
Submission

11 September 2023

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Australian Competition and Consumer Commission

Re: Proposed Variation to the NBN Co Special Access Undertaking

The Australian Communications Consumer Action Network (**ACCAN**) thanks the Australian Competition and Consumer Commission (**ACCC**) for the opportunity to provide comment on the NBN Special Access Undertaking Variation lodged by NBN Co on 14 August 2023 (**the August variation**).

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.

ACCAN welcomes the opportunity to provide comment on the August variation. ACCAN would like to express our qualified support for the August variation, noting:

- The price floor and ceiling model provides a reasonable framework for the pricing of NBN services, but nonetheless sets a high price floor for consumers, affecting overall consumer affordability for the network;
- The SAU could provide further assistance to low-income consumers by setting out a framework to provide a concessional, low-cost broadband service;
- The revisions to the intended scope and operation of the low-income and digital inclusion forum are welcome and will improve the effectiveness of the forum;
- The requirement for a Consumer Advocacy Group to engage in consultation on proposed expenditure, while a welcome development, does not carry with it any commitment to resource engagement.

Notwithstanding this feedback, the August variation represents a substantial step forward from previous SAUs, providing an effective approach to the pricing and regulation of NBN services that is consistent with the long-term interests of end users (**LTIE**).

Further detailed comments on the proposal are set out in **Attachment A**. We thank the ACCC for the opportunity to comment on the draft decision. Should you wish to discuss any of the issues raised in this submission further, please do not hesitate to contact me at audrey.reoch@accan.org.au.

Yours sincerely,

Audrey Reoch
Senior Economic Advisor

Attachment A: Further detailed comments on the August variation**The floor and ceiling model will promote competition but may embed higher consumer prices**

The August variation represents substantial progress in terms of regulatory and price certainty from the earlier proposed SAU variation in November 2022 (**the November variation**). The adoption of NBN Co's price floor and ceiling framework provides for reasonable pricing outcomes consistent with the LTIE. Accordingly, we accept NBN Co's decision to adopt Option 2 for its price floor and ceiling, noting that this option is revenue-neutral relative to our preferred Option 3.

ACCAN notes that one of the downsides of the floor and ceiling model is the lack of dynamic pricing, which may impact consumers' ability to access low-cost broadband services. However, ACCAN has also been consistently advised by smaller providers that the system requirements associated with more complex pricing frameworks are cost prohibitive. ACCAN therefore accepts that the floor and ceiling model will promote competition by reducing the advantages of incumbent participants relying upon their scale or existing market share alone.

The SAU should set out a framework to provide a concessional, low-cost broadband service

ACCAN continues to recommend the creation of a concessional, low-cost broadband service targeted towards those on low incomes. Such a service would ensure that all Australians facing poverty and hardship are still able to maintain internet access, participate in the digital economy and access crucial government and health services.

A concessional service, appropriately tailored and created with feedback from representatives of low-income consumers, would significantly improve the affordability of the NBN for those who need it most. It would also mitigate some of ACCAN's forementioned concerns with the floor and ceiling model. ACCAN recommends NBN Co consider the creation of a concessional low-cost service as a high priority for the first regulatory period (2023 – 2026).

The low-income forum, if not given an independent focus on affordability, risks being ineffective

ACCAN welcomes the August variation's amendments to the low-income forum, which provide more targeted criteria to the topics to be considered by the proposed forum. ACCAN maintains that the purpose of the low-income forum should be focused on affordability and accessibility, rather than the general issue of digital inclusion.

ACCAN considers that the effectiveness of the low-income forum can be strengthened by a commitment from NBN Co to appoint an independent chair. As many low-income consumer representatives report 'consultation fatigue' and limited resources, an independent chair would allow robust discussion while ensuring advocates have the opportunity to make recommendations that would promote the network's affordability and accessibility.

The SAU does not make any provisions to resource consumer engagement

The August variation retains the requirement that NBN Co undertake engagement on proposed expenditure with Access Seekers and Consumer Advocacy Groups in advance of submitting a Replacement Module Application (**RMA**). While ACCAN is supportive of the requirement to embed genuine engagement on proposed expenditures, the absence of any commitment to resourcing this material expansion in engagement risks the effectiveness of the RMA process.

As the peak communications consumer body, ACCAN is the primary and often sole non-industry contributor on matters relating to the economic regulation of communications services, including reliability, service standards and pricing. It is therefore highly likely that ACCAN will be asked to provide this consumer engagement role on NBN Co's proposed expenditure.

However, given the significant scale of NBN Co and the NBN itself, ACCAN does not consider it feasible for such engagement to not contain resourcing provisions. ACCAN notes that absent or ineffective consumer engagement has the potential to result in material harm, through the inefficient allocation of NBN revenues and the creation of regulatory uncertainty. Noting the magnitude of forecast NBN revenues, minor misallocations will have significant impacts on consumers, so resourcing this task is crucial.

Therefore, while offering qualified support to the acceptance of the August variation, ACCAN recommends the ACCC and NBN Co to consider what resourcing would be required to ensure the long-term sustainability of consumer representation and engagement with NBN expenditure.

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.
