commonwealth statutory authority whose role is to enforce the *Competition and Consumer Act 2010* (CCA) and a range of additional legislation, promote competition and fair trading and regulate national infrastructure for the benefit of all Australians.

As Australia's competition regulator, the ACCC assists in lowering the economic barriers to access telecommunications services by promoting competition in the sector. It also seeks to ensure that investment in, and use of, infrastructure is efficient. Competitive and efficient markets can deliver better services and lower prices to consumers.

The ACCC performs industry-specific competition and access functions under the *CCA*. This includes establishing and monitoring the general regulatory framework for the communications industry.

In particular, Part XIC of the CCA allows the ACCC to declare certain services following a public inquiry, if it is satisfied that to do so, would promote the long-term interests of end-users. Once a service is declared, the ACCC can set regulated prices and other terms and conditions of access. These decisions are generally reviewed every 3 to 5 years.

Declaration aims to promote competition by facilitating access to declared services and allowing access seekers to actively compete with dominant providers and build market share. Without declaration, incumbents or those with market power have the ability and incentive to use that market power to raise prices for both access seekers and consumers. Declaration also promotes the economically efficient use of existing infrastructure, as it can ensure access prices better reflect efficient costs and ensure that end-user services can still be competitively offered utilising existing infrastructure.

The ACCC also has a number of responsibilities regarding the National Broadband Network (NBN) under Part XIC of the CCA. The ACCC's responsibilities include ensuring NBN Co's compliance with its special access undertaking and we regularly monitor the development of the NBN, including in regional and remote areas. We also monitor and publish information on key NBN market indicators.

The ACCC monitors and enforces compliance with telecommunications-specific legislation as well as the general consumer protection and anti-competitive conduct provisions in the CCA and those protections afforded by the Australian Consumer Law.

While the principal focus of this submission is on the ACCC's role and experiences in regional issues as an economic regulator of the telecommunications sector, elements of the Commission's consumer protection role in the sector are highlighted in section 8.

3. The economics of connectivity in regional Australia

Achieving better connectivity in regional Australia requires significant ongoing investment in infrastructure. However, the commercial incentives for investing in regional Australia, particularly in areas of low population and undeveloped geographical areas, remain challenging.

For fixed networks, including fixed wireless, coverage and connections are largely driven by the roll-out of the NBN, universal service obligations and a statutory infrastructure provider regime rather than economic incentives. It is clear that without such obligations, the incentives to invest would be very low.

For mobile network operators (MNOs), the competitive advantage derived from having the largest population coverage has provided an incentive for investment in regional areas. Many consumers, particularly those in regional areas, place value on having wide coverage. However, commercial incentives to extend coverage or improve depth of coverage become increasingly marginal in more regional and remote areas. There are also limited incentives outside government subsidisation to improve either reliability or depth of coverage in many areas as the costs of doing so will likely far outweigh the potential returns from that investment.

The costs of building networks, both fixed and mobile, are very high and the returns from sparsely populated areas are generally low. This means that the economic case for extending networks is generally a difficult one to make.

To meet the different geographical challenges, a range of alternative broadband options and technologies are available in regional Australia. New technologies are emerging that can support new demand cases and may provide new incentives for investment. However, emerging technologies are unlikely to offer solutions to regional communication needs in the immediate future. They are also likely to be constrained by the cost/ revenue ratio that limits existing network investment.

In the absence of clear commercial incentives to invest, other economic incentives are likely necessary to ensure regional Australia has the quality and breadth of telecommunications services necessary to meet its needs. Any government intervention must balance the net benefits of doing so, against universal service commitments and other social policy objectives.

Through mandatory obligations to provide connectivity, the NBN has delivered almost universal coverage for basic broadband access. In regional and remote areas, this is provided by the NBN's fixed wireless and satellite service.

Similarly, government subsidies, like the federal Mobile Black Spot Program (MBSP), can be important programs to promote investment in areas where there is either inadequate or no mobile coverage. However, the design of these programs often means that governments are generally subsidising individual commercial entities without requiring broader benefits to be shared by consumers. The ACCC considers that setting clear objectives for improving coverage, and promoting competition, for such programs will deliver more benefits for consumers and communities.

It remains important that the regulatory settings, while promoting competition, do not undermine incentives to continue investing in telecommunications infrastructure in regional Australia.

4. Regional mobiles issues

The economics of network deployment discussed in Section 3 above means that regional mobile coverage may be sub-optimal if left to the market alone, and because there are external benefits that cannot be captured.

The ACCC recognises that geographic coverage and depth of coverage are important factors of competition, which creates incentives to improve coverage over time. While it could be expected that the market will deliver incremental improvement to regional mobile coverage through infrastructure competition, this alone will unlikely be sufficient in delivering the coverage outcome required by regional communities. Increasingly, targeted policy measures, such as government co-contribution programs, have become the key driver of coverage improvements in regional and remote areas.

This section provides the ACCC's views on a number of enduring regional mobile issues including:

- whether there should be a regulated mobile roaming service in regional and remote areas,
- measures to reduce the cost of network deployments in regional areas, and
- improving public information on mobile coverage and quality of service.

4.1. Mobile roaming

Regulated roaming would not resolve the issue of poor coverage

In recent years, there has been ongoing debate about whether domestic mobile roaming should be required in regional areas to improve coverage and deliver choice of providers to communities living and working in those areas. The ACCC considered this issue extensively in a public inquiry in 2016-17 and concluded that regulated roaming was not the answer to poor regional coverage.[1]

We recognise that domestic mobile roaming could deliver some benefits to regional communities. For instance, requiring an MNO to provide roaming to another in areas where the former is the only network provider could increase choice of provider for communities in those areas. In areas where multiple MNOs are present but coverage is patchy, requiring the MNOs to provide roaming to each other could potentially provide more continuous coverage for end-users, and dispense with the need to carry multiple devices and acquire services from multiple providers in those areas.

However, regulated roaming is a blunt regulatory tool, which would have undesired effects in the longer term. Regulated roaming would undermine any commercial incentives that may remain in improving network coverage by the MNOs in regional areas. It would also not be possible to delineate areas where such incentives would no longer exist for the purpose of assessing where regulated roaming should be required.

Commercial incentives to invest in regional infrastructure depend on a range of factors including the cost of deployment of infrastructure (for example, due to technological advancements) and changes in end-user demand and expectations. In many cases, just keeping pace with technological improvements requires significant ongoing investment. This reflects the dynamic nature of the mobiles market.

