TELSTRA GROUP LIMITED

Submission to ACCC NBN Co Special Access Undertaking Draft Decision

2nd June 2023

CONTENTS

List of Abbreviations

ACCC	Australian Competition and Consumer Commission
ACMA	Australian Communications and Media Authority
ADII	Australian Digital Inclusion Index
BBM	Building Block Model
CSA	Connectivity Serving Area
CPI	Consumer Price Index
CVC	Connectivity Virtual Circuit
EBITDA	Earnings Before Interest, Taxes, Depreciation and Amortisation
FTTB	Fibre To The Building
FTTC	Fibre To The Curb
FTTN	Fibre To The Node
FTTP	Fibre To The Premises
LIMAC	Low-Income Measures Assessment Committee
LTIE	Long Term Interests of End-users
MTM	Multi-Technology Mix
NBN	National Broadband Network
NBN Co	National Broadband Network Company Limited
PIR	Peak Information Rate
QCA	Queensland Competition Authority
RSP	Retail Service Provider
SAIGCR	Stand Alone Investment Grade Credit Rating
SAU	Special Access Undertaking
SLA	Service Level Agreement
TCP	Telecommunications Consumer Protections Code
WAPC	Weighted Average Price Cap
WBA	Wholesale Broadband Agreement

1 EXECUTIVE SUMMARY

Telstra welcomes the ACCC's Draft Decision to reject NBN Co's SAU Variation. Whilst we acknowledge the improvements made by NBN Co and the further concessions that they expect to make as detailed in their letter to the ACCC, we still consider that despite those changes, the SAU would not promote the long-term interests of end-users (LTIE). To make the SAU acceptable to industry and in turn, consumers, we consider the following critical aspects need to be addressed.

Service Quality

A baseline service standard is a fundamental component of the regulatory framework that applies to NBN Co. It provides a link between the price paid by end-users and the quality of service received. While significant progress has been made towards the inclusion of service quality, there remain gaps that have not been addressed in the SAU Variation or the amendments proposed by the ACCC and NBN Co. Specifically, there is no material improvement in the service quality that will be experienced by end-users in the first regulatory period and NBN Co continues to face limited consequences when it does not meet service standards.

The inability of access seekers to resolve service quality issues through the existing WBA process means the SAU is key to improving service standards and the end user experience on the NBN. This is particularly the case in the first regulatory cycle as the majority of end-users remain on MTM technology. These customers will pay a higher price for a service with no real benefit in the short to medium term.

Telstra considers baseline service standards must be expanded to address areas of concern raised by RSPs that have not been resolved through commercial negotiations. These relate to outage notification, priority assistance and speed rebates. There must also be a performance incentive framework included in the SAU that ensures NBN Co faces appropriate consequences where it fails to meet service standards. The framework should also be supported by an independent review of NBN Co performance that assesses the impact on the end-users.

Low Income

Telstra considers that NBN Co can and should strengthen its commitments regarding its Low-Income Forum, including the development of a fit for purpose baseline package that should be progressed and endorsed by the Low-Income Forum stakeholders.

Expenditure Review

Telstra considers that more rigorous assessment is required for proposed expenditures moving forward to avoid future pricing uncertainty. Telstra is supportive of the recommendations by Grex Consulting involving the expenditure review process in the first regulatory cycle which would provide better transparency for NBN Co and the ACCC.

Getting the SAU right is of critical importance to customers and the industry. To that end, we do not consider that the pricing outcomes set out by the ACCC are in the LTIE. Under the SAU Variation, NBN Co will be allowed to increase prices from FY25 every year until at least 2030. We have provided substantial evidence in our prior submissions that such an outcome is not necessary, will not address the current underutilisation of the NBN network, or help achieve the Government's digital economy strategy. However, despite these concerns, to expedite an already protracted SAU Variation process, we accept the ACCC's decision, but they need to be accompanied with improvements in service quality particularly in the first regulatory period.

2 MAJOR REMAINING CONCERNS WITH THE SAU

2.1 Service Quality improvements are not sufficient

A critical element of the consumer experience on the NBN is the quality of service provided by NBN Co. In the context of the WBA, service quality encompasses many elements, from that directly experienced by end-users to operational interactions with RSPs that underlie that experience. The clear imbalance in bargaining power between NBN Co and access seekers has, however, resulted in a level of service quality that does not meet the long-term interests of customers. This is in contrast to the NBN Co view that commercial negotiation has "...*allowed nbn and RSPs to evolve service standards under the WBA – with safeguards provided through the ACCC's access determination powers.*"[1] Rather a significant shift in the service quality provided by NBN Co has largely only been achieved through regulatory intervention, such as the court enforceable undertaking agreed as a result of the ACCC NBN Wholesale Service Standards Inquiry.

