
Policy Position

2022

The Future of Broadband

Over the last few years, the experiences of natural disasters and the COVID-19 pandemic have highlighted and heightened the need for access to reliable, resilient and affordable communications services. Today there is little doubt that telecommunications is an essential service. Throughout the pandemic and during lockdowns, telecommunications networks have allowed individuals to continue working, access services, stay connected to friends and family and learn remotely. The pandemic has accelerated a shift in consumer behaviours, triggering many small businesses to move their operations online and employees to work from home. These trends were already evident before the pandemic, due to the increasing availability of broadband and capacity of networks to deliver content, combined with readily accessible digital platforms and over the top services. It is clear from these developments that the provision of broadband remains critical to the downstream provision of all communications services.

The National Broadband Network (NBN) was created to reach the Federal Government's broadband policy objective of providing affordable high speed internet access to all Australians.¹ From the beginning, it was planned that nbn Co would be privatised after the completion of the initial rollout,² with the proceeds from the sale repaying the expenditure of the NBN rollout. Yet there is a conflict between the goal of maximising the revenue from the sale, through making the network attractive to investors, and putting in place sufficient regulatory provisions and consumer safeguards. However, it is vital that enduring provisions to safeguard consumer interests are established prior to the sale of the network. Now that the NBN has been declared built,³ it is appropriate for there to be an examination of what needs changing within the telecommunications sector in order to protect consumer interests and maximise the benefits of broadband. In order for this to happen, there needs to be a review of regulatory protections to ensure that the following conditions are being met:

- Broadband networks are secure, reliable and resilient
- Compliance with regulation is transparent
- Communications are affordable and measures support access for all consumers

¹ Senator Penny Wong and Senator Stephen Conroy, 'Statement of Expectations', 2010, <https://www.nbnco.com.au/content/dam/nbnco/documents/statement-of-expectations.pdf>.

² Legislation requires that the NBN can only be sold following a declaration by the Minister for Communications that the network is built and fully operational, the Productivity Commission has conducted an inquiry into regulatory, budgetary, consumer and competition matters relating to the sale of the network, a Parliamentary Joint Committee considers the findings of that inquiry, the Minister for Finance makes a disallowable declaration that conditions are suitable to sell the network and Parliament doesn't disallow that declaration.

³ Hon Paul Fletcher MP, 'NBN Declared Built and Fully Operational', Minister for Communications, Urban Infrastructure, Cities and the Arts (Department of Infrastructure, Transport, Regional Development and Communications, 23 December 2020), <https://minister.infrastructure.gov.au/fletcher/media-release/nbn-declared-built-and-fully-operational>.

- Priority Assistance arrangements for broadband are available
- Access to high speeds is equitable
- Social inclusion is supported by universal digital inclusion
- Consumers are supported to make appropriate choices
- The needs of small businesses are supported
- Consumers are treated fairly
- Consumer protections are appropriately enforced

These protections are needed across all fixed broadband networks, not only NBN, given that many premises are connected via non-nbn networks. Additional important issues addressed in this policy paper are questions relating to how the price of broadband should be set, and how regional broadband should be maintained and improved.

Broadband networks are reliable, secure and resilient

Reliability

Currently, there is no regulated reliability framework for broadband networks. For example, much of how nbn Co's service standards are developed occurs predominantly in commercial negotiations with retail service providers (RSPs) through the Wholesale Broadband Agreement. However, given nbn Co's monopoly position this may not necessarily result in the best outcome for consumers. The current approach contributes to issues of reliability that have been a long-standing problem for consumers. In 2020-21, 16.7% of complaints made to the TIO about internet services were in relation to no phone or internet service, 16.5% for intermittent service or dropouts, 13.6% for slow data speed and 6.6% for missed appointments.⁴

At the start of 2021, the Federal Government consulted on standards, rules and benchmarks for Statutory Infrastructure Providers (SIPs)⁵ concerning the level of service SIPs are required to supply, with the aim to address some of the concerns about reliability of service. Last year the ACMA also proposed new rules for RSPs, with the goal of ensuring RSPs give clear commitments on the service levels they will provide end users. These initiatives are welcomed but are yet to be completed.

A safety net of wholesale obligations to deliver minimum standards regarding timeframes for faults and repairs, new connections and appointment keeping is needed. This includes setting appropriate definitions for faults, modernising mass service disruptions definitions and establishing requirements for timeframes which should allow for RSPs to match and meet their requirements under the Customer Service Guarantee.⁶ Importantly, service standards for wholesale broadband networks must reflect the essential nature of the service.