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[1] See ACCC, *Domestic mobile roaming declaration inquiry: Final report*, October 2017, at: https://www.accc.gov.au/system/files/Mobile%20roaming%20declaration%20inquiry%20final%20report_0.pdf.

In saying that, the ACCC recognises that mobile roaming between the MNOs could improve communications during emergencies and natural disasters. This is discussed further below.

Mobile roaming could play a role in improving regional communications during an emergency

The reliability of telecommunications services is critical to ensuring the safety of regional and remote communities during emergencies and natural disasters. The ACCC would support policy measures to improve the reliability and redundancy of telecommunications networks, including by improving the ability of people to communicate during times of stress.

The ACCC recognises that mobile roaming is one option that could potentially play a role in improving communications during emergencies and natural disasters. The ability to roam in these circumstances would mean that end-users could communicate using mobile services, as long as they are within the coverage area of a mobile network, regardless of whether they are a subscriber on that particular network.

The use of mobile roaming in limited and well-defined circumstances such as these could serve an important policy objective and would not, in the ACCC's view, impact the overall competitive dynamics in the mobile services market. The ACCC would support initiatives by governments or industry to explore the feasibility of mobile roaming for the purpose of improving regional communications during emergencies and natural disasters.

4.2. Measures to reduce the cost of network deployment

Government co-contribution programs are a key driver of improved coverage in regional areas. Consistent with our views expressed previously, these programs should place equal weight on competition outcomes. Outcomes where all end-users, not just subscribers of one network, benefit from services delivered using the co-funded infrastructure will provide a better return on public investment.

It is also critical that regulatory settings that affect access to essential inputs in deploying mobile networks (such as access to facilities) are regularly reviewed and improved to reduce the cost of network deployment for operators.

Government co-contribution programs should have a clear objective to promote competition and maximise choice of providers

As the Issues Paper notes, there have been numerous co-contribution programs at both federal and state level aimed at addressing mobile black spots and regional connectivity in recent years. For instance, the MBSP has to date, provided funding to build over 1,270 new base stations across Australia under the first 5 rounds and Round 5A, and has committed further funding for Round 6.[2] As at January 2021, over 900 mobile sites funded under the MBSP were in operation across the MNOs' networks.[3]

Earlier rounds of the MBSP provided for co-location on funded sites as a means to attract MNOs, other than the funding recipient, to provide services on the funded sites. However, the extent to which the MNOs actually co-locate on MBSP funded sites has been limited. As at January 2021, only 8 per cent of active mobile sites funded under the MBSP has more than one MNO operating on them.[4]

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2 See the Department of Infrastructure, Transport, Regional Development and Communications' (DITRDC) website at https://www.communications.gov.au/what-we-do/phone/mobile-services-and-coverage/mobile-black-spot-program.

3 Data from the MNOs' reports in accordance with the ACCC's Infrastructure Record Keeping Rules.

4 Data from the MNOs' reports in accordance with the ACCC's Infrastructure Record Keeping Rules.

The Department of Infrastructure, Transport, Regional Development and Communications (the Department) previously noted that as MNOs considering co-location on co-funded sites typically engage with the successful bidder after the site location has been decided, the site may not be as attractive for co-location as it may not complement other MNOs' existing networks.[5] This means that while the MBSP has delivered improved mobile coverage in many regional and remote communities, those improvements are only accessible by the subscribers of the successful applicant's network, rather than available for all end-users.

The ACCC considers the experience with earlier rounds of the MBSP suggests that a co-location framework for co-contribution programs is unlikely to be sufficient to promote competitive outcomes or maximise choice of providers for regional communities. Co-contribution programs could potentially seek to promote competition by adopting other models to co-location such as:

- an open-access model, where an MNO awarded funding is required to provide wholesale access to another MNO on funded sites (i.e. effectively a roaming service). While this may further reduce the cost of deployment for the second MNO compared to a co-location model, it may not necessarily resolve the issue that the funded sites may not be in locations attractive to the second MNO seeking to extend its network.
- a neutral host model, where funding is awarded to a non-MNO infrastructure provider who can then provide wholesale services to all MNOs. The neutral host should be provided with incentives to collaborate with as many MNOs as possible. The ACCC notes that Round 5A of the MBSP awarded funding to Field Solutions Group (FSG) to trial this model. We consider this is a positive development that could lead to more infrastructure sharing and competition in regional areas if the neutral host model proves to be workable.
- an active sharing model, where at least two MNOs collaborate and jointly apply for funding on the basis that they will share both passive and active infrastructure being deployed under the co-contribution program, perhaps through a joint venture. For instance, in New Zealand, the Rural Connectivity Group (RCG) is a joint venture of the three mobile operators to build sites under the Rural Broadband Initiative II and the Mobile Black Spot Fund. Sites are acquired, built and operated independently by the RCG and are actively shared by the operators.[6]

In Australia, there are indications that co-contribution programs at both federal and state levels are increasingly considering the neutral host model and the active sharing model. The ACCC supports this development, as it will likely lead to more competitive outcomes and efficient use of infrastructure. Depending on the details of the sharing arrangements, active infrastructure sharing could potentially give rise to competition concerns due to the risk of collusion, reduced competition on network quality and distorted incentives for network investment in shared infrastructure.

However, if active infrastructure sharing is limited to deployments in areas where there is otherwise no commercial incentive to provide services, it is reasonable to assume that the benefit of such arrangement is likely to far outweigh any competition risk. In this respect, the ACCC's authorisation framework could mitigate any risks to parties considering active sharing arrangements.

Regulatory settings should ensure there are no barriers to efficient investments in regional infrastructure

[5] DITRDC, *Mobile Black Spot Program Round 5A Discussion paper*, April 2020, p. 8.

[6] See the RCG website at: https://www.thercg.co.nz/.

The ACCC considers that regulatory settings should be regularly reviewed and improved to ensure that there are no barriers to efficient investments in mobile infrastructure in regional and remote areas. This includes ensuring that operators can access essential inputs to the deployment of mobile services on reasonable terms.

The ACCC has powers in relation to access to facilities (such as mobile towers and sites) and regulated transmission services, both of which are important inputs to the deployment of mobile infrastructure, particularly in regional areas.