An accepted SAU would limit the ACCC's ability to issue Access Determinations or other future regulatory intervention. Therefore, it is critical to ensure that the SAU delivers the right outcomes for customers.

There continue to be gaps between the service quality provided by NBN Co and the expectations of consumers which RSPs have been unable to address through commercial negotiations. NBN Co also faces limited consequences where it fails to meet an appropriate level of service quality.

2.1.1 Further changes are required to baseline service standards

The inclusion of benchmark service standards, ACCC powers, and a process for updating service standards between regulatory periods in the SAU Variation represented an improvement in the regulatory framework. However, as set out in our previous submission, there was limited change in the actual service quality that would be experienced by end-users during the first regulatory period. The service standards proposed by NBN Co in the SAU Variation effectively locked in service standards that were introduced over two years ago and are resulting in poor customer outcomes. The ability to change those service standards in the first regulatory period was also limited.

Telstra set out a view that further changes were required to the SAU so that end-users can be confident current issues will be rectified and service quality generally would be improved. This included improving and expanding the baseline; compensation where speed levels are not provided; and performance incentives to hold NBN Co to account.

The ACCC Draft Decision sets out a view that the ACCC is "…*not satisfied that the benchmark service standards for the first regulatory cycle specified in the SAU Variation, or the framework for setting and reviewing benchmark service standards in the first regulatory cycle, are reasonable or would promote the LTIE*." The ACCC suggests the regulatory framework could be enhanced through further improvements including:

- A commitment to update the benchmark service standards proximate to any acceptance of the SAU Variation and to inform the ACCC and other stakeholders whether the updated benchmark service standards will be part of a future cost pass-through application.
- A commitment to periodically consult stakeholders over the measures that NBN Co should prioritise over the first regulatory cycle and update the benchmark service standards to incorporate improvements that are identified this way.

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[1] NBN Co, Special Access Undertaking Variation: Response to ACCC Draft Decision – Service Quality, May 2023 (https://www.accc.gov.au/by-industry/telecommunications-and-internet/national-broadband-network-nbn-access-regulation/nbn-co-sau-variation-november-2022/draft-decision)

These sit alongside changes proposed by NBN Co in response to stakeholder concerns raised throughout the consultation process. Specifically:

1. Improve the mechanism by which benchmark standards could be improved in a regulatory cycle to make it clear that a recurring event that impacts end-users can trigger a review rather than only those that impact retailers.
2. Implement a new transparency and reporting mechanism whereby NBN Co would prepare an annual service improvement plan and report on annual service performance review.

While welcome, the improvements suggested by the ACCC and NBN Co seek to address issues raised with respect to the regulatory framework only. There is no material improvement in service quality for the next three years nor is there any framework in place that incentivises NBN Co to meet its existing service levels, with the exception of limited rebates that are already in place (such as those for connections and fault rectification).

On benchmark service standards, the Draft Decision includes a view that NBN Co has offered improvements as part of WBA negotiations that, once incorporated into the SAU Variation, could assist to address concerns raised. However, the improvements offered by NBN Co will not make a material difference to service quality. They certainly will not, as argued by NBN Co in a recent Comms Day article "...*ensure the Amended Variation delivers a service quality framework that is in the long-term interests of end-users.*"[2] For example, while the inclusion of service levels for connection and fault rectification in isolated areas is welcome, it is not a material concession given the very low number of customers that will benefit in the first regulatory cycle – in Telstra's experience, one in the last 12 months and one currently scheduled for the remainder of this year would be covered by the proposed concession.

The majority of other improvements put forward by NBN Co are either not 'new' (i.e., included in the WBA4 bridging agreement or proposals that preceded the initial SAU Variation) or are those which NBN Co is already providing. For example, service modifications were included in the WBA4 bridging agreement and the reduction in drop out thresholds for fault recognition was proposed in the initial SAU Variation. Telstra's analysis of other performance objective improvements such as that proposed for trouble ticket management shows that NBN Co is already consistently exceeding the proposed improvement. Quite simply, there has been no material improvement since the Consultation Paper as part of WBA negotiations. Further, NBN Co has declined to include any service quality improvements put forward by Telstra.

