Telecommunications Reform Package 2017

Frequently Asked Questions

June 2017
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Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017

General

What is the rationale behind this legislation?

- In 2013-14, a panel of experts chaired by Michael Vertigan AC undertook a review of telecommunications regulatory arrangements which led to the publication of the NBN Market and Regulation Report and a cost-benefit analysis of the NBN.
- The Government responded in December 2014 in its Telecommunications Regulatory and Structural Reform policy statement.
- The Bureau of Communications and Arts Research undertook detailed analysis and public consultation on funding NBN Co’s non-commercial services in regional Australia during 2015 and 2016.
- The Bills implement measures from the Government’s 2014 Telecommunications Regulatory and Structural Reform paper.
- They amend existing carrier separation rules in the Telecommunications Act to create new commercial and competitive opportunities for network operators.
- They introduce statutory infrastructure provider obligations for NBN Co and other carriers to ensure Australians can be connected to superfast networks and receive superfast broadband services, regardless of where they live.

Who will benefit from the Competition and Consumer Bill changes?

- The changes to carrier separation rules will promote competition and investment while continuing to provide access for retail providers to bottleneck infrastructure. They do this by:
  - removing regulation from networks servicing small businesses;
  - allowing network operators to have functionally-separated wholesale and retail businesses, subject to pro-competitive safeguards and ACCC approval; and
  - giving the ACCC the power to exempt very small providers (up to 2,000 services, or 12,000 by regulation).
- As a result, consumers living in areas serviced by alternative networks will have greater choice of services and of retail provider.
- Small businesses will benefit because competition will promote investment in networks and services to meet their specific needs.
- Consumers will benefit from the statutory infrastructure provider measures because:
  - They provide for people to be connected to superfast networks and receive superfast broadband. As a result, people living in houses that are expensive or difficult to service will know that they can’t simply be ignored.
  - The rules provide access to peak download speeds of at least 25 Mbps and peak upload speeds of at least 5 Mbps. A statutory infrastructure provider’s broadband services also need to support voice on fixed-line or fixed wireless networks.
  - The Minister will be able to make service provider rules dealing with consumer issues like the handballing of disputes between wholesale and retail providers. Consumers will also have clear information on why a request to connect has been refused and by whom.
**Separation rules**

**What are the amendments to the separation rules?**

- The amendments reform the existing separation rules in Part 8 of the *Telecommunications Act 1997*, and associated carrier licence conditions made in 2014.

- There are five main changes to the separation rules:
  - Networks servicing small businesses will no longer be subject to the separation rules.
  - Carriers will be able to be functionally separated—that is, have both wholesale and retail businesses—subject to ACCC approval.
  - The ACCC will be able to make class exemptions for very small providers (up to 2,000 services, though this could be increased to 12,000 by regulation).
  - All services supplied on networks that are wholesale-only or functionally separated will be subject to non-discrimination obligations.
  - The enforcement regime has been improved to make it more effective by providing a wider range of enforcement measures and penalties.

- The changes promote competition and investment while continuing to provide access for retail providers to bottleneck infrastructure.

- Together, these changes promote greater commercial flexibility for carriers to grasp competitive opportunities while also setting an effective baseline for competition into the future.

**Why are you changing the rules? How do they help competition?**

- The Vertigan panel found that existing rules have a number of problems. In some areas they were open to gaming and weren’t achieving their objectives, but in other areas they were proving inflexible and deterring competition.

- An example of these problems is that existing networks can be extended by up to 1km without being subject to the rules. This could advantage these networks over new ones.

- Smaller networks are having difficulty in competing with larger ones because they can’t be extended very far without the requirement to be wholesale-only.

- Removing networks servicing small business from being subject to the rules will promote competition and investment in these networks, providing benefits for small businesses.

- The ACCC will be able to exempt very small networks, subject to competitive safeguards. This will promote market entry.

- Networks will be able to be functionally separated—that is, to have both wholesale and retail businesses. However, this will also be subject to competitive safeguards and to ACCC approval.

- Functionally separated networks will also be subject to broad non-discrimination requirements, which will limit their ability to favour their own retail operations and restrict competition.

**How do the functional separation arrangements work?**

- A carrier, alone or with other persons, can give the ACCC a functional separation undertaking. If the ACCC accepts the undertaking, then the carrier isn’t required to be wholesale-only but can have both a wholesale business and a retail business.