The MNOs require transmission services to transmit data to and from each mobile site to their core networks. The ACCC reviews the regulation of the domestic transmission capacity service (DTCS) periodically and sets regulated prices for the service. The DTCS is a high capacity transmission service that enables service providers to provide wholesale and retail services to end-users. Transmissions routes are regulated where the ACCC considers there is insufficient competition in providing services on those routes.

In the ACCC's DTCS declaration inquiry in 2018–19, we identified a separate 'service category' for mobile backhaul in recognition of the unique supply and demand characteristics of mobile backhaul, particularly in regional and remote areas.[7] In the DTCS final access determination inquiry in 2019–20, the ACCC substantially reduced the regulated prices for the DTCS (including mobile backhaul) which resulted in the regulated price for DTCS services reduced by 53 per cent on average.[8] Given our knowledge of current prices, the reduction in regulated DTCS prices has led to lower and more efficient pricing for mobile backhaul and likely reduced the cost of deploying mobile services, particularly in regional and remote areas.

In 2020, the ACCC amended the Facilities Access Code, which imposes requirements on owners and operators of telecommunications facilities to provide other carriers with access to facilities, such as mobile sites, to install equipment. Key amendments included the recommendation of pre-build consultation amongst carriers and the imposition of a 'use it or lose it' provision in relation to the facility owner's ability to reserve capacity for themselves.[9] These amendments should better promote the co-location of equipment on mobile sites, thus reducing the cost of deployment of mobile base stations in regional areas.

The Facilities Access Code does not currently impose obligations on non-carrier infrastructure providers to provide access to facilities. This is in recognition of the fact that non-carrier infrastructure providers would have sufficient commercial incentives to provide access and maximise tenancy on mobile towers.

The ACCC notes that the market for mobile tower infrastructure is currently undergoing significant changes, with both Telstra and Optus undertaking processes to sell off parts of their passive tower assets. TPG has also indicated that it is currently conducting a strategic review of its tower assets. It will be important for the continued roll out of mobile network infrastructure in regional areas that telecommunications access seekers continue to be able to access mobile infrastructure under current regulatory fall-back arrangements provided under Schedule 1 of the *Telecommunications Act 1997* and the Facilities Access Code.

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7 ACCC, *Domestic Transmission Capacity Service: An ACCC Final Report on the review of the declaration for the Domestic Transmission Capacity Service*, April 2019, p. 23, at: https://www.accc.gov.au/system/files/DTCS%20Declaration%20review%202018%2019%20-%20Final%20Report_0.pdf.

8 ACCC, Final report DTCS FAD inquiry 2019–20, October 2020, p. 6 at ACCC, *Domestic Transmission Capacity Service Final Access Determination Inquiry: Final Report*, October 2020, p. 6, at: https://www.accc.gov.au/system/files/DTCS%20Final%20Report%20-%202020%20Final%20Access%20Determination.pdf

9 See ACCC, Facilities Access Code Review: Final Report, June 2020, at: https://www.accc.gov.au/regulatedinfrastructure/communications/transmission-services-facilities-access/facilities-access-code-review-2019/final-report.

4.3. Public information on mobile coverage and quality of services

In the ACCC's *Measures to address regional mobile issues paper*, we discussed a number of issues relating to the lack of public information mobile networks for consumers and policy makers. These include:

- The lack of transparency and consistency regarding mobile network coverage information for consumers and businesses that reduces their ability to compare and choose a suitable mobile service and service provider.
- There is a lack of consistent, comparable and easily accessible, publicly available data on mobile networks for policy and regulatory purposes, which impacts the ability to target subsidy program to meet community needs.
- There is a lack of transparency around future network deployments and investment that particularly affects consumers and businesses in regional Australia, with regional communities often unable to monitor whether and when network improvements have been made in their regional areas.[10]

This is likely to disproportionately affect regional consumers and businesses.

There has been some progress in addressing these issues since 2018.

The ACCC wrote to the MNOs and the Australian Mobiles Telecommunications Association (AMTA) in May 2018 asking industry to work collaboratively to improve the accuracy and comparability of coverage information.[11] Since then, the MNOs have agreed to adopt common methodology to describe the three standard levels of coverage to consumers, i.e. indoor, outdoor and external antenna.[12]

The ACCC amended the Infrastructure Record Keeping Rules (RKR) in 2017 and 2020 to require the MNOs to provide more detailed information on their mobile sites and coverage maps to enable the ACCC to report on changes in the MNOs' mobile infrastructure and coverage over time.[13] The ACCC is planning to release a Mobile Infrastructure Report shortly, which will include the actual data provided by the MNOs on their networks and analysis of the changes in network infrastructure and coverage from 2018 to 2021. This will provide more transparency and accountability to the public and would be of particular interest to regional communities. The type of information and analysis that the ACCC intends to publish includes:

- the total number of, and the change in the number of, mobile sites that an MNO operates for 3G, 4G and 5G technologies across each remoteness area as classified by the Australian Statistical Geography Standard Remoteness Structure, and across states and territories[14]
- detailed information on each mobile site operated by the MNOs including location, technologies deployed, the spectrum bands used for each technology deployed and whether the site is co-funded under a government co-contribution program

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10 ACCC, *Measures to address regional mobile issues*, October 2017, pp. 5–13 at https://www.accc.gov.au/system/files/Measures%20to%20address%20regional%20mobile%20issues.pdf.

11 See ACCC website at: https://www.accc.gov.au/regulated-infrastructure/communications/mobile-services/regional-mobile-issues/industry-engagement-on-implementing-proposed-measures.

12 See AMTA website at: https://amta.org.au/understanding-coverage-maps/.

13 See ACCC website at: https://www.accc.gov.au/regulated-infrastructure/communications/monitoring-reporting/customer-access-network-infrastructure-record-keeping-rules.

14 See Australian Bureau of Statistics website at: https://www.abs.gov.au/websitedbs/d3310114.nsf/home/remoteness+structure.

- the extent to which the MNOs are co-locating on the sites they operate across each remoteness area and by each states and territory
- the number of new and decommissioned sites across and the proportion of new sites that are co-funded under a government co-contribution program
- the number of, and the change in the number of, sites on which each frequency band is deployed for each technology
- historical coverage maps by frequency bands and technology types, and
- analysis on the MNOs' coverage over time.