The ability to change service standards in the first regulatory period is also relatively limited. NBN Co has proposed to expand the ACCC's power to request changes to service standards to include where a recurring event impacts end-users. Telstra supports this expansion but considers more clarity is needed about what the threshold impact needs to be to trigger a review and how this would be practically implemented. Telstra's experience is that this would need to be more prescriptive to ensure NBN Co responds appropriately and transparently.

As set out in Telstra's submission to the Consultation Paper,[3] the only end-users who will benefit from service quality improvements in the first regulatory period will be those who upgrade to FTTP. While FTTP has the potential to solve many problems experienced by end-users, the reliance on FTTP is misleading from a quality-of-service perspective. The number of end-users who will benefit from FTTP in the first regulatory period is limited. Further most of those who will benefit will have to pay for the privilege through higher-priced plans.

Prices are forecast to increase substantially over the next three years as a result of significant expenditure being made to upgrade the network to FTTP. The brunt of these price increases will be borne by those who will receive no benefit in the short to medium term and are instead expected to

[2] Grahame Lynch, Communications Day, 25 May 2023, Page 3.
[3] Telstra, Telstra Submission in relation to NBN's proposed SAU variation, 17 February 2023, TELSTRA CORPORATION LIMITED (accc.gov.au)

continue to deal with too many faults and outages, and insufficient line speeds. NBN Co is simply not doing enough to support the majority of its customer base who will remain on MTM technology for at least the first regulatory cycle. As set out above, the ability to negotiate further improvements to service quality through commercial negotiations is unlikely. NBN Co has been clear that the WBA will reflect the SAU but with no further concessions. Any improvements in the baseline service quality experienced by end-users must come through the SAU Variation.

Telstra's view is that the baseline service standards in the SAU must be expanded so that end-users can be confident current issues will be rectified and service quality generally will be improved. We have previously set out in detail our position on the additional changes required for an acceptable baseline. At a high level, this comprises:

- Improving and expanding the baseline to ensure customers get the service quality that they are paying for, including in relation to speed, planned outage notification and priority assistance.
- Compensating customers where NBN Co is unable to support the speed tier expectation that it charges RSPs for.

2.1.2 Absence of a performance incentive framework is a significant gap

Telstra's submission to the Consultation Paper[4] also set out a view that the SAU should include performance incentives so that NBN Co is held to account when it doesn't deliver the service quality it promises. Despite the significant positive changes made to the regulatory framework by the ACCC and NBN Co, the lack of consequence remains a critical gap.

- There is a 10-business day SLA for notification of a planned outage. There is no consequence – in the form of a rebate or otherwise - if NBN Co does not meet this SLA. This has resulted in poor customer outcomes with most planned outage notifications made under 10 business days, including many with less than one hour notice. The work undertaken by the Communications Alliance Group will address process issues that may result in a more efficient notification process (including defining categories of outages more precisely). However, the lack of incentive to meet notification timeframes is detrimental to the consumer experience.

- As set out previously, there is no rebate when a customer's NBN line does not meet its plan speed. This is a key driver of poor customer experience and will continue to be so during the first regulatory cycle when the majority of customers will remain on MTM technologies. While there is a PIR[5] rebate, this is insufficient as it only applies in limited circumstances. Under the WBA, NBN Co can charge RSPs for 50/20 and 100/20 speeds supplied on FTTC, FTTB and FTTN lines but can supply speeds as low as 25Mbps without any consequence.

- Unlike faults, a performance incident has no rebates associated with its service levels. This means customers can experience up to 7 drop-outs per day with no consequence if NBN Co does not address the problem with the set timeframes.

In contrast to other regulated industries, there is also no broader consequence for NBN Co when it fails to deliver its forecast – and funded – service quality to consumers. There is no explicit performance incentive scheme in the SAU which would, as set out by the ACCC in its Consultation Paper, provide NBN Co with direct financial benefits from exceeding service standard commitments that inform the regulation of its prices, and costs for falling short of those commitments. Failure to include an appropriate scheme effectively removes the interaction between price and service quality.

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[4] Telstra, Telstra Submission in relation to NBN's proposed SAU variation, 17 February 2023, TELSTRA CORPORATION LIMITED (accc.gov.au)

[5] Peak Information Rate (PIR) is the theoretical speed that an end-user could receive if there were no other end-users using at the same time.

The transparency and reporting mechanism proposed by NBN Co does not appear to provide any incentive to uplift service performance over the first regulatory cycle. While useful for transparency and information purposes, the Service Improvement Plan is non-binding with no direct consequences under the SAU for a failure to deliver the improvements included. Similarly, the proposed Service Performance Review is backwards-focused and aimed at ensuring that enhanced service level commitments are only made where NBN Co is confident of its ability to meet the commitment.

