



Funding of universal telecommunications services

ACCC submission

May 2024

Acknowledgement of country

The ACCC acknowledges the traditional owners and custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.

Australian Competition and Consumer Commission

Land of the Ngunnawal people

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Introduction

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to make a submission to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts' discussion paper on the Funding of universal telecommunications services.

The ACCC is the economy-wide competition regulator responsible for enforcing the Competition and Consumer Act 2010 (CCA). We protect Australian consumers by fostering competitive, efficient, fair and informed Australian markets including telecommunications markets.

Overview

The ACCC has noted in previous submissions that a universal service obligation remains a necessity. Any design of the Universal Service Obligation (USO) and Regional Broadband Scheme (RBS) funding arrangements should promote competition, contestability and economic efficiency, while delivering the infrastructure and services needed by consumers to participate fully in society.

We note that there is increasing overlap between the two funding mechanisms, both in scope and coverage. While the RBS promotes the delivery of broadband services in non-commercial areas, the USO provides support for voice and other public interest telecommunications services largely provided over Telstra's remaining legacy copper network. Voice services, that largely meet the criteria of a standard telephone service, can now be delivered to a large proportion of premises through mobile networks and via broadband applications using voice over internet protocol (VOIP) delivered over fibre, wireless and satellite networks.

It appears likely that funding of infrastructure to provide USO services may become much less necessary over time, given the increasing availability of alternative networks to provide these services, even in the most remote areas of Australia. This potentially represents an opportunity to focus on more targeted and efficient interventions: funding uncommercial wholesale access infrastructure, with programs designed to address universality focused more at the retail level.

While affordability can be addressed through payments via the tax and transfer system, which has the least distortionary impact on telecommunications markets, this needs to be balanced against ensuring the delivery of the social objectives of a universal service obligation. There is still a need for universal services to be provided to the most vulnerable communities, to ensure they can access baseline communication services. Similarly, services fulfilling social objectives such as the National Relay Service, payphones and the Emergency Call Service are likely best funded through ongoing Budget measures.

In the short term, there are likely to be opportunities to enhance the delivery of the RBS and improve the effectiveness of the current funding arrangements for NBN Co's loss-making non-commercial fixed wireless and satellite services. This might begin with reforms to how costs are to be assessed, for example, by using an efficient, forward-looking cost concept and more robust methodologies to calculate costs. With these in place, we would support government considering expanding the contribution base to include high speed broadband services supplied over 4G and 5G fixed wireless networks.

The ACCC considers that all market participants offering broadband services in profitable metropolitan areas as the principal connectivity solution to consumers to meet their individual needs should contribute to costs in the non-commercial footprint. A broader RBS charge base would minimise market distortions and promote economic efficiency. Broadening the RBS charge base to reflect the current technology landscape and changing consumer preferences would also help ensure the RBS continues to provide an appropriate level of funding to support the government's objectives in relation to non-commercial NBN fixed wireless and satellite networks.

Universal Service Obligation design and funding

Universal Service Obligation design and funding of USO services should be transparent, flexible and cost-effective and also competitively neutral. Given the rollout of the NBN and the ability of fixed wireless to offer voice-only services, and increasing technological advances, there is now an opportunity to reconsider how universal services can be delivered and funded most efficiently. If USO customers are to be served on existing mobile or NBN fixed wireless networks, it will be important to ensure that any funding is transparent and targeted to deliver the most efficient and competitively neutral outcome.

The ACCC considers that funding for the USO should also be technology neutral in order to promote the efficient use of existing infrastructure and promote competition between viable delivery alternatives. As a general principle, the ACCC considers that funding of a universal services program should be directed toward the most efficient form of service delivery available in each area.

To minimise market distortions, subsidies should be contestable and targeted to promoting specific and measurable objectives. If not, they could introduce economic inefficiency, particularly if the funding is tied to a delivery technology that demands an unnecessary level of resources.

Data collected through the ACCC's record keeping rules shows the continual decline in copper-based services as customers migrate onto services delivered over alternative technologies, including the NBN, mobile networks and low earth orbit satellites (LEOSat).