This information will provide the public with a clear picture of how the MNOs' network infrastructure and coverage has changed over time, and makes it possible to examine specific changes in geographic areas. This would allow the public to scrutinise, and hold accountable, the MNOs' claims regarding network investments made to improve coverage and quality of services, in particular geographic areas and locations.

The information will also likely be useful to policy-makers in designing programs aimed at improving coverage in regional areas, and monitoring the phasing out of 3G technologies.

In saying that, the ACCC considers that there are two enduring issues in the provision of public information on mobile networks that remain unresolved, which are that:

- it is difficult to directly compare the MNOs' coverage maps due to different underlying assumptions or metrics used by the MNOs to produce their coverage maps, and
- the MNOs' coverage maps reflect 'predicted' coverage and may not reflect on the ground experience.

The ACCC understands that predicting coverage is an extremely complex process as there are numerous factors that could affect the extent and nature of coverage received on the ground. This complexity may have resulted in hesitancy from industry to address these issues. However, the mobile services market in Australia is characterised by a strong focus on competition on coverage and network quality, particularly amongst the MNOs. The lack of comparability of coverage offered by the MNOs as well as the lack of data on real-world experience hampers the ability of consumers and businesses to make informed choices when selecting their service provider. In other words, addressing these issues would help promote competition in the mobile services market to the benefit of consumers.

The ACCC considers that the Committee should explore various means by which these two issues could be addressed. We provide some observations in relation to each below.

There must be a common set of assumptions or metrics for the purpose of producing coverage information

The development of a common set of assumptions or metrics for the purpose of producing coverage information by the MNOs must be further explored. In the absence of an industry-led process, the government and regulators should consider the most appropriate way to prescribe these assumptions or metrics for the MNOs to adopt in publishing information on their coverage. This process would not only lead to more comparable coverage maps across the MNOs but would also ensure that the underlining metrics used for those maps are transparent and appropriate.

As noted above, the MNOs currently provide coverage maps to the ACCC pursuant to the Infrastructure RKR. The ACCC's current analysis on these coverage maps is limited to examining the extent to which coverage has changed for each MNO over time, due to the

lack of common assumptions used. However, we are continuing to review how this information can be best provided to improve the comparability of coverage maps across the MNOs.

An important issue that will need to be considered is how the standardised coverage maps would be made available in a user-friendly way for consumers. At least, there must be a clear requirement that MNOs publish standardised coverage maps on their websites.

Alternatively, an independent, user-friendly website will need to be developed which allows the public to examine and make use of these standardised maps in much the same way as they would using an MNO's website. An independent website may also have the added benefit of allowing direct comparison of the MNOs' coverage maps by allowing multiple maps to be shown at the same time.

There must be a transparent process to collect and report data on real world performance of networks and to use that data to augment coverage maps

The ACCC understands that while the MNOs' coverage maps mainly show predicted coverage, MNOs do collect (or are able to collect) real-world data about network performance and may use that data to refine their coverage maps from time to time. However, this process is not transparent and end-users do not have the benefit of those data to inform them how the networks are performing. While inaccurate coverage maps could potentially raise concerns under the Australian Consumer Law, enforcement actions may not benefit consumers as much as providing more useful data on network coverage and performance.

The ACCC considers there could be a number of avenues to explore how information on network quality could be collected and made available. Such data would also significantly assist in the development of co-contribution programs designed to improve coverage outcomes in regional areas.

One potential option is to have a measuring program which relies on end-users installing an app on their mobile phones which collects information on quality measurements, such as signal strength and speed, as they move around the country. Such information could then be collected, analysed and made public to allow consumers to compare the MNOs' network performance. This is similar to how crowd-sourcing apps such as OpenSignal works, but the development of the app and the program itself would require industry, government and consumer participation. Potential privacy implications would also need to be explored in developing such a program.

Alternatively, it may be possible to rely on information that the MNOs currently collect from their subscribers' devices, rather than developing a new app for the purpose of collecting information on network on performance. For instance, the Australian Treasury (Treasury) is currently conducting a sectorial assessment of the telecommunications sector which will inform the decision of the Minister for Superannuation, Financial Services and the Digital Economy on whether to extend the Consumer Data Right (CDR) to telecommunications.

As part of its assessment, Treasury will examine what data should be designated and disclosed for the benefit of consumer, particularly in choosing telecommunications services. There may be merit in exploring whether information held by the MNOs regarding the 'on-the-ground' experience of their networks, which they collect from their subscribers' devices, could be disclosed and made available publicly in the context of the CDR.

In addition, it may be useful to have a process whereby consumers, local governments or other interested groups could identify and 'log' blackspots or areas of poor coverage in an open and transparent manner. This would enable the public to see where the coverage

maps may not be accurate and apply pressure on the MNOs to either address the coverage issue or refine their coverage maps accordingly.

It is worth noting that the Federal Communications Commission (FCC) of the US is undertaking work to improve public information on mobile coverage and quality of service. We provide a brief overview of the FCC's work below as a case study.

The US Broadband DATA Act

In March 2020, the Broadband Deployment Accuracy and Technological Availability (DATA) Act was signed into law. This legislation aims to improve the FCC's broadband availability maps by strengthening the process by which broadband data is collected. Amongst other things, this legislation:

- requires the FCC to collect granular service availability data from wired, fixed wireless, and satellite broadband providers,
- sets strong parameters for service availability data collected from mobile broadband providers to ensure accuracy
- creates a process for consumers, state, local and tribal government, and other groups to challenge the FCC maps with their own data; and
- establishes a crowdsourcing process that will allow the public to participate in data collection.[15]

To implement the Broadband DATA Act, in August 2021, the FCC published a new map showing mobile coverage and availability data in the US from the country's largest wireless providers based on standardised data that was voluntarily submitted by the service providers, using a common set of parameters.[16] The map shows 4G LTE broadband data and voice coverage for each of the nation's four largest mobile carriers. The maps for each carrier could be overlayed on top of each other. The map also allows consumers to search by specific address to better understand whether they should be able to make and receive voice calls or use wireless data.

The FCC is also consulting on the technical requirements for the 'challenge' process that will allow consumers and other third parties to dispute service providers' coverage data, to verify the service providers' coverage data and to accept crowdsourced information from third parties.[17]

Of relevance to this is the FCC's Speed Test app, which has been used as part of the Measuring Broadband America program since 2012. The FCC publishes de-identified data from the app periodically in addition to providing yearly report on fixed broadband. However the mobile data is 'as is' and the FCC notes that it is therefore unsuitable to be used in comparing ISP performance.[18] The FCC is seeking to update the existing Speed Test app to allow the collection of the kinds of data that would be required under the challenge process.