NBN Co provides additional detail on the Service Performance Review in its Response to the ACCC Draft Decision (May 2023). Specifically, that NBN Co will conduct a review of its own performance against, and the effectiveness and relevance of, existing WBA service levels and performance objectives for NBN Ethernet. The transparency provided by such a report is critical to identifying areas where improvements are required to improve the consumer experience. However, Telstra considers the service performance review would be more appropriately undertaken by an independent party appointed by the ACCC. An independent party will be better placed to make an objective assessment, including appropriate consultation with other stakeholders to deliver a full and robust view of the impact of NBN performance on end-users. An independent party would be less prone to complaints that NBN Co would be “marking its own homework” on how it has delivered on promises to improve service quality for end-users.

NBN Co must face a clear consequence for failing to meet its baseline service quality. This could be reduced capex inclusions in subsequent regulatory periods or a WAPC ‘penalty’. In contrast to rebates, this type of financial consequence would closely reflect the link between price and service quality, a fundamental aspect of the regulatory framework. Telstra does not consider the SAU is acceptable absent the inclusion of NBN Co facing consequences for not meeting its regulatory commitments.

2.2 Pricing outcomes delivered by the SAU are not in the LTIE

Telstra believes it would be in the long-term interests of end-users for NBN Co’s wholesale prices to be set lower to improve affordability and encourage more efficient use of the NBN infrastructure, particularly in the context of the social and private returns of the Government’s investment in NBN being likely to already outweigh its costs. However, if the ACCC and Government’s decision is that price increases in line with CPI are in the LTIE we respect that decision, but they need to be accompanied with improvements in service quality particularly in the first regulatory period.

There are, however, some additional considerations that are important for the assessment of whether the SAU is in the LTIE.

2.2.1 The AVC/CVC price for any 50/20 customer should be capped at $55

It makes little sense for NBN’s price structure to result in individual customers on a 50/20 plan costing more to supply than customers on the 100/20 plan.

If the cost of a 50/20 plan (AVC and overage) is not capped, RSPs are likely to carry out costly and complex arrangements to migrate 50/20 customers that individually cost more than $55 to a 100/20 plan (and back down again if their usage falls). That will require complex analysis and predictive tools built and maintained by all RSPs. It would also require multiple orders for plan migrations to NBN Co, moving customers up and down speed tiers so that RSPs ensure their 50/20 customers don’t cost more than the 100/20 plan. Those migrations would need to occur daily to minimise overage – while wholesale prices are often expressed in per-month terms, RSPs are charged on a daily basis. The effort involved in ensuring no individual 50/20 customers cost more than $55, and no 100/20 customer would cost less on a 50/20 plan, could involve tens of thousands of customer migration orders each day. Further, many customers on NBN Co’s network would be migrated up to 100/20 even though NBN Co’s network does not support those speeds, nor could RSPs provide those speeds.

It would be much more efficient for NBN Co to operate an effective 50/20 price cap of $55 once for all RSPs, than for hundreds of RSPs to self-manage their own cap, particularly given it is not NBN Co's intent to earn revenue in excess of $55 for high use 50/20 customers.

If RSPs are not able to perfectly migrate 50/20 customers to cap their costs at $55 and end up paying NBN costs for individual customers in excess of $55, then this would be due to RSPs having imperfect information about customers' usage and costs on the NBN, or reduced ability to undertake dynamic customer plan migrations. It would not be appropriate for NBN Co to profit from that imperfect information or constraints in customer plan migrations. It might also be the case that NBN Co has incentives to not provide sufficient information or to establish barriers to RSPs migrating customers (for example, NBN Co currently caps the number of migration orders a RSP can request). We do not expect NBN Co intends to profit from the imperfect information or make difficult the flow of adequate information at this point in time, but that might change in future or be an unintended consequence. Further, RSPs that are less able to perfectly migrate customers will be at a competitive disadvantage to those that can. This would harm the competitive process.

In terms of NBN Co's legitimate business interests, NBN Co will be much better off financially with a 50/20 price of $50 plus overage and with an individual customer cap of $55, than it would be with the current 50/20 price of $45 plus overage.

2.2.2 CVC allowances

Since introducing bundle plans, NBN Co has annually increased the amount of CVC inclusions in its bundles acknowledging that customer usage continues to grow. NBN Co also proposed to increase CVC inclusions on an ongoing basis at half the rate of growth. However, NBN Co has not increased the inclusions since May 2022, and recently decided not to do so again, until WBA5 comes into effect.