- It is optional for a carrier to submit an undertaking. When a carrier gives an undertaking, all of that carrier’s local access lines must be part of the undertaking, regardless of when they were built.

- The ACCC will consider whether to accept an undertaking based on whether the undertaking promotes the long-term interests of end-users.

- The functional separation undertaking has to contain a number of measures. These include:
  - maintaining separate wholesale and retail businesses;
  - separate workers;
  - separate business, operational support and communications systems;
- separate accounts;
- transparency requirements including publishing standard offers for services;
- non-discrimination requirements, involving supplying the retail unit on the same terms as other wholesale customers;
- the retail unit using the same customer interface as other wholesale customers; and
- protecting confidential information relating to wholesale customers.

- The ACCC must consult on the undertaking. After an undertaking has been accepted, the carrier or carriers who gave the undertaking must provide the ACCC with regular compliance reports.

**What is the process for submitting an undertaking?**

- An undertaking can be submitted at any time but must be in a form approved by the ACCC and include a fee (if any) specified by the ACCC.
- The undertaking must include such information as would reasonably assist the ACCC in deciding whether to accept or reject the undertaking.

**What are the non-discrimination rules?**

- The Bill sets out three non-discrimination requirements:
  - not to discriminate between wholesale customers in relation to the supply of services, or in favour of a carrier's own retail operations;
  - not to discriminate in carrying out related activities, such as developing new services or giving information about network extensions or enhancements;
  - publishing standard offers for all eligible services and reporting to the ACCC if there are variations from the standard offer in an access agreement.

- The rules are subject to enforcement by the ACCC or by a carrier or carriage service provider.
- Together, the rules ensure that a carrier which has undertaken functional separation cannot discriminate in favour of its own retail operations.

**Statutory infrastructure providers**

**What will the amendments do? Why are they needed?**

- Schedule 3 establishes a new statutory infrastructure provider (SIP) regime.
- Currently there is no statutory obligation on NBN Co to connect premises to its networks. Similarly, there is no general statutory obligation on non-NBN superfast networks to connect premises (in areas where they are available).
- A legislative framework provides certainty for all stakeholders: NBN Co, retail service providers, and consumers.
- NBN Co will be the default SIP as it rolls out across a given area. After the NBN is completed, NBN Co will be default SIP for the whole of Australia. This is appropriate given that NBN Co will ultimately replace Telstra as the principal fixed-line network provider in Australia.
- The SIP regime creates two obligations:
  - An obligation to connect premises via fixed-line unless this is not reasonable, in which case connect premises via fixed-wireless or satellite.
  - An obligation to supply wholesale services with a peak download speed of at least 25 Mbps and a peak upload speed of at least 5 Mbps.
- Other carriers can also be SIPs where appropriate, for example where they have contracts to service premises in a new real estate development.
- All SIPs will have to offer broadband services able to support 25 Mbps down and 5 Mbps up. SIPs’ standard services will also have to support voice on fixed-line and fixed wireless networks.
- The ACMA will be the regulator responsible for enforcing the regime and will maintain a register of SIP service areas and SIPs.
Will customers be connected to fixed-line networks?
- A SIP should connect premises to a fixed-line network as the default, but where this is not reasonable then the provider should connect premises to a fixed wireless network or a satellite network.
- SIPs would be able to determine what type of network is best to service an area. If a provider determines an area is best serviced by fixed wireless and rolls out a fixed wireless network, then it can automatically connect premises to fixed wireless.

What are the services that consumers will receive?
- The SIP must supply services that enable carriage service providers to supply broadband services with a peak download speed of at least 25 Mbps and a peak upload speed of at least 5 Mbps.
- These are the specified speeds across all technologies. Where networks can supply faster speeds, it is expected that SIPs would do so.
- The Bill also sets a target for NBN Co that 90 per cent of premises in its fixed-line footprint can receive peak download speeds of at least 50 Mbps and peak upload speeds of at least 10 Mbps. This target is already set out in NBN Co’s Statement of Expectations.
- On fixed-line and fixed wireless networks, the broadband services a SIP supplies must enable a carriage service provider to supply voice services to consumers.
- The Minister will also have powers to make standards, rules and benchmarks that SIPs must comply with. These powers can be used to set more detailed service standards, such as timeframes for connecting services and rectifying faults.
Regional Broadband Scheme
Telecommunications (Regional Broadband Scheme) Charge Bill
2017

What is the Regional Broadband Scheme?

