

2 February 2017

Telecommunications Reform  
Broadband Implementation Branch and Infrastructure and Access Branch  
Department of Communications and the Arts

***Re: Proposed Telecommunications Reform Package***

Please find attached our comments on the Australian Government's proposed Telecommunications Reform Package.

RDA NT is an incorporated not-for-profit community-based organisation that is concerned with building partnerships and ensuring that all governments and stakeholders collaborate in developing and strengthening regional communities. RDA NT is part of a nationwide network of 55 RDA Committees with membership comprising local individuals who have a good understanding of the economic, environmental and social issues and priorities in their respective regions. RDA NT has identified telecommunications as the backbone underpinning the NT's economic and social development.

Whilst we appreciate the Government's intentions to ensure that broadband services are available for those in regional, remote and very remote areas of Australia, we believe that it is premature to proceed with the proposed reform package at this time. Instead, we urge the Government to adopt a holistic approach towards telecommunications, to develop a strategy for regional and remote telecommunications and reconsider the package after the reviews of the existing Telecommunications USO and other consumer safeguard frameworks are completed, and a new USO and relevant consumer safeguards are ready for parallel

rollout. We believe such a strategic approach is necessary in order to mitigate the risk of perverse, unintended outcomes in both the short and medium-long term that will deepen the 'digital divide' for those living and working in remote and very remote parts of the Territory.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K. Peake', with a long horizontal flourish extending to the right.

Kate Peake  
Chief Executive Officer



An Australian Government Initiative

## Comments on Government's Telecommunications Reform Package

Our comments have been structured in the following manner: general comments regarding process and policy co-ordination are followed by specific comments on each element of the package.

### **General**

Much of the proposed Telecommunications Reform Package relates to matters considered in the current inquiry into the TUSO. These parallel but unconnected processes reflect a disappointingly uncoordinated approach to telecommunications. The Productivity Commission are recommending a market driven approach (Productivity Commission, 2016, *Telecommunications Universal Service Obligation Inquiry Draft Report*, page 11) while the Department of Communication and Arts are proposing a Regional Broadband Scheme and SIP whereby nbn is the default provider. These inconsistencies have arisen despite the Commission identifying a lack of policy coordination and stating that there would be benefits from moving towards a more integrated approach to meeting universal service objectives (Productivity Commission, 2016, pages 20, 103 and 226 and draft recommendations 4.1 and 9.3). It is our view that consideration of the proposed reform package should be deferred until after the completion of the TUSO Inquiry, the proposed review of consumer safeguards and a stocktake of government telecommunications policies and programs. The opportunity should be taken to adopt a holistic approach towards telecommunications services, including the development of a specific Regional and Remote Telecommunications Strategy, which can then guide subsequent decision-making.

### **Proposed amendments to Parts 7 and 8 of the *Telecommunications Act 1997* and Part XIC of the *Competition and Consumer Act 2010***

Regarding the proposed amendments, we note that the overall intent appears to be to provide nbn with greater ability to compete with other providers in (more lucrative) greenfields developments. This, in turn, allows nbn to continue to provide fixed wireless and satellite services outside of major metropolitan centres.

While we are supportive of efforts to ensure that broadband services continue to be available in regional and remote Australia, we are concerned that the current proposal may have perverse outcomes which are ultimately detrimental to these areas. In terms of existing competition, despite the number of RSP's in the Australian market the majority of the market (over 90%) is dominated by just four telco's. The current proposal carries a high risk of leading to less choice, as the associated costs may drive smaller market players out. In regional and particularly remote and very remote NT, this proposal may well act as a strong disincentive for some providers to enter the market even though these providers may have innovative and superior (ie faster and more reliable) solutions.

This means that potentially regional and remote Territorians will have less choice in terms of the technology platform over which broadband is delivered (ie they will be locked into the NBN infrastructure even though there may be opportunities to connect via existing backhaul which could enable delivery of a superior service) and the field will continued to be dominated by the major telco's.

### **Proposed introduction of a Statutory Infrastructure Provider Regime into the Telecommunications Act 1997**

Regarding the proposed SIP regime, we note that this intends to create a USO type arrangement for broadband services with nbn as the default wholesale broadband provider and funded by an industry levy, the proposed Regional Broadband Scheme.