[15] See press release by the US Senate Committee on Commerce, Science and Transportation on 23 March 2020, at: https://www.commerce.senate.gov/2020/3/bill-to-improve-broadband-data-maps-signed-into-law.

[16] See FCC press release on 6 August 2021 at: https://docs.fcc.gov/public/attachments/DOC-374726A1.pdf.

[17] See FCC public notice at: https://docs.fcc.gov/public/attachments/DA-21-853A1.pdf.

[18] See FCC website at: https://www.fcc.gov/reports-research/reports/measuring-broadband-america/measuring-broadband-america-mobile-data.

5. Regional broadband services

5.1. NBN services in regional areas[19]

Since the time of the last review, regional customers have continued to migrate to the NBN. As at 30 June 2021, there were 2.1 million regional TC-4[20] (residential level) broadband services in operation (SIOs) on the NBN, up from 1.6 million in December 2018.

State of competition

The state of competition in telecommunications markets is mixed. In mobile markets, Telstra remains the dominant mobile provider in rural and regional areas largely due to its extensive coverage. While other MNOs have provided increased competition at the margins this has largely come as a result of government subsidised programs to extend mobile coverage. However, there appear to be signs that other MNOs and private network operators have gained success in acquiring government funding due to funding criteria that promote tower sharing, co-location and open access networks.

While Telstra's market share for retail broadband services has fallen over the time of the rollout of the NBN, from historically high levels of upwards of 90 per cent in some regional areas, it still provides over 58 per cent of NBN TC-4 services in regional areas. This is down from about 61 per cent in 2018. Telstra still maintains a very significant share of the retail broadband market outside of the NBN fixed and wireless network. Given the NBN network rollout is largely complete, with only the migration of existing customers in the fixed-line network to remain, Telstra is likely to continue to be the provider of fixed-voice and broadband services to many parts of rural and regional Australia. It will be important that current regulation of fixed line network, such as the six fixed line services and wholesale ADSL, continue.

The service declarations for the six fixed line services continue until 30 June 2024. On 30 July 2021, the ACCC commenced a public inquiry, under Part 25 of the *Telecommunications Act 1997*, into the declared wholesale ADSL service. The ACCC has released a consultation and position paper to facilitate its inquiry. The ACCC's position, as set out in the consultation and position paper, is that continued declaration of the wholesale ADSL service until 30 June 2024 will promote competition and align the expiry of the declaration with that of other Telstra fixed line services currently declared by the ACCC.

The number of access seekers directly connected to regional NBN Points of Interconnect (POIs) has continued to rise. On average terms, there are 50 per cent more access seekers connected at regional POIs than in 2018. This is mainly due to a mix of fixed line and wireless providers. This exceeds the average presence at metropolitan POIs where there are fewer fixed wireless and satellite retail service providers (RSPs). This suggests that there is a growing number of small specialist access seekers operating in regional Australia.

Telstra's Customer Access Network

Legacy copper services will continue to have an important role to play in parts of regional Australia for the foreseeable future.

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[19] Regional NBN services are defined as satellite services and those services provided from an NBN POI located in a regional area.

[20] NBN Co notes that Traffic Class 4 (TC-4) is designed primarily for general internet and standard data services. It is considered to be a "best effort" service, suitable for non-critical business data applications. See https://www.nbnco.com.au/business/product-and-technical-information/nbn-ethernet/wholesale-traffic-classes/traffic-class-4

The Universal Service Guarantee and the Universal Service Obligation ensure homes and businesses in rural and regional areas have access to telecommunications services, regardless of their location. Together they use the NBN and Telstra's existing copper and wireless networks to ensure the provision of broadband and voice services in rural, regional and remote Australia.

Over time, voice and data services have been migrated onto the NBN from Telstra's customer access network (CAN) as the new infrastructure has become available. From almost 10m SIOs at the outset, legacy services have been decommissioned at a steady rate since 2014, leaving around 1.1 million services remaining at the end of the June quarter 2021.

Of these remaining services, we estimate that between 300,000-400,000 SIOs are located outside the NBN's fixed line footprint and are therefore not subject to mandatory disconnection.

The continuing supply of these copper services is likely to be commercially challenging, as they are spread across vast areas of the Australian landmass with low population. We estimate that at the end of June 2021, around 90 per cent of the Telstra exchanges in NBN satellite areas were operating with less than 100 SIOs.

Enhanced NBN services provide increased speeds and data allowances

It is important that consumers in rural and regional areas are provided with services that meet their needs in terms of speed and availability. While acknowledging the high cost of providing such services, those services generally come with limitations in respect of speed and data allowances. Where possible, enhancements to service provision will provide extensive and realisable benefits for regional and remote consumers.

In general, the vast majority of NBN fixed wireless and satellite technologies service regional customers.

- NBN's Fixed Wireless connections utilise data transmitted over radio signals to connect a premises to the network.
- NBN's Sky Muster satellite service delivers network services to homes and businesses in regional and remote Australia through two state-of-the-art satellites.

These services comprise 13 per cent and 4 per cent of total regional NBN SIOs respectively.

Nationally, NBN Co provides just over 363,000 fixed-wireless services, which account for just over 4.3 per cent of all NBN services. Satellite services account for around one percent of all NBN services.

Wireless Plus and Sky Muster Plus are relatively new services from NBN Co that offer enhanced capabilities and throughput speed where available. Wireless Plus offers speeds up to 75Mbps, depending on the amount of spectrum available and the number of users accessing the service at any one time. Sky Muster Plus offers unmetered internet for many activities except video streaming and VPN traffic. Unmetered traffic generally includes wifi calling, basic video streaming gaming, and software and application updates.

5.2. Wholesale market developments

Domestic Transmission Capacity Service

As noted above, the DTCS is a high capacity transmission service that enables service providers to provide wholesale and retail services to end-users. Where the ACCC considers

there is insufficient competition on a particular transmission route, that transmission route is regulated.