- NBN Co’s fixed wireless and satellite networks provide essential broadband services to regional Australia.
- However, these networks are loss-making and are estimated to incur net costs of $9.8 billion over 30 years.
- Currently, these net costs are covered by an opaque internal cross-subsidy from NBN Co’s profitable fixed line networks (predominantly in metropolitan areas). The RBS makes this cross-subsidy transparent and requires other competing fixed line networks to contribute to the cost of funding broadband for regional Australia.
- The RBS is a long-term solution that ensures essential broadband services will continue to be provided to regional Australia well into the future, regardless of who owns the regional networks and who is the dominant fixed line provider in profitable metropolitan areas.
- Under the Scheme all high speed fixed line carriers, including NBN Co, will be charged around $7.10 per month for each active premises on their networks from 1 July 2018.
- The RBS does not impose a new cost on NBN users—the cost is already built into existing NBN pricing. By the time the NBN is completed in 2020, 95% of the RBS will continue to be paid for by NBN, whereas today it is 100%. The remaining 5% will be paid for by competing NBN-comparable wholesale networks. This establishes a competitively-neutral funding mechanism for broadband services in regional and remote Australia.
- The charges will be collected by the Australian Communications and Media Authority annually, commencing in December 2019, and will then be paid to NBN Co to fund the net costs of building and operating its fixed wireless and satellite networks.
- Since the telecommunications industry is so dynamic, the legislation requires the Australian Competition and Consumer Commission to regularly review the charge amount and the Minister for Communications to commence a policy review in the first four years of the Scheme’s operation.

Is this a new fee customers will pay or is the fee already built into NBN Co’s business model?

- The RBS does not impose a new cost on NBN users—the cost is already built into existing NBN pricing.
- By the time the NBN is completed in 2020, 95% of the RBS will continue to be paid for by NBN, whereas today it is 100%. The remaining 5% will be paid for by competing NBN-comparable wholesale networks.
- For the remaining five per cent—many of these networks service medium and large businesses which will for the first time contribute to funding regional broadband.
- NBN-comparable network owners will pay the charge based on the size of their networks.
- For non-NBN networks servicing residential and small businesses—it will be up to these networks to decide whether or not the charge will be passed on, either in part, in full, or at all.
Is the Regional Broadband Scheme consistent with the Productivity Commission’s main recommendations in its report on the Universal Service Obligation?

- The Productivity Commission found that NBN infrastructure, complemented by mobile coverage, is expected to mostly address the objective of universal service availability for broadband and voice.
- Therefore, it is essential that NBN Co’s infrastructure, especially in areas where it operates at a loss, has a sustainable and transparent funding source, such as the Regional Broadband Scheme.

Who will pay the charge?

- Carriers will incur a charge for each premises on their fixed-line local access networks where a carriage service provider (CSP) provides at least one high speed broadband service.
- The line must be technically capable of download transmission speeds of at least 25 Megabits per second.
- Carriers will only incur a single charge for each premises, even if multiple services are being provided to the premises by multiple CSPs over the carrier's local access line/s.
- If multiple carriers are providing broadband services over their local access line/s to a single premises, then each carrier will incur a charge.
- The charge will not apply to voice-only or broadcast television-only services.
- It is expected that all of the larger carriers will contribute to the charge, including NBN Co, Telstra, Optus, Vocus and TPG. Additionally, a number of smaller carriers, such as OptiComm, OPENetworks and LBN Co may also contribute to the charge. However, the charge concession period, which exempts the first 25,000 residential and small business premises for five years, will limit the amount smaller carriers initially contribute (if at all).

Which networks are technically capable of providing broadband speeds of at least 25 Mbps?

- Networks using fibre-to-the premises (FTTP), fibre-to-the node (FTTN), fibre-to-the-basement (FTTB), fibre-to-the-curb (FTTC) and hybrid-fibre coaxial (HFC) technologies are expected to be technically capable of providing broadband speeds of at least 25Mbps.

Where does the $7.10 figure come from? What analysis was performed to reach this figure?