Again, while we welcome the Government's intention to ensure the availability of broadband infrastructure to all Australians, including those in regional and remote areas, the proposal fails to acknowledge lessons from the past. Telstra, as the USO provider for the standard telephone service, became the dominant market player in regional and remote Australia and the only provider of the domestic carriage transmission service. This resulted in little or no choice of telecommunications provider for consumers in these areas. The SIP proposal comes with the very real risk that the same outcome will occur in relation to the provision of broadband infrastructure in these areas. This in turn will stifle the introduction and development of alternative technology solutions that may offer a superior service.

This risk is increased by the proposal that the Minister have a reserve power to "set standards, rules and benchmarks that SIPs must meet...[which] could include the type of technology that SIPs must use in particular areas" (SIP Regulatory Impact Statement (RIS), page 7) and "where it is not reasonably practicable for the SIP to connect a premises to the fixed line network, it must provide a fixed wireless or satellite technology solution" (Explanatory Notes, page 7). We believe that such standards and benchmarks should be established, where possible, in terms of the end-user experience and therefore be technology neutral. The proposed legislation (Part 19, Division 1, Section 360A) omits any reference to download transmission speeds for qualifying fixed wireless and qualifying satellite carriage services. In contrast, the definition of qualifying fixed-line carriage services includes reference to the download transmission speed as "normally 25 megabits per second or more". This is inconsistent with the latest Statement of Expectations issued on 24 August 2016, which specifies that nbn should deliver a network "capable of download data rates of at least 25 megabits per second to all premises" (emphasis ours) (SIP RIS, page 6). The proposed legislation paves the way to allow lesser quality services to be provided to customers reliant on fixed wireless or satellite.

There is also a very real danger that voice services and standards will be omitted altogether, particularly if the Productivity Commission's recommendations to phase out the existing TUSO are adopted. Some consumers could be left without any telecommunications at all, for example remote outstations who currently rely on Telstra payphones and who face considerable barriers limiting their access to the Skymuster satellite service.

The proposed amendments do not specifically refer to voice services, instead various definitions include the phrase “the carriage service allows end-users to download communications”, thereby suggesting voice services are excluded. Greater clarity is required to make it clear if the SIP regime applies only to the provision of data services, or data and voice services via VOIP. If it is intended to capture both this has significant implications in terms of establishing standards and benchmarks, particularly in relation to voice services provided via the Skymuster satellite. The TUSO Inquiry Draft Report indicated some concern around the adequacy/quality of the voice service to be provided over this platform and nbn has indicated that its broadband network was not designed to provide voice services over fixed wireless or satellite.

In introducing the SIP regime there appears to be little consideration of standards and consumer protection guarantees, only that:

“Secondary issues relates to the appropriate standards and benchmarks that should apply to NBN Co or any other provider in fulfilling its SIP obligations. The USO and CSG set out a number of features that a SIP regime could include, for example a broad obligation to connect premises” (SIP RIS, page 5).

We note that, while Division 19, Part 4, Section 360U, sub-section (1) of the proposed legislation relates to the types of matters that standards and benchmarks can pertain to (such as terms and conditions, reliability, maximum fault repair and connection times), standards only apply to the provision of wholesale services, not retail services. Given that the existing TUSO and CSG relate only to the provision of standard telephone (voice) services and therefore are not directly transferrable, we argue that the existing USO and CSG framework should be reviewed and updated to cover fixed and mobile, broadband and voice, services. Such standards and benchmarks should be established with emphasis on the end-user experience and therefore be technology neutral.

This review should be undertaken prior to the introduction of the proposed SIP legislation, consistent with Productivity Commission advice (2016, page 277). We note that “for ease of administration the proposed legislation enables the Minister to delegate to ACMA a range of powers, including the power to make standards, rules and benchmarks” (Explanatory Notes, page 8). There is a danger that implementation of the proposed legislation without such standards and benchmarks being defined will result in existing specifications becoming the default, and will not necessarily guarantee availability, accessibility and affordability of broadband services for end-users. It is our view that such standards and benchmarks should be drafted and ready for implementation in parallel with proposed legislation.

