

## Submission

12 July 2023

Submitted via email: [telco.regulation@acc.gov.au](mailto:telco.regulation@acc.gov.au)

**Re: Public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service discussion paper**

The Australian Communications Consumer Action Network (**ACCAN**) thanks the Australian Competition and Consumer Commission (**ACCC**) for the opportunity to comment on the public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service discussion paper (**the discussion paper**).

ACCAN is the peak body that represents consumers on communications issues including telecommunications, broadband, and emerging new services. ACCAN provides a strong unified voice to industry and government as we work towards communications services that are trusted, inclusive and available for all.

The discussion paper provides a timely opportunity to re-examine the suitability of existing access declarations for telecommunications infrastructure services. Access declarations need to promote the long-term interests of end-users (**LTIE**). The ACCC assesses measures to promote LTIE through three criteria:<sup>1</sup>

- Promoting competition.
- Any-to-any connectivity.
- Economically efficient use of and investment in infrastructure.

Considering these criteria, ACCAN supports the declaration of:

- Domestic transmission capacity services.
- Fixed line services on the same and/or similar basis as existing arrangements.
- Mobile terminating access services (**MTAS**) for voice.

ACCAN provides further detailed comments on the discussion paper in **Attachment A**.

We thank the ACCC for the opportunity to comment on the discussion paper. Should you wish to discuss any of the issues raised in this submission further, please do not hesitate to contact me at [samuel.kininmonth@accan.org.au](mailto:samuel.kininmonth@accan.org.au).

Yours sincerely,  
Samuel Kininmonth  
Policy Adviser

---

<sup>1</sup> ACCC 2016. *Guideline for Part XIC declaration provisions for telecommunication services*. Available at: <https://www.accc.gov.au/about-us/publications/guideline-for-part-xic-declaration-provisions-for-telecommunication-services>

## **Attachment A. Further comments on the discussion paper**

### **Domestic transmission capacity services**

ACCAN supports the continued declaration of domestic transmission capacity services (**DTCS**) on the same or similar terms to existing arrangements. DTCS are a critical input into the delivery of downstream retail communications services for consumers.

#### *Promoting competition*

Declaration of DTCS will promote competitive outcomes in downstream retail markets by ensuring that all retail market participants have access to DTCS on uniform or standard terms that reflect the efficient costs of access. While there has been considerable investment in transmission capacity over the past five years, as noted by the ACCC there are many regional transmission corridors in which there are limited or no economically viable alternatives to monopoly DTCS. In ACCAN's view continued declaration of DTCS where there is limited, or no competition is appropriate and consistent with promoting the LTIE.

ACCAN considers that the competition criteria applied continues to be broadly appropriate to ensure that access services are declared where there is limited competition. However, noting recent investments, we consider that further refinements to the existing competition criteria may be appropriate, if more granular or accurate criteria are available to the ACCC.

#### *Ensuring any-to-any connectivity*

In ACCAN's view declaration will promote any-to-any connectivity. Noting the high barriers to entry in the DTCS market in regional transmission corridors, continued declaration ensures access for service providers wishing to acquire transmission services on efficient terms to provide retail services in regional areas and nationally.

ACCAN supports the continued declaration of last-mile infrastructure or 'tail-ends'. We note that a similar approach to the assessment of competition could be taken with 'tail-ends' for broader DTCS. While there may be incentives for efficient investment in metropolitan areas, there are likely to be limited incentives to invest in regional, rural and remote (**RRR**) contexts and accordingly 'tail-ends' may form a monopoly bottleneck for services.

#### *Encouraging economically efficient use of and investment in infrastructure*

The continued declaration of DTCSs promotes the economically efficient use of the network infrastructure where there is little competition. We agree with the ACCC that maintaining regulation in areas where investment in new transmission services is less likely would enable access to DTCS on terms of access that approach commercially negotiated terms.

ACCAN notes that declaration may have limited impact on incentives for efficient investment in DTCS, noting that the scope of application is constrained to routes characterised by limited or no competition. Accordingly, in our view the continued declaration is consistent with measures of dynamic efficiency, as the framework provides incentives for efficient investment in DTCS and does not unduly curtail investment incentives.

## Fixed line services

ACCAN supports the continued declaration of fixed line services. While we note that the number of fixed line services is in decline, fixed line services remain a critical service for consumers, particularly those residing in RRR Australia.<sup>2</sup> In forming our view on the declaration of fixed line services, we note that the LTIE is framed primarily by reference to the interests of end-users, who in this instance would reflect those consumers residing in RRR Australia. Noting the absence of reliable competitive alternatives to fixed line services for RRR consumers, we consider that declaration is in the LTIE.

### *Promoting competition*

In ACCAN's view the continued declaration of fixed line services will promote competition in RRR areas that have high barriers to entry and are reliant on existing monopoly infrastructure. Although emerging technologies, including Low-Earth Orbit (**LEO**) satellite networks are promising, further assessment of their in-field technical capabilities and pricing structures is required before they can be treated as equivalent to or substitute to existing legacy services.

### *Ensuring any-to-any connectivity*

ACCAN considers the declaration of fixed line services is consistent with the Universal Service Obligation (**USO**), and the provision of any-to-any connectivity. We acknowledge that emerging technologies and reforms to the USO may occur within the declaration period and accordingly it may be appropriate to articulate criteria for the re-assessment of arrangements if reform is progressed.

However, we note that USO reform has been mooted at several junctures over the past decade, with no substantive reform progressed. While we consider that reforms are reasonably likely, in our view the ACCC should consider the declaration by reference to existing rather than potential policy settings.

