



29th May 2020

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**ACCC Long Term Revenue Constraint Methodology 2018-2019 Draft Determination.**

ACCAN is the peak body that represents all consumers on communications issues. We would like to thank the ACCC for the opportunity to comment on the Long-Term Revenue Constraint Methodology (LTRCM) 2018-19 Draft Determination.

ACCAN appreciates the new challenges created from the COVID-19 pandemic and is understanding of the additional workload pressures this may have created. However, due to the potential of harm to consumer interests, ACCAN believes that it is necessary to consider the future of the LTRCM. This is consistent with the ACCC's role in promoting the long-term interests of end-users (LTIE) in the telecommunications sector.

*Transparency*

As mentioned in the ACCC's preliminary view note, the completion of the NBN rollout requires turning attention towards service delivery. As the operating environment for NBN changes, so must the regulatory environment. ACCAN believes that as part of that changing regulatory environment, the level of transparency in which NBN operates should be considered. ACCAN takes the view that this is in the LTIE.

NBN's move into the competitive enterprise market highlights questions regarding transparency, particularly in relation to cross subsidies between different markets. Cross subsidising the enterprise market with revenue from the residential market would be to the detriment of consumers in both markets. ACCAN is concerned that cross subsidising increases the likelihood of predatory pricing that would dampen competition in the enterprise market, which over a longer period may eliminate competitors.<sup>1</sup> Once this has occurred, NBN would then be able to increase prices in this market, which would harm the LTIE. Consumers in the residential market will be harmed as the cross subsidy may inflate prices. This is a significant issue as ACCAN has ongoing concerns regarding pricing and the affordability of broadband.<sup>2</sup>

For this reason, ACCAN believes that the LTRCM should be segmented. The extent to which this occurs should be carefully considered. At the very least there should be oversight between residential and enterprise reporting. However, considering the Regional Broadband Scheme, which aims to create transparent funding for regional broadband, it could be argued that segmenting the LTRCM by technology and geography would contribute further to this goal.

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<sup>1</sup> <https://www.accc.gov.au/business/pricing-surcharging/setting-prices>

<sup>2</sup> <https://accan.org.au/media-centre/1572-nalo-media-release>

Australian Communications Consumer Action Network (ACCAN)  
*Australia's peak body representing communications consumers*

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### *The Weighted Average Cost of Capital*

The SAU establishes a framework for the economic regulation of NBN and provides the opportunity to recover its prudent and efficient costs subject to the long-term revenue constraint methodology.<sup>3</sup>

ACCAN is concerned that the Weighted Average Cost of Capital (WAAC) utilised in the LTRCM does not reflect accurately the true cost of NBN's capital. For example, in 2016 NBN secured a loan from the federal government for \$21.5 billion with an interest rate of 3.96%.<sup>4</sup> More recently, NBN received a private loan of \$6.1 billion.<sup>5</sup> If the interest rate on this loan is significantly lower than the 6.2% used as the nominal rate of return, ACCAN believes that LTRCM should be reviewed to ensure that it is fit for purpose. The impact of using a value for the nominal rate of return in the LTRCM which exceeds the true value of NBN's cost of capital inflates NBN's allowed revenue.

Furthermore, the value used for the nominal rate of return (6.2%) contributes to the ever-growing size of the Initial Cost Recovery Account (ICRA) which allows NBN larger leeway regarding their revenue constraint. The ACCC should consider if and when the ICRA is likely to be depleted, because until then NBN is being allowed to operate as a monopoly with no regulated revenue constraints.

If revenue is not constrained appropriately, given NBN's monopoly position, this is likely to result in cost inefficiencies and profit maximisation rather than output maximisation.<sup>6</sup> As a result of this, NBN is incentivised to charge significantly above costs in the nearer term, this has been reflected in previous CVC pricing decisions. This issue emphasises the ACCC's role in ensuring efficient use of, and investment in, infrastructure.

The consequences of COVID-19 have emphasised the importance of affordable access to telecommunications. With households on the lowest incomes spending nearly 10% of their income on telecommunications,<sup>7</sup> the cost of broadband plays a significant role in ensuring people are able to participate in the digital economy. Thus, for an essential service we feel more should be done to ensure that the regulatory environment protects consumer outcomes.

ACCAN is aware that the ACCC is holding an inquiry into NBN's wholesale prices, however this too has been put on hold due to COVID-19. Therefore, we are concerned that consumers will be harmed in the short term due to the lack of oversight regarding the environment in which NBN operates, and ultimately the prices it charges.

Our view is that deferring vital decisions was reasonable in the early stages of COVID-19. However, the recovery phase means that the ACCC should now turn to dealing with these critical issues in order to ensure the LTIE.

Should you wish to discuss this further, please do not hesitate to contact me.

Yours sincerely,

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<sup>3</sup> The ACCC (2018) *Communications Sector Market Study*. Pg.18 [https://apo.org.au/sites/default/files/resource-files/2018-04/apo-nid139446\\_1.pdf](https://apo.org.au/sites/default/files/resource-files/2018-04/apo-nid139446_1.pdf)

<sup>4</sup> <https://www.itnews.com.au/news/nbn-co-to-get-three-more-years-to-repay-195bn-govt-loan-511824>

<sup>5</sup> <https://minister.infrastructure.gov.au/fletcher/media-release/nbn-co-secures-61-billion-private-sector-funding>

<sup>6</sup> The ACCC (2018) Pg. 99.

<sup>7</sup> BCAR (2017) *Trends and drivers in the affordability of communications services for Australian Households*. <https://www.communications.gov.au/documents/trends-and-drivers-affordability-communications-services-australian-households-0>