The ACCC would support the migration of USO voice customers from the legacy copper network to quality-equivalent voice services provided on either NBN fixed wireless or on mobile networks, as this will allow the copper network to eventually be shut down and increase utilisation of alternative networks. However, this then raises the question of whether the underlying infrastructure serving these customers needs to be funded. Given the RBS is already funding NBN Co's fixed wireless network, this would indicate that the retail service provider should not receive any funding for serving a customer on the NBN within the fixed line and fixed wireless footprints, unless Priority Assistance or similar services are required. This may also provide NBN Co the opportunity to expand coverage, thereby increasing retail competition for these customers.

We note that there are likely to be a small number of consumers seeking voice-only services who reside in locations outside mobile and NBN fixed wireless network footprints. A targeted solution is needed for these customers with subsidies being contestable and targeted to promoting specific and measurable objectives including quality standards. Again, funding should be based on reliable measures of the efficient, forward-looking costs of providing uncommercial services.

It is likely, however, that voice-only services provided over LEOSat, perhaps through a retail provider purchasing wholesale satellite service, will provide a high-quality service, although

expensive. Affordability is of course a key component of universality. Telstra is trialling services over Starlink for example, and it will be important to consider whether subsidies are required to make these services more affordable, despite being provided over commercial networks. Part of this puzzle will be whether other retailers can offer similar services under similar wholesale arrangements to provide competition.

Telecommunications services such as Payphones, Emergency Call Service and the National Relay Service are essential social services and funding for these services would be best addressed outside of a telecommunications levy and be directly drawn out of general budget revenue, similar to other social services.

Contributors to current USO funding

We note that funding decisions for USO services are complex with policy makers needing to find a balance between broadening the funding base or promoting competition to deliver lower-cost USO services.

The Telecommunications Industry Levy (TIL) has been often criticised as an inefficient funding mechanism where the levy proceeds have been simply returned to the incumbent supplier of universal services. If the TIL is to be retained any funding model thresholds need to be reviewed and set to ensure that only efficient expenditure on USO services is recovered. As we argue above, this is because baseline telecommunications services outside the NBN fixed and wireless networks are now likely available via a number of technologies including NBN satellite and commercially available fixed wireless, satellite and mobile networks.

We note that Telstra and NBN Co benefit significantly from universal service funding. Telstra via the Telstra Universal Service Obligation Performance Agreement (TUSOPA), and NBN Co by the RBS levy. Contestability in downstream markets should be a key objective of future funding arrangements. The basis on which a levy is applied should not impose disproportionately higher costs on network owners in a way that restricts competition or deters competing networks owners from entering the market. Industry funding of a baseline service could be considered if it is impracticable to transition fully to budget funding of unprofitable areas.

Regional Broadband Scheme

Broadening the RBS charge base

The ACCC agrees with the view expressed by the former Bureau of Communications Research (BCR) in its 2016 final report¹ that “NBN equivalent” broadband services are the most appropriate levy base for the RBS. Although the BCR did not then recommend including mobile broadband services as part of the levy base as they were not close substitutes to fixed line services at that time, the BCR noted that this may change in the future with the introduction of 5G technology, or if mobile network operators leverage their mobile networks to deliver fixed wireless services.²

¹ Bureau of Communications Research *NBN non-commercial services funding options* initial consultation paper final report (March 2016), page 7.

² Bureau of Communications Research *NBN non-commercial services funding options* initial consultation paper final report (March 2016), page 94.

Given the increasing availability and growing uptake of 4G and 5G fixed wireless services in metropolitan areas and the emergence of alternative broadband technologies, including LEOSat, the ACCC considers it is timely for the government to reconsider the RBS charge base.

In light of these market developments, the current RBS charge base, which is targeted at NBN equivalent fixed line broadband services, may be distorting investment incentives and impacting on infrastructure-based competition.

Provided important reforms are made to how RBS costs are assessed, including using an efficient, forward-looking cost concept, consideration should be given to whether it is now appropriate to broaden the RBS charge base to include high speed broadband services supplied over 4G and 5G fixed wireless networks. In the ACCC's view, all market participants offering high speed broadband services in profitable metropolitan areas as the principal connectivity solution to consumers to meet their individual needs, should contribute to the costs in the non-commercial footprint. A broader RBS charge base would minimise market distortions and promote economic efficiency.

