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ACCAN thanks the Department of Communications and the Arts for the opportunity to contribute to its Draft Carrier Licence Conditions for the provision of telecommunications infrastructure in new developments consultation.

ACCAN would like to provide the following feedback. We are currently working on new Customer Service Standard and Universal Service Obligation positions. Feedback in this submission draws on our thinking in relation to these two documents, which will be released shortly.

Objectives and use of carrier licence conditions
Low quality networks and a lack of competition at a retail level negatively impact consumers through a lack of choices, lower quality services and increased costs. ACCAN agrees and supports the Department in this area of work and the use of carrier licence conditions (CLCs) as the means to implement the policy. CLCs appear to give the greatest benefit while costing the least. However, we have some reservations about the ability to ensure the ongoing quality of the network through the use of CLCs.

Performance standards
Communication and data services are an enabler for consumers to perform a variety of functions, rather than delivering value by themselves. Therefore, they should be judged on how well they are utilised for the capabilities that they deliver. ACCAN is supportive of utilising a capability framework such as developed by Nobel Prize winning economist Amaryta Sen.[1] For consumers in Australia, this means the ability to ensure personal safety, self-progression and personal development, completion of online tasks, e-commerce and economic livelihood, success and well-being and social networking, interaction and communications.[2] In order for an end user to achieve these, a guarantee to a level of service that will allow these functions to be carried out is required. Therefore we believe that standards set out in wider terms than a download and upload speed are required.

The CLCs should guarantee the minimum speed levels per end user. The level of download and upload speeds that are in the CLC are peak capabilities rather than guaranteed levels. A committed rate would ensure a minimum bandwidth per end user. This would be important to ensure that end users are receiving a high standard of service and limit the contention at the network level. ACCAN suggests that a minimum speed, or Committed Information Rate (CIR), per premise should also be included in the CLC to ensure consumers achieve a high standard service.

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[1] SEN, A. 1999 Development as Freedom. OUP, Oxford.
[2] Thomas, R. 2015. 'Contactability framework for the delivery of universal services.' Australian Journal of Telecommunications and the Digital Economy, ISSN 2203-1693, Volume 3 Number 4

ACCAN is glad to see that the CLCs include a greater range of measurements which affect performance, such as jitter, latency and packet loss. However, the standards should be clearly stated and measure the network element of the service delivery. We have concerns over the wording used in subsection 5(3)(d) of the new developments declaration, which refers to standards "comparable to the service quality typically experienced by end users being supplied with comparable carriage services". This may be difficult to prove or measure as the end user experience may be affected by a number of factors, such as RSP service provisioning. The use of the word comparable also allows for a range of variation which is subjective. A clearer definition of the standards required would be welcomed.

In terms of availability of services for end users we believe measuring the following is important: number of minutes that a customer is without services in a year, number of times a customer's supply is interrupted per year, duration of each interruption, and number of momentary interruptions per customer per year. ACCAN suggests that these measurements are used instead of a percentage of availability in a 12 month period.

ACCAN is supportive of the CLCs requiring the network to support the delivery of voice services; however, some other elements of the CLC appear to not support this. The activation and repair timeframes (subsections 5(12) and (13) of the new developments declaration) are more aligned with the nbn standards than those required in the delivery of voice services through the CSG or priority assistance. This appears to be a disincentive to RSPs to offer these services. If Telstra is requested to supply voice or priority assistance services in a new development which is served by another provider, it may use alternative networks to deliver the services. By using these standards we are concerned that end users will not have access to voice services, priority assistance or a CSG service. Furthermore, this may be a duplication of network expenditure that may come at a cost to developers and end users. Access to CSG services and priority assistance should be available to all end users and part of the minimum quality standards that a network should deliver.

Furthermore, ACCAN is concerned that the definition of voice service is being interpreted in such a way that may restrict the use of fibre in new developments. In a recent article a Telstra spokesperson said: "Under the current regulatory settings we can't roll out a fibre network and then retail voice services over it, so where we are approached by a developer to build new telecommunications infrastructure we roll out copper." [3] The CLCs for new developments should be technology neutral and not exclude the use of other technologies.

