

RE Your URGENT Advice about the proposed Regional Broadband Scheme (RBS) Charge

I am writing to you on behalf of the Greenfield Fibre Operators of Australia, (GFOA) which comprises the major non nbn comparable carriers, OPENetworks, LBN Co, RedTrain Networks, Pivit, Comverge Networks and Real World Networks.

We seek your urgent advice concerning the proposed RBS Charge including the associated Administration Levy. Please confirm and explain how "*nbn...would pass the charge on to their end users base*", as stated on page 12 of the Regulation Impact Statement (RIS). Will there be a Statement of Expectations from the responsible Ministers for nbn, some new legislation or some other instrument to force nbn to levy the **full amount of RBS Charges** on all connected retail broadband service providers (RSPs), who in turn may pass the amount of the RBS Charge on to end users?

Background to GFOA concerns

On page 20 of that RIS, the Department of Communications and the Arts (DOCA) says that in relation to the impact of the RBS Charge and "*Competitive Neutrality nbn could lower its prices in line with the amount of the additional funding it received*".

You would appreciate that, as nbn is likely to be the only Eligible Funding Recipient, without specific legislation or a clear obligation in a Ministerial Statement of Expectations addressed to nbn or other legislation affecting nbn, then nbn will probably not pass on any part of the RBS Charge to end users. Indeed, it seems that DOCA believes that nbn may even reduce its prices because of additional funding from non nbn providers (like the GFOA carriers) through introduction of the RBS. Such anti competitive action by nbn could be argued to be in line with the Government's Telecommunications Regulatory and Structural Reform Policy 2014, which states on page 6, at Section 2.6, as follows:

"The cross-subsidies which are currently embedded in NBN Co's wholesale prices will be replaced by transparent funding provided via contributions sourced from owners of high-speed broadband access networks that target residential and small business customers – i.e. the NBN and networks in commercially viable areas that are comparable to the NBN. There will be no additional costs to consumers relative to current NBN pricing – an opaque part of the cost of the NBN will be made explicit."

The idea that there would be "*no additional costs to consumers relative to current nbn pricing*" following the introduction of the new RBS Charge, clearly encourages nbn to not pass on to connected RSPs any share of the RBS Charge. Recent discussions between nbn and RSPs have (according to RSPs) reportedly confirmed that nbn does not intend to pass on the RBS Charges to RSPs on the nbn network and they have stated that the non nbn comparable carriers, such as GFOA carriers, should also absorb the RBS Charges rather than pass them on to RSPs.

If nbn does not pass on the RBS Charge to RSPs, then it suffers no loss, but could materially and adversely affect non nbn comparable and competing carriers, like

GFOA carriers. The Explanatory Notes (on page 11) for the RBS legislation, states that, "The Bill allows the Secretary to offset eligible funding recipient's (EFR) charge liabilities against their funding entitlement under a contract or grant. This improves the inefficiencies of the RBS and minimises transaction costs." The offset mechanism replaces the substantial payment of RBS funding to nbn (as currently the only proposed EFR) and thereby enables nbn to dispense with recovery of the RBS Charge from the RSPs who may have otherwise been likely to pass on the RBS to end users. If that happens, then only those RSPs connected to non nbn comparable carrier networks will be asked to pay amounts to cover the RBS Charge levied on these (GFOA) carriers or otherwise those GFOA carriers must absorb the RBS Charge to retain the interest of the RSPs in maintaining connection to end users on those networks. Those connected RSPs are likely to refuse to pay any increased access fees that may cover new RBS Charges, because that would create a two tiered price book for RSPs; one for nbn connected end users and another for the end users connected to non nbn comparable networks of GFOA carriers. It will also put those connected RSPs at a competitive disadvantage to Telstra and Optus, as they are not offering retail services on GFOA networks whilst there is no common RSP Interface also used by nbn. It is apparent that this scenario will discourage RSPs interconnection with the non nbn carrier operators and the potential absence of RSPs on those non nbn comparable networks would further reduce competition. The failure of government and nbn to provide or encourage the common RSP interface for superfast broadband highlights the problems that will develop as a result of nbn not passing on the RBS Charges to RSPs.

The effect of GFOA carriers absorbing RBS Charges on the GFOA carrier revenues and there trying to maintain RSP interconnection on the GFOA networks when nbn does not have that problem, would be financially devastating. It would erode net revenues of GFOA carriers by at least 25% or increase their operational expenses by over 30% when nbn suffers no similar effect. An example of the effect on the already capped LBAS/SBAS 25Mbps access service rate of \$27 per month, would mean that after the RBS Charge and Administration Levy (\$7.10) is deducted, a non nbn carrier would earn a net revenue is \$19.90/ per service, whilst nbn would earn \$27 per month for the same access service. This effect is magnified for lower access fees for 12Mbps services such that the reduction in net revenue is almost 30%.

As a supplementary question, GFOA asks whether and how SBAS/LBAS capped rates for access services will be increased by the amount of the RBS Charge, if the RBS Bill becomes law.

The urgency of your advice on these two important questions arises, because answers to those questions, is fundamental to understanding how the RBS will operate. Furthermore, because the DOCA consultation period has just commenced and continues over the holiday season, when many GFOA carriers' senior personnel are on annual leave and as it is highly desirable to have their contributions to submissions on the matter, your response is needed before they go on leave.

We therefore ask for your response to these 2 questions, on or before 21 December 2016, when senior personnel will start going on annual leave.

Regards

Michael Sparksman
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OPENetworks Pty Ltd