### *Encouraging economically efficient use of and investment in infrastructure*

The continued declaration of the fixed line services provides for the economically efficient use of and investment in infrastructure. Existing fixed line services networks enable service providers to offer consumers a greater range of services in RRR areas.

ACCAN notes that existing reporting by Telstra indicates that the existing fixed line network is not experiencing rapid declines in reliability, with the CSG requirements consistently complied with. The Australian Communications and Media Authority (**ACMA**) no longer publishes data on Telstra's performance against the Customer Service Guarantee (**CSG**) Standard, but examination of the data published in 2020 showed the network to be reliable. For example, the percentage of CSG services that experienced a fault between 2014-2019 was on average 1.6% every month.<sup>3</sup> Between the same period, the percentage of time in a month that CSG services were available was on average 99.8%.<sup>4</sup> Existing networks continue to provide a valuable option to RRR consumers, senior consumers, and during times of emergency. ACCAN considers that continued declaration is appropriate to ensure that wholesale prices remain at efficient levels. While we note that existing arrangements will see an

<sup>2</sup> ACCC 2022. p.15. *Communications market report 2021-22*. Available at:

[https://www.accc.gov.au/system/files/22-71RPT\\_Communications%20Market%20Report\\_FA.pdf](https://www.accc.gov.au/system/files/22-71RPT_Communications%20Market%20Report_FA.pdf)

<sup>3</sup> ACMA 2020. *Communications report 18-19 Chapter 4 Data files*, Available at:

<https://www.acma.gov.au/publications/2020-02/report/communications-report-2018-19>

<sup>4</sup> ACMA 2020. *Communications report 18-19 Chapter 4 Data files*, Available at:

<https://www.acma.gov.au/publications/2020-02/report/communications-report-2018-19>

incremental roll-off of consumers from legacy services over time, we consider that declaration is necessary to limit the potential for inefficiently high pricing to drive a faster than efficient roll-off of legacy services.

While ACCAN considers that the prospect of inefficiently high pricing is somewhat constrained, in our view it is not remote, noting the commercial incentives to roll-off legacy customers may be material due to their relatively high-cost to service and thin margins. Further, we consider that in the context of mooted USO reforms that the incentive to drive customer roll-off through inefficiently high pricing may be material. We note that accelerating customer roll-off may further reinforce the case for USO reform to remove obligations to support legacy services, reducing the costs of servicing legacy sites in remote areas for existing providers.

Accordingly, we consider that continued declaration of fixed line services is in the LTIE. Noting the potential for substantive reforms to occur in the medium term we consider that regulatory settings should be revisited following clarification of the scope and timing of any potential USO reforms.

### **Domestic mobile terminating access service**

ACCAN supports the continued declaration of MTAS for voice services. The continued declaration of MTAS for voice services will promote the LTIE by providing access to MTAS on competitive and efficient terms, and facilitating any-to-any connectivity.

Mobile services are a fundamental part of Australian consumers' connectivity and the number of services in operation continues to grow annually. MTAS is an integral input into the delivery of voice services for mobile users.

#### *Promoting competition*

The mobile market is highly concentrated, with a few firms providing key wholesale mobile infrastructure and significant barriers to entry. In ACCAN's view the continued declaration of MTAS for voice services will ensure that smaller retail service providers, including Mobile Virtual Network Operators (**MVNO**) can continue to access MTAS on competitive terms.

Noting the importance of voice communication to Australian consumers and the effective monopoly each provider has over mobile connections to the numbers it services, it is important that market certainty is provided for voice calls to mobile end users through a declaration. While ACCAN considers that there is some constraint on mobile network operators (**MNOs**) offering uncompetitive terms of access, we note that there may be incentives to charge more than the efficient costs of access. Noting this potential, ACCAN considers that continued declaration is appropriate to ensure that MNOs offer competitive terms and conditions of access to smaller retailers and MVNOs.

#### *Ensuring any-to-any connectivity*

The continued declaration of MTAS for voice services ensures greater any-to-any connectivity for consumers, regardless of their carriage service provider. In ACCAN's view over the top (**OTT**) services provide fragmented voice calling to consumers and are not substitutable to mobile voice services.

Further, we note that the interoperability of mobile voice services and fixed line voice services is critical to ensuring any-to-any connectivity for consumers of both services. Noting that both

wholesale services are inputs into a seamless retail voice service offering, we consider that declaration of both services is appropriate to facilitate any-to-any connectivity.

ACCAN notes that OTT services such as WhatsApp or Telegram can make voice calls, but users are limited to calling other users on the same app. These OTT services are not substitutable to fixed and mobile voice services. Accordingly, ACCAN considers that continued declaration of MTAS for voice services is appropriate to promote the LTIE.

*Encouraging economically efficient use of and investment in infrastructure*

Setting prices that are cost-reflective for voice termination services prevents network operators from charging termination fees that are greater than the cost of provision and is consistent with productive efficiency. In the absence of declaration incumbent providers could charge higher fees and reduce efficient use of the existing infrastructure. Regulating the price of connections based on cost also promotes the efficient investment in infrastructure by ensuring operators can recover the efficient cost of investment at a normal commercial rate of return.

ACCAN notes that the emergence of OTT alternatives may impose a competitive constraint on MTAS for SMS, however noting the continued fragmentation of voice services, there may be incentives to impose higher than efficient wholesale charges for access. Accordingly, we consider that continued declaration of MTAS for voice services is in the LTIE.

---

***The Australian Communications Consumer Action Network (ACCAN) is Australia's peak communication consumer organisation. The operation of ACCAN is made possible by funding provided by the Commonwealth of Australia under section 593 of the Telecommunications Act 1997. This funding is recovered from charges on telecommunications carriers.***

---