ACCAN agrees there is a need for additional requirements in relation to the commercial track record of carriers and their ongoing sustainability. This would ensure that a network is not likely to stop providing service to a new development, leaving end users without services.

Regulatory Impact Statement and costings
Complying with the CLCs may impose a financial and administrative burden on network providers. However, if a network requires significant updates to meet standards then it is not efficient or

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[3] https://delimiter.com.au/2016/01/21/telstra-says-govt-policy-forcing-it-to-deploy-brand-new-copper/

delivering for end users. The costings in the RIS should also account for the potential impact on end users. There are a number of costs which end users are likely to face when they do not have access to a quality network, which supports retail competition. For example:

- Monopoly prices paid by end users. Limited retail competition can lead to end users paying more for services. This has been the experience of a number of end users in new developments. During our examination of the market in a submission to the ACCC on Superfast Broadband Access Services (SBAS) we found that some RSPs charged up to 80% more for similar services over a non-NBN network.[4] Failure to ensure high quality networks for end users may result in significant costs paid by end users for services.

- Lower quality service. While headline download speed is usually the most quoted and influential factor, the upload speed, jitter and other quality measures are increasingly important. Low quality networks may not offer end users the level of services needed. This may impact on the ability to run small businesses for example, which often need a higher level of service. Access to only lower quality networks may result in sub-optimal services being used and potentially limit innovation and economic benefit.

- Increased product search and transactional costs. End users in new developments have expressed difficulty and frustration to ACCAN regarding finding products and plans. Often the options available to them are not easily found, have a number of different offers and conditions compared to mainstream plans and are usually not on comparison websites. Furthermore, difficulties arise if a consumer moves premises, into or out of a network, where they may not be able to bring their current services with them. If networks all offer a minimum level of service the difference in product offerings and end user product search and transactional costs will likely be reduced.

As well as these, costs may be faced by nbn to overbuild within the areas that do not meet standards.

Remedies, incentives and breaches of conditions

While ACCAN is happy to see that the networks have to have independent certification prior to the first end user being connected, we have concerns about the ongoing performance of the network. Performance is increasingly important for end users and it is important that networks perform consistently. As currently presented it is unclear to ACCAN how end users or the ACMA could determine that a breach in performance conditions has occurred. It is also unclear what penalties will arise from this or how any payments may be passed onto an RSP or end user. The example of a trivial failure to comply with a requirement is given to be 'not connecting a single premise within the timeframes required by a short period in circumstances where this has been rectified'.[5] If this occurred and the RSP offered a CSG service, the RSP would be liable to compensate the end user. The fault however, lies with the network. It is unclear how the arrangement with the retail provider and network provider would work and if this would reduce product offerings to end users. For the

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[4] https://www.accc.gov.au/regulated-infrastructure/communications/superfast-broadband-access-service-declaration-inquiry/draft-decision

[5] Carrier Licence Conditions (Networks in New Developments) Declaration 2016 pg. 19

best outcome for end users there should be no barriers for retailers to offer services over any network.

Reporting

It would be useful if carriers (under subsection 5(1) of the reporting requirements declaration) were required to report which RSPs will offer services over the network. This would allow end users and property buyers to know which retailers they will have access to prior to purchase. If the list of RSPs is of concern the potential buyers would have an opportunity to raise this with the developers.

Furthermore, we believe that the annual reporting requirements (under subsection 5(16) of the new developments declaration) be in a standardised format outlining all obligations and information on breaches. This information will be important for end users that utilise the development as they may otherwise be unaware of breaches or that the service failed to deliver. It is also important to limit any passing of blame between the RSP and network provider when problems do occur. Given that a number of factors may contribute to poor service, end users are not often in a position to identify the cause of problems or avenues for rectification. Providing this information in a standardised format will increase end users' information and give them the ability to address any issues.

Sincerely

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