Not increasing inclusions might have been palatable if NBN Co had met its timing objective set by its Shareholder Ministers:

> *"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. They 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.*[6]

However, by taking at least three SAU variations until developing a proposal that might be capable of acceptance, NBN Co has delayed the SAU implementation to potentially as late as the end of 2023. Not increasing inclusions in bundle plans means RSPs are facing increasing overage costs. RSPs are being made worse off through the interim period before new arrangements are implemented.

We therefore consider that NBN Co must rebase its data inclusions for its bundle plans and include additional capacity to reflect the increased customer usage since May 2022.

2.2.3 Appropriate construct of the WAPC

We are still concerned about the operation of the WAPC. It does not measure the changes in average prices from one year to the next. It measures the price forecast for the next year assuming that it was applied to demand from the previous year. This indicates that if the mix of demand changes between consecutive years, the WAPC will not pick this up.

Using NBN Co's WAPC models for FY25 and FY26, it is possible to show that the average price over all AVC services increases from $47.87 in FY24 to $51.32 in FY25 (see the below table). This is a 7.2%

[6] Minister for Finance and Minister for Communications, Letter to NBN Co, attached to letter to ACCC dated 22 July 2022.

weighted average price increase that is well above NBN Co's forecast of CPI increase of 4.8% for FY25. NBN Co's approach measures this weighted average price change as only 4.63%.

NBN Co's Approach to the WAPC

Time periods		p1q1	p2q1	Yearly increase	p2q2	p3q2	Yearly increase
t=1, 2024	Total NBN Revenue	5,030,247,488	5,263,253,983	4.63%	5,504,146,569	5,670,510,249	3.02%
t=2, 2025	Number of AVCs	8,755,914	8,755,914	0.00%	8,937,247	8,937,247	0.00%
t=3, 2026	Average Price	$ 47.87	$ 50.09	4.63%	$ 51.32	$ 52.87	3.02%
	WAPC Constraint			4.80%			3.20%

Since the WAPC formula does not account for changes in the mix of demand, NBN Co has a strong incentive to force customers to higher value plans even though they might not want or be capable of achieving those speeds. NBN Co would also face a strong incentive to set prices in a way that minimises demand for low priced products – which tend to be consumed by low- income customers or customers experiencing hardship.

A better operation for the WAPC would be to structure it so that the numerator is an average price for a second period (i.e. P2Q2/SUM[Q2]) and the denominator is an average price for the last period (i.e. P1Q1/SUM[Q1]). We note that NBN Co publishes a similar measure from time to time, representing it as the average residential ARPU. As illustrated in the table below, it is relatively simple to calculate using the information already in NBN Co's WAPC models.

Telstra's Proposed Approach to the WAPC

Time periods		p1q1	p2q2	Yearly increase
t=1, 2024	Total NBN Revenue	5,030,247,488	5,504,146,569	9.42%
t=2, 2025	Number of AVCs	8,755,914	8,937,247	2.07%
t=3, 2026	Average Price	$ 47.87	$ 51.32	7.20%
-	WAPC Constraint	-	-	4.80%

We consider that this would be more dynamically efficient than a structure where the cap measures the change in prices keeping demand constant (i.e. where the numerator is P2Q1 and the denominator is P1Q1). The proposed approach still has strong incentives for NBN Co to increase demand overall, as it would keep the additional revenue being higher than forecast.   It would also protect against future pricing strategies that are unfavourable to consumers and competition in future regulatory periods.

2.3 Low Income Measures are inadequate

Telstra agrees with the ACCC's Draft Decision that the level of commitments made in the SAU regarding low-income measures could be strengthened.[7] We also agree with all of the ACCC's suggestions as outlined within the Draft Decision, but consider that even if NBN Co were to adopt all of these, there is still room for improvement. In our view, NBN Co, as the broadband network operator, needs to take a primary role in supporting the needs of low income, vulnerable and unconnected customers. NBN Co's SAU Variation effectively limits NBN Co to actively consulting with representatives of low income and other disadvantaged groups via its Low-Income Forum and to NBN Co reporting, each Financial Year, via an update on its website regarding its initiatives to improve access for low-income, vulnerable, and unconnected customers.[8] We consider that NBN Co's commitments in the SAU are currently insufficient to protect our most vulnerable Australians and drive digital adoption and must be enhanced, particularly given the SAU will permit NBN Co to lock in price rises until at least FY30. We also remain concerned that much of the detail of NBN Co's commitments to support low-income customers are moved to subordinate documents such as the Terms of Reference of the Forum thereby limiting scrutiny by the

[7] ACCC, Draft Decision, pg. 38
[8] NBN Co SAU Variation, 2B.7

ACCC and consider NBN Co should seek to provide more detail and certainty of its commitments within the SAU itself.