As the RBS charge is currently only borne by fixed line broadband network operators, this improves the economics of providers offering 4G and 5G fixed wireless broadband, which may be driving greater take up of these services by consumers than would otherwise be the case.

We expect the availability and take up of fixed wireless broadband services to continue to accelerate with the deployment of 5G Standalone technology by Australia's mobile network operators.

Adjusting the RBS charge base to reflect the current broadband technology landscape and changing consumer preferences is likely to help ensure the RBS continues to provide a sustainable level of funding to support the net costs of supplying non-commercial broadband services over NBN Co's fixed wireless and satellite networks. Under the current RBS funding arrangements, as more consumers substitute 4G and 5G fixed wireless services for fixed line broadband services, the RBS funding base will continue to be eroded over time. This will necessitate ongoing increases to the RBS levy amount, which is likely to further disadvantage fixed line network operators in those geographic areas where they compete with 4G and 5G fixed wireless providers.

There is some risk that broadening the levy base to include 4G and 5G fixed wireless broadband services, which are a source of potential competitive constraint on NBN Co, could result in higher prices for these services. However, expanding the RBS charge base to include these services is likely to improve the efficiency of the RBS funding arrangements by spreading the costs more broadly across participants competing in the broadband market.

The ACCC does not recommend including LEOSat services in the RBS charge base at this time as these services are largely supplied in areas outside of NBN Co's fixed line footprint and are currently priced at a significant premium to NBN equivalent services. While the ACCC considers that LEOSat technology is likely to play an increasingly important role in providing broadband and voice connectivity in areas outside the NBN fixed line and fixed wireless footprint in the future, they are not considered to be close substitutes in terms of price at this time.

To minimise the risk of chilling investment incentives by broadening the RBS charge base, the ACCC suggests that the government adopt a measured approach, which could include transitional concessions for 4G and 5G fixed wireless broadband providers.

Appropriateness of the charge base unit for the RBS

If the government decides that it is appropriate to broaden the RBS charge base to include 4G and 5G fixed wireless broadband services, consideration would need to be given to the best approach for revising the RBS charge base unit. This could potentially include simplifying the charge base unit by basing it on services in operation, rather than “chargeable premises”.

RBS general exemption for smaller carriers should be maintained

The ACCC supports the general exemption for smaller carriers, who are not required to pay the RBS levy. This is designed to reduce the regulatory burden for these carriers and not to deter new entrants.

The ACCC considers that the RBS exemption for smaller carriers promotes economic efficiency and should be maintained as it prevents the levy from disproportionately impacting small network owners or dissuading new entrants and chilling investment incentives.

We do not consider that there is a strong case for varying the general exemption as the current threshold would appear to be set at an appropriate level to ensure that the regulatory cost and burden to businesses of complying with the RBS regulations and the administrative costs of collection are not disproportionate to the amount collected.

Transparency and administration

The ACCC considers that the RBS has improved transparency in relation to the support being provided for NBN Co’s fixed wireless and satellite services. That said, there may be scope for the government to consider opportunities to provide additional transparency.

In this regard, we note that NBN Co is required to publish an annual RBS Transparency Report pursuant to its RBS Contract obligations in accordance with section 80(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act). These reports include information in relation to the amounts received by NBN Co through the RBS, its expenditure on the fixed wireless and satellite networks, and information on the footprint and performance of both networks.

NBN Co classifies expenditure in its reports as operating or capital expenditure based on Australian Accounting Standards. In its latest report which relates to the year ending June 2023, NBN Co states that its direct operating and capital expenditure includes various grant funded amounts, including amounts from the Federal Government for the Fixed Wireless and Satellite Upgrade Program.³ However, the report does not identify the amount of NBN Co’s direct operating and capital expenditure for the reporting period which was funded by government grants.

It is important that any government funding NBN Co receives for the provision of non-commercial fixed wireless and satellite services is netted out of the assessment of NBN Co’s net losses/costs so there is no double recovery under the RBS.

³ NBN Co, Regional Broadband Scheme Transparency Report, for the reporting year ended 30 June 2023.