In its 2019 DTCS declaration inquiry, the ACCC found that Telstra remained the dominant supplier of transmission services in 85 per cent of regional exchange service areas (ESAs). It extended the declaration of the DTCS until March 2024, recognising that the continued availability of a regulated transmission service in many regional and remote areas was necessary to enable smaller operators to provide downstream services in those areas.[21]

In its subsequent 2020 DTCS Final Access Determination (FAD),[22] the ACCC set regulated prices between 35 and 65 per cent lower than the previous FAD, reflecting the general downward trend in commercially-negotiated transmission prices over time.

Transmission services in regional areas slowly becoming more competitive

In the 2019 DTCS declaration inquiry, the ACCC found that competition among transmission providers in regional areas was growing, albeit slowly. As a result, the ACCC deregulated an additional 27 regional ESAs where it considered competition was effective. It assessed the level of competition on DTCS routes on the basis of key criteria, including the number of fibre providers located at or adjacent to an exchange.

At that time, only 809 of 4,514 regional ESAs had two or more competing fibre providers. Recent analysis (September 2021) undertaken by the ACCC has revealed that this has grown to 1,747 ESAs as transmission services become more widely available in regional areas. This is largely due to a combination of transmission providers extending their networks beyond the metropolitan areas, or new transmission providers such as electricity and rail utilities opening up their optic fibre networks to supply telecommunications services.

Currently, 4,437 ESAs in regional areas (98.3 per cent) remain subject to DTCS regulation.

There have been a number of state government sponsored initiatives to support the roll out of fibre and digital connectivity hubs into regional areas.

In early 2020, the Queensland government created QCN Fibre, consolidating and managing spare capacity in over 6,000 km of fibre belonging to a number of state-run utility companies (including Powerlink and Energy QLD). Its network provides backhaul to the state's six NBN regional POIs of Toowoomba, Bundaberg, Rockhampton, Mackay, Townsville and Cairns.

In May 2020, the NSW government committed significant funding to develop its own regional telecommunications infrastructure, known as Gigabit State, to boost regional fibre capacity and upgrade local access network technology. This project has the objective of delivering faster and higher quality internet services for regional communities, at a lower price.

The Victorian government has also committed a substantial amount on rolling out high-speed fibre optic cable to regional areas. The program specifically targets regional areas that currently have access to only satellite and fixed wireless services. In Victoria, VicTrack has significantly upgraded its regional rail network to provide improved customer and telecommunications services for government and business.

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[21] ACCC, *Domestic Transmission Capacity Service: An ACCC Final Report on the review of the declaration for the Domestic Transmission Capacity Service*, April 2019, at: https://www.accc.gov.au/system/files/DTCS%20Declaration%20review%202018%2019%20-%20Final%20Report_0.pdf.

[22] ACCC, *Domestic Transmission Capacity Service Final Access Determination Inquiry*, Final Report, October 2020, at: https://www.accc.gov.au/system/files/DTCS%20Final%20Report%20-%202020%20Final%20Access%20Determination.pdf.

Availability of dark fibre in regional areas

Dark fibre refers to unlit fibre optical cable to supply transmission services. Transmission services enable large volumes of aggregated communications traffic (e.g. voice, data, video) to be carried from one point to another. Dark fibre is used by some service providers as an input to the supply of retail voice, broadband and business services. Service providers who acquire dark fibre have to use (and manage) their own electronics at each end to provide supply their own services. It is mainly available in metropolitan areas and densely populated regional areas.

One of the main limitations of dark fibre in regional areas is that the optic fibre cables may only have a very small fibre count (e.g. two, four or eight fibres) depending on location and capacity demanded. Also, Telstra is likely the only company with significant fibre in many regional areas. While other providers' optical fibre may traverse regional areas to some extent, they may not have hand-off capabilities everywhere, which limits its utility.

In the Final Report of its Communications Sector Market Study (April 2018),[23] the ACCC found that there was limited competition in the supply of dark fibre services. A subsequent review (in February 2019) into the need for reporting rules in relation to availability of, and access to dark fibre,[24] found that as competition in these markets is rapidly developing, reporting rules were not warranted. We continue to monitor this market, and the availability of dark fibre.

Generally, transmission providers in regional areas can earn better returns from the supply of managed transmission services to access seekers rather than provide a dark fibre pair to one customer. A transmission provider has an incentive to maintain its ownership and control of the fibre. If a transmission provider sells a fibre pair as dark fibre it loses access to that fibre pair. By retaining control of the fibre pair it can resell a managed transmission service to multiple customers.

While the market for dark fibre, where available, seems to be opening up (albeit slowly), we have not yet seen access problems that would require regulatory intervention beyond what is currently available. However, while dark fibre has become increasingly available in the last couple of years, this has mainly been in the major metropolitan areas and to NBN POIs. For example, Telstra has recently introduced a dark fibre product, the Point of Interconnect "Ring" product, which connects NBN POI locations to major data centre sites in the six metropolitan cities of Sydney, Brisbane, Canberra, Melbourne, Adelaide and Perth.

Extending or duplicating fibre is costly. However, the roll out of fibre to regional hubs through government initiatives is encouraged where the net benefits of doing so are clearly identified.

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[23] ACCC, *Communications Sector Market Study Final Report*, April 2018, at https://www.accc.gov.au/system/files/Communications%20Sector%20Market%20Study%20Final%20Report%20April%202018_0.pdf.

[24] https://www.accc.gov.au/regulated-infrastructure/communications/monitoring-reporting/dark-fibre-and-nbn-wholesale-aggregation-record-keeping-rules

6. Measuring Broadband Australia

The Measuring Broadband Australia (MBA) program is a broadband performance monitoring and reporting program delivered by the ACCC. The program relies on a panel of residential consumers to host testing devices to measure their home broadband services. The program was established in 2017 with key objectives to:

- provide consumers, industry and policy makers with robust, independent and comparable information on the performance of fixed-line broadband services
- facilitate performance-based competition between RSPs,
- improve consumer outcomes by publishing performance information to assist consumers' purchasing decisions, and
- assist in detecting where real-world performance is falling short of claims made by service providers as part of a broader strategy to promote compliance with the law (in conjunction with appropriate ACCC compliance guidance strategies and enforcement action).

As the ACCC noted in its review of the effectiveness of the MBA program in 2020-21[25] (the MBA Review), the program has met its objectives and has contributed to improved market outcomes for consumers - broadly reflected in improved broadband performance and reduced complaints concerning broadband speeds. Access to broadband services is essential for all Australians and the program is the only independent source of reliable broadband performance information.