The latest Australian Digital Inclusion Index (ADII) shows that 11% of Australians are still characterised as highly excluded,[9] with affordability remaining a central issue to closing the digital divide. A large proportion of Australians are now also mobile only, and the research shows that despite the benefits of mobile internet, this group is relatively digitally excluded.[10] In addition, ACCAN's research opines that those on incomes less than $35,000 per year were also less likely to have a home internet connection.[11] ACMA also found in its *Financial hardship in the telco sector* report that in the last 12 months almost 2.4 million Australians had trouble paying or had concerns with their bills.[12] ACMA Chair, Nerida O'Loughlin highlighted these concerns and pressed the need for telcos to do more, stating "*With the current cost of living pressures, telcos need to be even more attuned to the needs of customers who may be doing it hard*."[13] Telstra remains committed to supporting our most vulnerable Australians through a range of programs,[14] however given NBN Co's status as the network operator and wholesaler, NBN Co needs to take a more significant role in supporting RSPs to support retail customers. RSPs need NBN Co to be responsive to the needs of low-income, vulnerable and other unconnected customers, otherwise the ability to provide sustainable support to low-income and vulnerable customers will be diminished (particularly as wholesale input prices will continue to rise). For example, today there is no mechanism for RSPs to seek recourse from NBN Co should a customer express hardship concern. Given the criticality of NBN services for consumers, NBN Co must propose a suite of measures that highlight its increased commitment to RSPs on supporting these customers with appropriate offers to encourage digital adoption.

2.3.1 A fit for purpose baseline package should be developed and endorsed by the Low-Income Forum

As noted by the ACCC, the SAU Variation does not commit NBN Co to develop a special offer for low income or disadvantaged consumers but does contemplate the potential for NBN Co to introduce discounts that are targeted at such consumers.[15] We consider this to be a missed opportunity and something that must be addressed by NBN Co in its revised SAU. To date, Telstra has proposed various proposals to NBN Co on services that may aid in bridging the gap for low-income customers, however none of these proposals has thus far been adopted, with decisions on these proposals pushed back until after the SAU is accepted.

A key outcome of the Low-Income Forum must be a fit for purpose package, developed and endorsed by the Forum which should act as a set of baseline commitments to RSPs from NBN Co. Such a package should then be periodically reviewed. The Forum could then hear other ideas (as currently contemplated) that support digital enablement, however, we consider a baseline package a necessary safeguard, particularly against the backdrop of increasing prices. Whilst we support NBN Co's commitment to introduce a low-cost service – its "Basic Bundled Offer' at $12 per month that can be used to deliver both voice and broadband, more can be done. We also consider that the usage of this service should only be measured at CSA peak (evening), when NBN Co would incur cost in delivering the additional bandwidth.

[9] Australian Digital Inclusion Index: 2021
[10] Case study: Mobile-Only Australians - Australian Digital Inclusion Index. In 2021, the number of mobile only users is 9.6%.
[11] ACCAN,2022, ACCAN 2022 Research Snapshot Affordability.pdf
[12] ACMA, Financial hardship in the telco sector: Keeping the customer connected | ACMA
[13] ACMA calls on telcos to improve support for customers in hardship | ACMA, 2 May 2023
[14] Access for everyone (telstra.com.au)
[15] Draft Decision, pg. 33, NBN Co, SAU Variation, Module 2, Schedule 2C.4(3)(a)(iv)(B)

As discussed in our July 2022 submission,[16] a new Carrier Licence condition was imposed on Telstra to protect the interests of low-income consumers, including requirements to work collaboratively with welfare groups to develop the 'Access for Everyone' package, provide support to compensate existing low-income customers and also to meet the special needs of low-income consumers with an affordable basic service. The commitments made by NBN Co in the SAU are not as firm, and in our view do not adequately protect consumers.

2.3.2 The design of the Low-Income Forum can be improved

Under the current SAU, NBN Co will chair the Low-Income Forum. However, we do not think this creates the appropriate setting to drive the right outcomes. Small changes, such as the setting of an independent chair and having experienced representatives involved in the design of programs, will create a better environment to drive change and ensure that the needs of vulnerable customers remain at the fore. Such an approach was adopted by Telstra in development of the LIMAC forum and Comms Alliance took a similar approach when developing the TCP Code and, in our view, this has led to positive and lasting improvements for customers. Given the Low-Income Forum is designed to hear the concerns of this important cohort of customers, it should be chaired by an appropriate and independent advocate of the customer.