The SIP RIS states that “As Telstra will stop using its copper network after the NBN becomes available in an area, it is expected Telstra will generally use the NBN to meet the USO” (page 3). This statement does not acknowledge Telstra’s Copper Continuity Obligation (CCO) and does not specifically address the implications for the CCO, particularly in areas where the capacity of the NBN infrastructure to deliver a voice service of appropriate quality/reliability may be limited. As previously indicated, the Productivity Commission has concluded that there is some question about the adequacy of voice services provided over the Skymuster satellite, yet this issue is also not adequately considered in the SIP RIS.

The proposal that nbn be designated as the default SIP for all of Australia is not entirely consistent with the Productivity Commission view that “nbn become the statutory infrastructure provider of last resort” (2016, page 11 and 22, draft recommendation 7.1). Declaring nbn to be the SIP by default does not provide any incentive or encouragement for other potential wholesalers to seek SIP status in areas covered by the NBN. In contrast, “last resort” suggests nbn should become the SIP only after it is apparent that there are no other wholesale providers providing services in a particular area.

We also note that the timing of this proposed SIP regime is inconsistent with the Productivity Commission view that nbn’s universal role be made more explicit in legislation following the full roll out of the NBN and before any privatisation of nbn is considered (2016, page 217).

The proposal includes a provision that the Minister be able to declare that there was no SIP for an area if the level of competition in the area is such that the Minister considers that services will be delivered to end-users without the imposition of SIP obligations. This is potentially risky in that it could be interpreted in such a way that non-commercial areas are left without a SIP. The inclusion of subsection (2) under Section 360N, Part 2, of the proposed legislation should provide an appropriate safeguard.

#### **Proposed Regional Broadband Scheme (establishing an ongoing funding arrangement for nbn’s fixed wireless and satellite networks)**

The Government’s commitment to ensuring that fixed wireless and satellite networks continue to be funded is welcomed. However, we note that the current proposal is inconsistent with that recommended by the Vertigan Panel’s recommendation (ie a broad levy on both broadband and voice with such a levy charged only if nbn co is broken up into separate business units) and the Productivity Commission recommendations regarding funding mechanisms for universal service obligations.

In considering this proposal we appreciate the intention that the extent of the cross-subsidy from fixed line services (ie commercial) to fixed wireless and satellite services (ie non-commercial) becomes more transparent. We do not share the Productivity Commission view that universal service obligations are best met by funding from general government revenue for a series of small programs (nor support Option 2 in the RBS RIS). Instead we believe that universal telecommunications availability, accessibility and affordability should be established by a new TUSO which is underpinned by legislation. We are, nevertheless, concerned that the current proposal mimics the existing TUSO and TIL arrangements, and risks having similar perverse outcomes for those in regional and remote areas. We are not convinced that provisions for SIPs other than nbn will adequately mitigate against this risk in regional and particularly remote and very remote areas.

Owing to the apparent lack of policy coordination, the RBS RIS does not consider in detail the current TUSO Inquiry, except in terms of the financial impact of a delay (Option 5 in the RBS RIS, page 10, 14-15 and 18).

The basis upon which it is assumed that there would be a five year delay to consider funding arrangements alongside the USO review is unclear, given that the Commission's final report to Government is expected in April this year. We further note that it appears that the arrangements during the delay period are essentially the same as Option 1 (ie do nothing, and nbn's end users continue to pay with the extent of the cross-subsidy remaining opaque), the financial impact of which has been set to "nil". Although the RBS RIS states that this is for comparative purposes, it is misleading to suggest that Option 1 has a nil impact. We also do not believe that a five year delay would be necessary, should Government choose to expedite its consideration of the USO and related customer service guarantee frameworks. The cost of a shorter delay should be considered against the medium-long term impacts of potentially perverse outcomes that may result from the continued ad hoc approach to telecommunications.

Finally, there does not appear to be sufficient flexibility/scope in the proposed Regional Broadband Scheme to allow for, or encourage, the development of innovative new technology solutions in regional and remote areas. Instead, as previously noted, it appears to lock users in these areas into particular solutions which, given the pace of technological change, runs a risk that they will be left with outdated technology and the digital divide between metropolitan and regional and remote users will only deepen.