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Re: Review of the 2015 Telecommunications in New Developments (TIND) policy

ACCAN welcomes the opportunity to contribute to the Department of Communication and the Arts consultation on the Telecommunications in New Developments (TIND) policy. The TIND policy affects over 537,878 premises,¹ and has a substantial impact on new communities in the metropolitan fringe and many inner city multi-dwelling units.

The regulatory settings currently in place for TIND, although broadly appropriate, can be improved through the adoption of a series of revisions. ACCAN believes that the majority of these changes would result in a more consistent set of standards and rules that would provide for a fair and robust competitive environment.

ACCAN is regularly contacted by consumers residing in TIND areas that are experiencing poor service outcomes through slow or intermittent services and facing higher than competitive retail prices for services that are often lower value than their NBN alternative. However, systematic evidence of poor outcomes is limited due to the opacity of current reporting arrangements. At present there is extremely limited reporting on service levels or the escalation of complaints to the TIO for services in operation in TIND areas. ACCAN considers that as a minimum increased reporting and scrutiny concerning the performance of non-NBN services is required to ensure that consumers are getting what they are paying for.

In the absence of detailed information about the relative performance of alternative infrastructure providers the potential benefits of infrastructure competition are unlikely to flow, as developers will not be in a position to assess the relative merits of alternative providers beyond a simplistic assessment of the infrastructure cost. Moreover, consumers will be unable to signal their preferences to developers as they too will not be in a position to express their views on the desirability of various infrastructure service providers.

¹. Department of Communications and the Arts 2019, *Telecommunications in New Developments*, viewed 11 December 2019, <<https://search.data.gov.au/dataset/ds-dga-7a5ba140-82c2-4746-b579-e59d524ae88d/details?q=telecommunications%20in%20new%20developments>>.

Australian Communications Consumer Action Network (ACCAN)

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Developer compliance

ACCAN acknowledges the significant work of the Department in conjunction with State and Territory governments in driving greater awareness of and compliance with the TIND policy. However, as noted by the Department there is ongoing work to be done in raising awareness of the obligations that are faced by developers, particularly for smaller developers who are generally less aware of the TIND policy, as flagged in the Departments consultation paper.

Prospective developers are primarily regulated through local and state level planning arrangements and accordingly the use of targeted information campaigns at these levels of government are more likely to be effective than programs operating at the federal level. ACCAN believes that further effort is required at the state and territory level in order to ensure that legal notices are provided to prospective developers concerning their obligations to put in place appropriate telecommunications infrastructure.

Infrastructure Provider of Last Resort

ACCAN strongly supports the passage of the Telecommunications Reform Package and the establishment of the statutory infrastructure provider obligations. Ensuring that all consumers have a right to network access is of fundamental importance and we believe that these reforms must be implemented as a matter of urgency. As noted by the Department there are sound grounds for these obligations to be imposed on non-NBN infrastructure providers where these providers are the primary infrastructure provider within a given area.

Charging

ACCAN believes that the current lack of regulation concerning the charging arrangements for infrastructure in new developments is providing perverse incentives for infrastructure providers and developers. The consequence of these incentives is that developers often seek to obtain infrastructure services at the cheapest possible price, irrespective of the underlying quality of the infrastructure put in place and subsequently leave consumers in a position where cost-recovery occurs through inflated or excessive service charges.

Developers have little incentive to arrange for the provision of telecommunications infrastructure on terms that are favourable to consumers. Rather, the commercial incentives that they face provide strong incentives to obtain infrastructure from the provider that represents the least cost to them. ACCAN considers that the outcomes for consumers residing in non-NBN network areas have been markedly sub-optimal, with consistently higher than average retail prices charged when benchmarked against the NBN.²

² ACCAN 2019, *ACCAN submission to the Department of Communications Consultation on changing the designated date*, <<http://accan.org.au/our-work/policy/1575-telstra-s-south-brisbane-velocity-network-time-for-change>>; more recent ACCAN benchmarking has reconfirmed the pricing outcomes observed at the time of the submission. ACCAN notes that the only point of departure has been a movement on the part of Telstra to align their NBN and non-NBN pricing, noting that Telstra's retail prices are materially above those of the average provider.

Network and service standards

The issues associated with the regulation of embedded networks or private monopoly infrastructure is not unique to non-NBN networks, with similar issues having arisen with the NBN. As is the case for NBN Co., the creation of comprehensive services standards through the ACCC's *Wholesale Service Standard Inquiry Draft Decision* and clear pricing oversight is the first step to addressing these issues.

ACCAN strongly supports the adoption of uniform wholesale service standards for networks in new developments. Consumers, whether users of the NBN or non-NBN networks should be able to access reliable services that perform in accordance with their expectations and the way in which they are described.

In developing wholesale service standards, ACCAN believes that this process should be undertaken in conjunction with the proposed development of NBN wholesale service standards recommended by the Department of Communications and the Arts in the recent report on consumer safeguards.³ The contemporaneous development of these standards would facilitate a level playing field and ensure that wholesale infrastructure providers, whether NBN or private providers, compete on equal terms. The application of consistent wholesale service standards and reporting arrangements would also facilitate greater transparency and accountability on the part of NBN and non-NBN infrastructure providers, allowing for developers and consumers to better exercise their influence through an easier assessment of network quality.

ACCAN considers that there are sound grounds for the extension of wholesale service standards to non-NBN networks, in order to ensure competitively neutral regulatory arrangements that underpin the delivery of quality communications services and robust infrastructure competition.

ACCAN thanks the Department for the opportunity to contribute to this important consultation. Should the Department require any further information or clarification concerning any of the issues raised in this submission please do not hesitate to get in contact with Una Lawrence, ACCAN Director of Policy.

³. Department of Communications and the Arts, 2019, *Consumer Safeguards Review – Part B (reliability of services) – Final Report*, Canberra, 12.