2.3.3 Improving Australia's digital inclusion should be a key aim of NBN Co's Low-Income Forum

NBN Co needs to set clear objectives for increasing the digital adoption of low-income, vulnerable and unconnected users. As stated above, with around 1 in 9 Australians still characterised as being highly excluded[17] and affordability a central issue, the Low-Income Forum being committed to by NBN Co is an important vehicle to close this gap. Whilst NBN Co's commitment to openly reporting and updating status of its initiatives[18] will increase transparency, success of NBN Co's Low-Income Forum should be measured by tangible and measurable improvements in the ADII and/or increased take up rates of services. Such a firm objective must form part of NBN Co's low-income remit.

2.4 Expenditure Review process requires more rigorous assessment

2.4.1 NBN Co needs to adopt a more rigorous approach to assess whether spending is efficient and prudent

NBN Co has not demonstrated efficiency and prudency objectives in the first regulatory cycle. This does not set a good precedent to assess their proposed expenditures in future. Telstra is concerned that without a more rigorous assessment this will affect future pricing, hence it will be important that only efficient capex is entered into the asset base.

In our submission in February, Telstra provided a range of points to highlight why there must be strong thresholds to ensure future expenditure is efficient and in the LTIE.[19] Our submission argued for a more rigorous approach to assessing expenditure highlighting the methodological approach used by QCA delivering prudent and efficient capital expenditure for Aurizon. Telstra supports the recommendations

[16] Telstra, July 2022 Submission - Telstra - Public - NBN Co SAU Variation March 2022 - 20 July 2022.pdf (accc.gov.au), pg. 32
[17] Australian Digital Inclusion Index: 2021
[18] NBN Co SAU Variation, 2B.7
[19] Telstra Submission in relation to NBN's proposed SAU Variation, 17 February 2023, s2.5 and 4.7 https://www.accc.gov.au/system/files/Telstra%20-%20Submission%20to%20ACCC%20consultation%20paper%20-%20Public%20version.pdf

from Grex Consulting regarding the review process for the first regulatory cycle as it will deliver a range of benefits to both NBN Co and the ACCC in the expenditure review process.[20]

The approach outlined by Grex Consulting would enable NBN Co to:

- deliver further information representing key metrics and costs,
- explain the proposed benefits of proposed and forecast expenditure,
- to deliver a business case based on the cost and benefits of proposed expenditure items.

Further to this, Telstra supports the recommendations from Grex Consulting of the need for the ACCC to develop an annual reporting process that will:

- allow them to support their assessments more accurately,
- focus on the benefits of NBN Co's current initiatives, and
- measure progress across the regulatory cycle.

2.4.2 NBN Co could achieve an investment grade standalone credit rating with more debt than Sapere's modelling assumes

The Sapere report on the revenue required by NBN Co to achieve a standalone investment grade credit rating (SAIGCR) relies on a Debt to EBITDA ratio threshold of 1.5x – 3x for a Baa credit rating band.[21] Telstra commissioned a report by Incenta Economic Consulting that found that Debt/EBITDA ratio for a BBB- / Baa3 standalone investment grade credit rating would more likely be 4.25x to 4.5x.

In their assessment of NBN Co's SAIGCR Sapere appears to have relied on the statement from Moody's that:

"NBN's A1 rating benefits from a 6-notch rating uplift to its ba1 BCA [baseline credit assessment], based on Moody's assessment of high level of support from the Australian Government (Aaa stable) in times of need."[22]

Telstra believe that Sapere may have incorrectly interpreted a baseline credit assessment to mean the same as a stand-alone credit assessment when evaluating NBN Co's potential credit rating. In arriving at their conclusion Sapere appear to have placed undue weight on NBN Co's government ownership. Although government ownership will be incorporated in deciding on a higher rating assessment, it would not be the only consideration. Credit ratings agencies such as Moody's will consider a range of factors in devising their final credit rating score, including:

- Scale
- Its role as the dominant/national provider of fibre connection
- Customer diversity
- A stable and predictable regulatory framework
- Low customer churn
- High barriers to entry
- High barriers to exit for customers.

