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The Hon Michelle Rowland MP

Minister for Communications
Federal Member for Greenway

MS22-001176

Ms Gina Cass-Gottlieb
Chair
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

via: gina.cass-gottlieb@acc.gov.au

Dear Ms Cass-Gottlieb

I am writing to set out the Australian Government's views about the NBN Co Special Access Undertaking (SAU) variation process. I thank the ACCC for its efforts during the negotiation process so far and for the constructive engagement with me over recent weeks.

Since the election, the Prime Minister has emphasised that the Government is committed to collaborative decision-making about the issues that impact the lives of Australians.

Reflecting that commitment, and the change of Government which has created space for problem-solving, my preference is that all parties continue with the SAU variation process. This offers the best prospect of an outcome that serves the long-term interests of consumers, which is the priority of the Government.

I have great respect for the independence of the ACCC and believe that a fit-for-purpose SAU is achievable. In my view, the objective should be for the process to effectively secure an outcome as soon as possible, with the aim of this occurring by early 2023. There should be appropriate time for consultation with retail providers.

This would allow NBN Co Limited the time to develop new systems and prepare to implement a varied SAU on 1 July 2023. It will also provide certainty for industry about National Broadband Network (NBN) pricing and other matters.

A varied SAU should reflect the changes in the policy landscape and operating environment since the current variation was lodged. The Government has stated that it will retain NBN Co in public ownership for the foreseeable future, expand full-fibre access to more homes and businesses, and ensure the NBN delivers for consumers and facilitates productivity.

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Shareholder Ministers expect to issue a revised Statement of Expectations to NBN Co that reflects this. These changes allow space for a reset in the process, and for NBN Co and the ACCC to work positively towards a new SAU variation.

It is important that NBN Co has regard to these changes, as well as the concerns about the current SAU variation proposal, which I do not consider fit for purpose. I would therefore support NBN Co deciding to withdraw its current variation and submitting a revised proposal capable of acceptance by the ACCC, and that delivers pricing certainty for retail providers.

In doing so I wish to respectfully convey an observation derived from my lived experience as a Parliamentarian. Relative to the range of cost pressures being faced by Australian consumers and businesses, they are not complaining to me about the price of NBN services. They are primarily concerned with quality and service. I have encouraged all stakeholders to keep this in perspective when considering the long-term interests of consumers.

I ask that the ACCC work constructively with NBN Co to try and ensure that its new proposal addresses issues that have been raised through consultation to date. I also ask that this work reflect the need for NBN Co to deliver long-term outcomes for consumers by supporting continued efficient investment in the NBN and providing equitable and affordable access to high-speed broadband.

The Finance Minister and myself have also written to NBN Co to outline our views, and I have attached a copy for your reference. I will subsequently write to other industry stakeholders to encourage them to continue to work with the ACCC and NBN Co in developing and considering a revised proposal for assessment.

I am committed to supporting the process however I meaningfully can, and in my view, it would be a failure for all involved if we were not able to deliver a positive outcome under the SAU process.

The enduring purpose of the NBN should be to provide fast, reliable and affordable connectivity. I am confident NBN Co shares this objective, in conjunction with its broader mission to satisfy the needs of the Australian people and foster an inclusive and globally competitive society.

Thank you again for your efforts and I look forward to working with you over coming months.

Yours sincerely

A handwritten signature in blue ink that reads "M. Rowland". The signature is fluid and cursive.

Michelle Rowland MP

22 / 7 / 2022

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SENATOR THE HON KATY GALLAGHER
Minister for Finance

THE HON MICHELLE ROWLAND MP
Minister for Communications

Ms Kate McKenzie
Chair
NBN Co Limited
Level 13, 100 Mount St
North Sydney NSW 2060

Dear Ms McKenzie

We are writing to set out the Government's views and expectations of the NBN Co Limited (NBN Co) Special Access Undertaking (SAU) variation process. We thank NBN Co for its efforts and for its constructive engagement with the Government and the Australian Competition and Consumer Commission (ACCC) over recent weeks.

Since the election, the Prime Minister has emphasised that the Government is committed to collaborative decision-making about the issues that impact the lives of Australians.

Reflecting that commitment, and the change of Government which has created space for problem-solving, our preference is that all parties continue with the SAU variation process because this offers the best prospect of an outcome that serves the long-term interests of consumers, which is the priority of the Government.

In our view, the objective should be for the process to secure an outcome as soon as possible, with the aim for this to occur by early 2023. This would allow NBN Co the time to develop new systems and prepare to implement a varied SAU on 1 July 2023. It will also provide certainty for industry about NBN pricing and other matters.

A varied SAU should reflect the changes in the policy landscape and operating environment since the current variation was lodged. The Government has stated that it will retain NBN Co in public ownership for the foreseeable future, expand full-fibre access to more homes and businesses, and ensure the NBN delivers for consumers and facilitates productivity.

We expect to issue a revised Statement of Expectations to NBN Co that reflects these objectives and will also work with NBN Co through the Corporate Plan process to settle a realistic expectation about future returns to shareholders. This would allow space for a reset in the process, and for NBN Co and the ACCC to work positively towards a new SAU variation.

To facilitate NBN Co having regard to these changes, we consider a withdrawal of its current variation and the submission of a revised proposal capable of acceptance by the ACCC is the best way forward for the process. This will also allow NBN Co to take into account the feedback that has been provided on the current proposal through the ACCC's consultation process.

We ask that NBN Co work constructively with the ACCC to try and ensure its new proposal addresses issues that have been raised through consultation to date.

We understand that any variation to the SAU will need to have some regard to the past. However, we encourage NBN Co to develop a proposal that reflects a reset in the process and looks forward to the necessary and appropriate returns to support the business. This could mean historical concepts such as the Initial Cost Recovery Account (ICRA) could be changed or reconsidered to facilitate a focus on a forward looking regulatory model for the business.

We also note that there has been some discussion about how projects related to Government policy should be treated under the SAU. While we believe that the Government and NBN Co should retain flexibility in how individual projects are funded, we consider that there is scope for NBN Co to work with the ACCC to develop a model that retains flexibility while providing appropriate regulatory rigour to delineate between commercial and non-commercial investments.

Finally, we recognise that the SAU variation process has been underway for some time, and that it is unlikely that assessment of a revised SAU variation proposal can be concluded prior to the expiry of current Wholesale Broadband Agreement (WBA) on 30 November 2022. We also understand that the changes to the pricing construct being proposed by NBN Co through the SAU variation will take time to implement.

In our view, the interim pricing construct that will need to apply from 1 December until the next WBA is agreed should not be a step backwards from the perspective of retailers. We ask NBN Co to ensure that the interim arrangements are the same as, or an improvement on, WBA4. These arrangements should provide certainty to industry and seek to facilitate a smooth and timely pathway to the next iteration of the WBA once the SAU variation is agreed.

The Minister for Communications has also written to the ACCC to outline our views, and we have attached a copy for your reference. The Minister will subsequently write to other industry stakeholders to encourage them to continue to work with NBN Co and the ACCC in developing and considering a revised proposal for assessment.

We are committed to supporting the process however we can, and in our view it would be a failure for all involved if we were not able to deliver a positive outcome.

We thank you again for your efforts and we look forward to working with you over coming months.

Yours sincerely



Katy Gallagher
Minister for Finance



Michelle Rowland
Minister for Communications