- The initial charge amount of $7.10 per month, per premises is based on modelling undertaken by the Bureau of Communications and Arts Research (BCAR) as part of its NBN non-commercial services funding option—Final Report, released in March 2016.
- The BCAR consulted with NBN Co to estimate the net cost of its fixed wireless and satellite networks over a 30 year period. The figure they came to was a loss with a net present value of $9.8 billion.
- The BCAR then modelled the number of high speed fixed line services in the market over that period. It then used that information to calculate the amount required per premises to fund NBN Co’s regional networks.
Will the Scheme impact the viability of small carriers?

- The Government has consulted with small carriers and has amended the Scheme to reduce the impact on them, including:
  - Creating a concession period so that all carriers will have the first 25,000 residential and small business premises on their network exempt for the first five years. This will give small carriers time to transition to the Scheme.
  - Implementing a charge cap so the monthly charge amount cannot be raised above $10, indexed to CPI. This will provide more regulatory and investment certainty and support market competition.
  - Removing the Minister’s ability to require bonds and guarantees from carriers with a charge liability. This provides regulatory certainty and does not risk revenue collected from the Scheme since the Government can adjust the charge amount to recoup charges owed by insolvent carriers.
  - Creating a statutory requirement for a policy review within the first four years of the Scheme. This provides assurance to industry that the Government will assess the scope of the Scheme as technology and market conditions change.

- In its May Final Decision on the SBAS and LBAS Final Access Determination, the ACCC decided to allow TPG, OptiComm and other small carriers to pass on the Regional Broadband Scheme charge above their regulated prices, if required. This will also reduce the pressure on their business cases.

What is the charge concession period?

- To help small carriers adjust to paying the charge, the Scheme includes a concession period that exempts the first 25,000 residential and small business premises that have an active high speed fixed line broadband service on each carrier’s network for the first five years.
- The threshold of 25,000 has been selected because it preserves the tax base and ensures that small carriers are not initially caught by the charge but will progressively contribute as their businesses grow.
- This exemption supports wholesale market competition by providing relief to smaller carriers that may be disproportionately affected by the charge. It also provides a smooth transition for small carriers if they grow their businesses above 25,000 premises over the first five years.

Are there any exemptions?

- Yes, exemptions will apply to:
  - network owners that operate less than 2,000 services; and
  - networks that have agreements in place to transition their networks and/or customers to NBN Co.
- The charge will not apply to premises with voice-only or broadcast television-only services.
- There is also a limited charge concession period that exempts the first 25,000 residential and small business premises that have an active high speed fixed line broadband service on each carrier’s network for the first five years. This supports market competition by helping smaller carriers adjust to paying the charge.

Why aren’t mobile broadband services included in the charge base?

- Funding for the Scheme will come from high speed fixed line broadband providers.
- High speed fixed line services are generally comparable to one another. That is, for most consumers one high speed fixed line service is much like any other.
The same is not true for mobile broadband services. Mobile broadband services are not comparable to fixed line services mainly due to the much higher cost for data use and as a result are generally not substitutable.

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

Why does NBN Co require funding from industry when the Government has already committed to providing additional funding through a loan?

- The Regional Broadband Scheme is a long-term solution that provides funding certainty for regional Australia to ensure that quality broadband services will continue to be provided.
- These services will be funded into the future regardless of who owns the regional network and who is the dominant fixed line provider in profitable metropolitan areas.
- The current funding arrangement being facilitated by the Government is a short-term commercial arrangement that enables NBN Co to focus on completing the network rollout as quickly and efficiently as possible. It is not an ongoing funding mechanism for NBN Co’s loss-making fixed wireless and satellite networks in regional Australia.

What is the rationale behind moving from an internal cross-subsidy model for funding regional networks to the Regional Broadband Scheme model?

- NBN Co currently relies on revenue from metropolitan areas to cross-subsidise its fixed wireless and satellite networks. This means that if NBN Co’s metropolitan market share is impacted by increasing competition, it may not be able to sufficiently fund its fixed wireless and satellite networks.
- The Government supports infrastructure competition - we believe more competition results in better outcomes for consumers. But if we’re going to support competition in profitable metropolitan areas, we need to find a sustainable way to fund loss-making broadband services for regional Australia which don’t enjoy that same level of competition.
- The Regional Broadband Scheme does this. It implements the policy announced in the Government’s 2014 Telecommunications Regulatory and Structural Reform Paper to establish an industry levy to sustainably fund NBN Co’s fixed wireless and satellite networks. The Scheme safeguards funding for regional broadband by transparently and fairly spreading the cost across all operators of high speed fixed-line broadband networks.