Consumers have benefited from the program as it assists them to compare plans, make more informed decisions about which plan is best suited to meet their needs, detect performance issues and advocate for action to address these issues.

The MBA program also assists the ACCC in responding to instances of poor market behaviour. The MBA program complements the ACCC Broadband Speed Claims guidance and associated compliance activity by making more likely detection of systemic under performance relative to marketing claims.[26] The MBA program also assists in the identification and resolution of wholesale market issues.[27]

The MBA program was established to address competition and consumer issues impacting the NBN fixed-line broadband market which predominantly serves consumers in metropolitan areas. Technologies serving regional areas (fixed wireless and satellite) were not part of the original design predominantly due to technical challenges.

However, a small pool of volunteers have been established on the NBN fixed wireless network which we monitor for data reliability. As the data obtained from this panel increased, the ACCC became confident in the reliability of this data and in late 2020 began publishing indicative NBN fixed wireless network performance data.[28]

In May 2021, the Federal Government announced support for a four-year extension to the program with an express direction to expand the program to include the NBN fixed wireless

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25 https://www.accc.gov.au/system/files/Measuring%20Broadband%20Australia%20-%20Report%2014%20-%20August%202021_0.pdf

26 For example, see https://www.accc.gov.au/media-release/dodo-and-iprimus-to-pay-25m-for-misleading-nbn-speed-claims.

27 ACCC, Measuring Broadband Australia review – Consultation report, December 2020, available at https://www.accc.gov.au/system/files/Measuring%20Broadband%20Australia%20review%20-%20Consultation%20report%20-%20December%202020_0.pdf.

28 https://www.accc.gov.au/system/files/Measuring%20Broadband%20Australia%20-%20Monthly%20report%20-%20August%20to%20October%202020.pdf

network. This direction was consistent with the findings of the MBA Review (and recommendations made in the 2018 Regional Telecommunications Review (the 2018 RT Review)).[29]

The MBA Review examined the program with reference to its original objectives and canvassed views on the potential scope of the program if it was renewed following its timeframe of June 2021. In particular, the MBA Review sought views on expanding the program to monitor NBN fixed wireless and satellite services.

In submissions to the MBA Review, stakeholders representing consumers in regional, rural and remote Australia identified the need for the MBA program to cover networks servicing these communities to extend the benefits and improved market outcomes to more consumers. Proponents included consumer advocates, the Regional, Rural and Remote Communications Coalition (RRRCC) and the Australian Communications Consumer Action Network. NBN Co also supported such an expansion.

The RRRCC offered and has assisted in recruiting fixed wireless volunteers for the program. As a result, the NBN fixed wireless panel continues to grow. While NBN fixed wireless panels are currently below levels to report individual RSP performance, the ACCC intends to increase panels to a size to support this over the term of the extended program.

Satellite services

Both the MBA Review and the 2018 RT Review recognised the benefits of extending the MBA program to NBN satellite services.

However, the ACCC considers that satellite monitoring is not feasible at this point in time for a number of reasons:

- the impact on volunteers' broadband usage given the limited data quotas available on many NBN satellite plans,
- search costs to attract and retain a volunteer cohort of sufficient breadth and depth,
- low absolute numbers of users of the NBN satellite service (that is, the potential volunteers to draw on), and
- environmental factors that can potentially skew performance metrics for satellite broadband more so than other technologies. It was for this reason that the Government did not direct the ACCC to include NBN satellite services in its decision to renew the MBA program.

The ACCC also notes that network performance, rather than RSP performance, can be a greater determinant of satellite broadband quality than for other technologies. This is particularly the case given that NBN Co's access service is of greater scope (e.g. centralised point of interconnect, error correction and application awareness features) and connectivity virtual circuit (CVC) requirements, controlled by the relevant RSP, are much less given the access network is, itself, constrained.

As a result, the ACCC considers that a better approach to incentivise NBN Co to deliver a better broadband quality satellite service would be through greater transparency over its network performance. We note that NBN's Sky Muster Plus service goes some way to alleviating restrictive data allowances and CVC requirements. The ACCC is currently reviewing NBN Co's reporting requirements for satellite services to increase transparency.

[29] Recommendation 6 of the 2018 Regional Telecommunications Review: https://www.communications.gov.au/publications/2018-regional-telecommunications-review-getting-it-right-out-there

7. Service standards

Given the importance of telecommunications in regional Australia, consumers should receive the services they need and be able to get any faults fixed quickly. When buying a service, it is important that consumers know what they are getting for the price. That is, the level of support or performance they are likely to receive.

NBN Wholesale service standard inquiry

The ACCC commenced the NBN wholesale service standards inquiry in 2017 in the context of a high number of complaints from consumers around poor experiences on the NBN, particularly in relation to:

- connecting to NBN services and having faults repaired,
- concerns raised by industry that service standards were not adequate to ensure a positive consumer experience on the NBN.

The focus of the inquiry was to determine wholesale terms of access to the NBN that would provide suitable incentives for NBN Co to better meet its commitments to keep appointments, activate services and fix faults, and to provide more accurate and timely speed performance information to access seekers.

The ACCC considered that incentives, such as rebates, would allow access seekers to offer suitable support and compensation to end-users on those occasions where the commitment was not met, or services did not meet the expected speed performance.

In November 2020, the ACCC finalised the NBN wholesale service standards inquiry (together with an inquiry on NBN wholesale access pricing). The ACC decided not to set regulated terms of access because it considered that the new access arrangements under NBN Co's wholesale broadband agreement (WBA4) would address the matters of concern that had arisen.

Those new access arrangements included:

- daily rebates for late connections and unresolved faults
- increased rebates for missed appointments which retail service providers are required to pass through to consumers,
- monthly rebates for fixed wireless services in congested cells or connected to congested backhaul links and fixed line services[30] that fail to meet certain minimum speed objectives, and
- enhanced reporting and automation requirements to promote better information flows, transparency and supply-chain coordination.

NBN Co's timeframes under WBA4 for making connections, repairing faults and attending appointments vary according to service class, work required, network type and geographic location. Timeframes are generally longer for rural and remote areas where the attendance of a technician is required.

[30] Fixed line services provided via fibre to the curb, basement and node technologies. Services provided on HFC and fibre to the premise technologies are not included given the lack of evidence of speed issues on these networks.