[20] Grex Consulting, 2023, https://www.accc.gov.au/system/files/Grex%20Consulting%20-%20Draft%20report%20on%20expenditure%20-%20Part%20D.pdf
[21] Sapere, 2023, Revenue required for investment grade credit rating, Report to DLA Piper, s2.3.2, https://www.accc.gov.au/system/files/Sapere%20Research%20Group%20-%20Revenue%20required%20for%20investment%20grade%20credit%20rating.pdf
[22] IBID s2.3.1

Rather than targeting a primary credit metric of 3x Debt/EBITDA ratio for SAIGCR, NBN Co could accept a higher ratio of 4.25x – 4.5x and still attain an investment grade credit rating. NBN Co's business model and its dominant market position would enable it to achieve its investment grade credit rating with higher debt levels then Sapere has outlined in its modelling.

2.5 NBN Co's proposed Smart Communities product requires greater clarity

Telstra notes that NBN Co is currently consulting on the development and introduction of a new 'Smart Communities' product, which NBN Co expects to introduce during the first regulatory cycle. It is unclear to Telstra if this product will be regarded as core or non-core, hence we recommend the ACCC carefully scrutinise its introduction to ensure that costs are appropriately allocated and RSPs are not paying for NBN Co's entry into a competitive market.

2.6 NBN Co's exit of CSAS requires greater clarity

Telstra notes that NBN Co is currently consulting on the exit of the CSAS product.[23] NBN Co has treated this product as a core regulated service. It is unclear whether NBN Co has excluded all the costs associated with this product from the regulatory asset base and ensured that those costs are not allocated to other services, including residential services.

[23] NBN Co, Product Construct Consultation Paper RMID1065 Cell Site Assess Service Withdrawal- April 2023

3 OTHER CHANGES REQUIRED TO THE REGULATORY FRAMEWORK

3.1 Post 2032 Framework

The ACCC should primarily have regard to the statutory criteria (reasonableness), and the SAIGCR can be specified as an input into the legitimate business interests of the access provider (as per s152AH(1)(b)). But it should not be given undue weight over the other criteria.

Telstra notes that in their letter of response to the November SAU NBN Co has sought to address stakeholder concerns around the SAIGCR in the post 2032 framework.[24] We are satisfied with NBN Co's proposed additional clauses to the Module 3 principles and allowing NBN Co the potential to attain an SAIGCR. The proposed clauses offered by NBN Co appear to have given regard to the potential diminished regulatory powers of the ACCC, providing the ACCC with greater flexibility concerning prudent and efficient expenditure within the regulatory framework than offered in the November SAU Variation.

Telstra would like to see the removal of the timeframe reference in clause 1[25] however, as we believe that consideration of any timeframe to achieve an investment grade credit rating should remain an operational concern for NBN Co, rather than the regulatory body.

3.2 NBN Co still need to deliver improvements in their approach to the BBM

Telstra is in general agreement with the ACCC regarding Schedule 2G.5 of the SAU Variation and the BBM proposals for the regulatory period. However, some of the concerns that we raised in our February submission remain and will need to be addressed in any revised SAU that NBN Co submits.[26]

Third party funding and government grants: Telstra agrees with the ACCC that in any SAU Variation NBN Co needs to consider its treatment of funding from third parties and grants obtained from government. This would include Telstra's infrastructure remediation credit which should be considered in the BBM as payment to NBN Co each year of each regulatory cycle.[27] Telstra also agrees with the ACCC that NBN Co should not be able to over recover costs that are related to the delivery of core services.

Improved transparency: NBN Co needs to provide stakeholders with greater transparency in the public BBM explanatory notes. The ACCC in the draft decision[28] outlined areas of refinement that could potentially address issues noted by stakeholders and agree that NBN Co should include these in any subsequent SAU Variation.

Weighted Average Asset Lives: Telstra is satisfied that the supplementary submission depreciation approach for Module 2 (Frontier Report)[29] addresses concerns raised in our February submission on the weighted average asset lives calculations. However, we agree with the ACCC assessment that NBN Co should define in Schedule 2G separate asset classes for those commissioned prior to FY24 and those commissioned from FY24 to promote investment that is more economically efficient.

[24] NBN Co, 2023, https://www.accc.gov.au/system/files/NBN%20Co%20-%20Response%20to%20issues%20raised%20in%20consultation.pdf
[25] IBID
[26] Telstra, 17 February 2023, Telstra Submission in relation to NBN's proposed SAU Variation s4.5 p43
[27] IBID
[28] ACCC, April 2023, Variation to the NBN Co Special Access Undertaking, Draft Decision, s4.6.3, p50
[29] Frontier Economics, 13 March 2023, NBN Co's depreciation approach for Module 2