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Review of NBN Application for SAU Variation

Communications Markets and Advocacy  
Australian Competition & Consumer Commission

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Dear ACCC team

AGL Southern Phone (**AGL**) welcome the opportunity to provide input on the issues raised in the Consultation Paper dated May 2022 (**Paper**) published as part of the ACCC Consultation regarding NBN Co's application for variation of its Special Access Undertaking.

Our submission is enclosed. It does not contain any confidential information.

Please do not hesitate to contact us if you have any questions in relation to this submission.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'D. Stewart', with a long horizontal flourish extending to the right.

**Dean Stewart**

Head of Telco Product Operations



## AGL Southern Phone Submission

### What are your views on the various elements of the pricing proposals put forward by NBN Co for the SAU variation?

To promote the LTIE (and in particular the economically efficient use of the NBN infrastructure), we submit that:

- a) The simplified pricing structure (ie removal of CVC) should be adopted for all speed tiers (rather than only the speed tiers 100/20 and above); and
- b) The price point for higher speed plans should start, and remain, at levels that are affordable and with gaps that allow retailers to encourage consumer upgrade from lower speed plans.

We set out below the primary reasons for these submissions.

#### Simple AVC only pricing structure across all speed tiers

In our view, the simplicity of an AVC only pricing structure for all speed tiers would promote competition in retail markets and encourage the efficient use of the NBN infrastructure. Specifically:

- We offer 'unlimited' plans for reasons including that we consider customers value the simplicity of those plans and typically have a better experience on these plans. We observe:
  - o Different internet applications use different quantities of data. This changes over time and is not easy for consumers to monitor.
  - o Unlimited plans (ie plans with no 'data cap') remove the risk of a poor customer experience due to either:
    - Consumer bill shock. For example, consumers on a 'capped data' plan may face higher bills than expected if they are required to pay excess charges for any periods when they inadvertently, and unknowingly, exceed their data cap; or
    - Speed throttling. For example, consumers on a 'capped data' plan may have a very poor broadband experience if their speed is throttled to very low levels for any periods when they inadvertently, and unknowingly, exceed their data cap.
  - o Data capped plans create pricing uncertainty and can be inefficient for smaller retailers to manage. This is for reasons including potential misalignment between retail prices (which are typically based on data usage at any time of day) and wholesale costs (which is proposed to be based on usage during the peak hour).
  - o As is evident in the data published in the ACCC's Internet Activity Record Keeping Rule reports, the proportion of retail customers with 'capped data' plans has been declining over the last few years and is now well under 20%.
- CVC pricing creates significant inefficiency and cost, particularly for smaller retailers, which is not in our view outweighed by any benefit. For example:
  - o In our view, removing the inefficiency associated with CVC pricing would allow retailers to operate more efficiently, minimise retail prices and costs and, consequently, encourage the economically efficient use of the NBN infrastructure.
  - o In our experience, the cost of managing CVC is significant, particularly for smaller retailers. Although the proposed shift to utilised CVC (rather than provisioned CVC) as the basis for these costs would mitigate this inefficiency to some extent, we anticipate that significant costs would remain. That is because retailers would still need to undertake sophisticated



analysis of the usage patterns of individual customers in order to optimise their wholesale costs.

- We do not consider there is sufficient benefit to outweigh this cost. For example, we are not aware of evidence that consumers are likely to shift their internet usage to different times of day (ie away from peak usage times) in response to signals or incentives from retailers. Accordingly, we do not consider that CVC pricing is necessary to encourage efficient use or, or investment in, NBN infrastructure. We observe in this regard that the proposed 'utilisation management commitment' regarding future network investment is based on the overall utilisation of the NBN shared network resource by customers on all speed tiers (ie including the higher speed tiers for which AVC only pricing is proposed).
- The costs of managing CVC are likely to be disproportionately felt by smaller retailers (due to the smaller size of their customer base). Accordingly, simpler AVC only pricing for all speed tiers would in our view promote competition in the retail market.
- The proposed CVC pricing could inhibit the economically efficient use of the NBN infrastructure by making lower cost plans unaffordable for customers with lower capacity to pay. Specifically:
  - the proposed approach would see CVC charges on lower speed tier plans increase relatively quickly over time (due to 'CVC inclusions' increasing at a slower rate than peak usage). Cost increases due to CVC usage would therefore disproportionately impact customers on the lowest cost plans who are typically least able to afford them, and could result in some customers no longer being able to afford to access the internet through these lower cost plans. That outcome would be counter to the efficient use of the NBN infrastructure and the purpose of maximising the economic and social benefits of the NBN set out in NBN's Statement of Expectations.
  - Instead, our experience suggests that as internet usage grows over time, there will be increasing opportunities for retailers to grow the revenue received by NBN by transitioning to higher speed plans those customers than can afford to pay for such plans.

#### **Affordable price point for speed tiers 100 and above**

In our view, there will be increasing opportunities over the next decade and beyond for retailers to upgrade customers from lower speed plans to higher speed plans provided that the price gap between them is low enough to make such upgrades attractive to customers. In particular:

- In our experience, many customers are willing to upgrade to faster plans when retailers can offer upgrades at a relatively small additional cost. The ACCC observed in its 2020-21 Communications Market Report:

*"In 2020–21, the general distribution of NBN plans shifted further towards higher-priced plans... . This change was likely driven by NBN Co's wholesale pricing initiatives, encouraging take-up of higher speed but more expensive plans, through the use of discounts."*

- We submit that any increase in wholesale prices should be limited to CPI. In this respect:
  - The proposal currently contemplates price controls permitting price increases above CPI (both in the first regulatory cycle and on an ongoing basis).



- We do not consider there is any basis for prices increasing faster than CPI in any period given the performance levels will not increase (a 100 speed tier plan will remain fixed at that level).
  - In our experience, consumers are sensitive to changes in price, but are in many cases willing to upgrade over time by paying more for higher speed plans (provided the cost of doing so is set at affordable levels). We submit that limiting wholesale price increases to CPI would therefore be more likely to encourage the efficient use of the NBN infrastructure.
- The price controls in individual products are in our view of significant importance in providing retailers with pricing certainty. As is noted by the ACCC, the revenue cap may not bind for a significant period of time and stability in retail prices for periods of at least a year are beneficial for consumers and retailers.

#### **Access for everyone**

By way of context for the present decision, we observe there are various mechanisms for the provision of financial support from Federal and State Governments to ensure that low-income individuals and households are able to access and pay for essential services across Australia's economy. For example, we see first-hand the benefits that government concession rebates and emergency relief payments provide for energy consumers. We consider access to the internet is similarly an essential service.

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