For example, connection timeframes for customers on the fixed wireless network is 9 business days in urban areas, 14 business days in rural areas and 19 business days in remote areas.

For customers on the satellite network it is 20 business days except for isolated areas where it is 35 business days.

Customers on the fixed wireless and satellite networks are nevertheless entitled to monetary or fair value benefit of wholesale rebates which may include things like 4G backup (where available) in the case of faults where service level timeframes are not met. These arrangements apply for all technologies, except for some satellite customers in remote and inaccessible locations. While there are rebates for each fixed wireless service supplied via a wireless network cell that is persistently congested during that month, WBA4 does not have any comparable terms for services on satellite technologies.

While the service standard framework operates between NBN Co and its wholesale customers, many retail service providers offer their customers rebates or other measures if a service is unavailable for a period of time. In addition, under rules set by the Australian Communications and Media Authority, a service provider cannot charge a customer until a service is activated.

The ACCC is currently undertaking a review of the NBN regulatory framework as set out in the Special Access Undertaking (SAU). The ACCC acknowledges that consumers have expectations about price, quality and choice of NBN services that should be met by the regulatory framework.

8. Consumer protection issues

8.1. Consumer safeguards must be strengthened and include regional connectivity

The ACCC supports, and has provided submissions to, the Department's review of the telecommunications consumer safeguards framework to ensure that it is fit for purpose and meets consumer needs in a post-2020 environment. The matters canvassed in the review cover redress and complaints handling (Part A), reliability of services (Part B) and choice and fairness (Part C).

These matters are vital for an effective safeguard framework in the telecommunications sector. Being able to seek redress for a problem, or resolve a complaint is a fundamental right for consumers. Changes to improve the rules around complaints handling, and more transparency around how retail service providers record and resolve complaints, have strengthened the safeguards for consumers and will promote competition. Similarly, steps which align the wholesale and retail benchmarks for service standards will provide more certainty and confidence for consumers dealing with their retail provider.

However, the underlying premise for these safeguards is that consumers can access reliable telecommunications services at their home and work premises, and that those services are capable of meeting their needs.

Not all regional consumers can access reliable services, particularly mobile services. Some consumers need to carry multiple devices in order to ensure connectivity. Other regional consumers have invested in additional technology to provide connectivity on their properties. A number of consumers cannot access reliable telecommunications services at all. For these consumers government support in some form is likely to be ongoing. In these instances, while this support should be contingent on the generation of net social and public benefits, there will continue to be a role for government assistance in difficult to service areas beyond what is provided under current universal service obligations or guarantees.

As noted above, there are no simple answers to these issues. Telecommunications services are essential services, as highlighted by the Covid-19 pandemic. Many elements of the current safeguard framework for telecommunications do not reflect the essential nature of these services, and the strong reliance consumers place on their service.

The current safeguard framework must be strengthened to reflect the everyday importance of communications services, the need for connectivity and the risk of harm to consumers and communities of non-compliance. The changing nature of telecommunications services, and the near completion of the rollout of the NBN requires a re-think of the safeguards framework.

Co-regulation under the industry led Telecommunications Consumer Protection Code (TCP Code) combined with the two-step enforcement process and disproportionately low financial penalties, provide few incentives for industry compliance. As discussed in the next section, we continue to see widespread poor conduct in the telecommunications sector which leads to significant consumer detriment. We consider that it is the right time to implement a new framework which reflects the essential nature of telecommunications, fits the increasingly diverse range of industry participants and incentivises compliance.

We consider that these objectives could be achieved by mandating minimum conditions of entry and participation when providing essential telecommunications services. This could include a requirement that all providers meet minimum standards of entry to be able to

provide telecommunications services, including a suitability criteria. Providers should also be able to demonstrate their capability to meet existing consumer safeguards.

8.2. ACCC enforcement action to protect telecommunications consumers in regional areas

Conduct that affects vulnerable, disadvantaged or Indigenous consumers, many of whom live in regional and remote areas, is an enduring enforcement priority for the ACCC.

As the economy-wide consumer regulator, the ACCC has an active role in investigating and enforcing breaches of the Australian Consumer Law, which establishes legal protections for consumers in their dealings with businesses across the entire economy.

In recent times, the ACCC has taken action against a number of telecommunications providers engaging in conduct that affects consumers in regional areas. Some examples are outlined below.

Action relating to vulnerable consumers in regional and remote areas

In November 2020, the ACCC instituted court proceedings after an investigation into Telstra's practices of selling mobile plans to indigenous consumers in remote parts of the Northern Territory, Western Australia and South Australia. In May 2021, Telstra was ordered to pay a $50 million penalty by the Federal Court for engaging in unconscionable conduct in relation to these vulnerable consumers. Telstra also provided an enforceable undertaking to the ACCC to refund affected customers, and develop an appropriate compliance program.

Action against NBN Co relating to customers in the ACT and regional NSW

In June 2020, the ACCC accepted an enforceable undertaking from NBN Co in relation to representations NBN Co made to consumers on the TransACT Network, which covers the ACT and parts of regional NSW, that their telephone and internet services would be disconnected if they did not move over to the NBN. The ACCC considered those representations were false as the TransACT Network will continue to operate alongside the NBN. As part of the undertaking, NBN Co agreed to reimburse the early termination costs paid by customers, and to improve transparency over networks that will continue to compete with the NBN

Enforcement action in relation to NBN speeds

The ACCC took court action against a range of providers for false or misleading claims in relation to NBN speeds and transitioning to the NBN network. This type of conduct can affect consumers in regional and remote areas where network coverage and quality of service can vary with the broadband technology available in that area. Some of the action taken includes:

- in August 2021, court action against Telstra, TPG Telecom and Optus for failing to check the maximum attainable connection speeds customers could achieve, and offering remedies to customers whose connections couldn't achieve the speeds advertised
- in June 2021, a $2.5 million penalty against Dodo and iPrimus for making misleading representations as to the NBN connection speeds customers would receive, and
- in 2018, a $1.5 million penalty against Optus for misleading consumers regarding the need to switch to NBN or risk disconnection. In 2019, the ACCC had previously taken action against Optus for similar conduct ($6.4 million penalty). Optus admitted that it had no basis for claiming the consumers were at risk of disconnection, since Optus

understood that the consumers were already acquiring NBN services from another provider.