Where networks do not meet the expectations of consumers, rebates should be paid, with an established rebate pass-through obligation on retailers supported by back to back wholesale arrangements. Rebates should be designed to create increasing incentives for retailers the longer an issue persists, by escalating the rebate over time. Retailers should be obliged to provide clear

⁴ Telecommunications Industry Ombudsman, 'Annual Report 2020-21', 2021, https://www.tio.com.au/sites/default/files/2021-09/TIO_AR_Accessible_LR.pdf.

⁵ Statutory Infrastructure Providers are telecommunications carriers that are obliged to provide baseline wholesale broadband services in areas that they service and support voice services where they operate fixed line and fixed wireless networks.

⁶ Noting that the Customer Service Guarantee only covers voice services, hence the need to establish similar protections in regard to broadband services.

information to consumers on the service standards they can expect, and the applicable recourse when standards are not met, including the consumer's right to escalate complaints.

Recommendation: The Federal Government should enact appropriate minimum wholesale and retail service performance and reliability standards for broadband services.

Security and resilience

Communications consumers are deeply concerned about the resiliency of networks, particularly during emergencies. The catastrophic 2019-20 bushfire season resulted in widespread service outages. NBN Co alone reported a peak of 20,000 service outages, and responded by deploying technicians, generators, and road muster trucks, and installing temporary satellite access at evacuation centres to provide internet services to keep people connected during the emergency.

Given that telecommunications is critical to the economy and indeed the everyday lives of Australians, capabilities for broadband networks to remain resilient and secure are warranted and must be supported. To this effect, the Federal Government has identified a need for an enhanced regulatory framework in order to uplift the security and resilience of critical infrastructure and systems of national significance, including telecommunications. The Government is enacting legislation which creates a framework for managing risks relating to critical infrastructure involving risk management programs, declarations of systems of national significance and enhanced cyber security obligations.⁷ Additionally, the regulatory framework established to manage the national security risks of espionage, sabotage and foreign interference to Australia's telecommunications networks and facilities has been reviewed.⁸ ACCAN is supportive of these initiatives. The outcomes of the new legislation and review should seek to ensure that when it comes to network security, the regulatory requirements of carriage service providers are clearly defined and understood, and that consumers can have confidence that networks are compliant with their obligations.

Recommendation: The Federal Government's efforts to enhance the security and resilience of critical infrastructure must give consumers confidence that telecommunications networks are secure.

In recognition of the importance of resilience to telecommunications networks, the Government has invested in the Strengthening Telecommunications Against Natural Disasters (STAND) package to address the issue. This involves funding to install Sky Muster connections to rural and country fire service depots and designated evacuation centres, with a selection of critical sites having batteries and solar panels installed; improving community awareness; and boosting temporary infrastructure capabilities such as Sky Muster trucks. Whilst the STAND package is a welcomed initiative, it only provides one-off funding for an ongoing requirement of resiliency and redundancy and needs ongoing commitment and resourcing. A key area of focus should be ensuring community based resiliency by

⁷ See *Security legislation amendment (Critical Infrastructure) Act 2021* and *Security legislation amendment (Critical infrastructure protection bill) 2022*.

⁸ Parliamentary Joint Committee on Intelligence and Security. *Review of Part 14 of the Telecommunications Act 1997 – Telecommunications Sector Security Reforms*.

pre-positioning emergency solutions to be used in the event of a mass service disruption, for example pre-deployed satellite services, or utilising microwave backhaul in addition to fibre.

Recommendation: The Federal Government should provide ongoing funding to ensure the resiliency of telecommunications networks.

Compliance with regulation is transparent

Currently there is limited transparency in relation to network reliability. Therefore a transparency regime of network reliability reporting needs to be established. Public information provided should be geographic specific as national averages can conceal localised poor performance. This ensures accountability and visibility over the quality of service broadband networks are delivering.

The transparency regime should extend to retailers. Under the *Telecommunications (Consumer Complaints) Record Keeping Rules 2018*, the Australian Communications and Media Authority (ACMA) collects data from telcos about the complaints they receive. The data includes details of the type of complaint, access technology and time taken to resolve the complaint. However, currently public complaints data is not disaggregated by retailer, and there is a lack of information regarding disconnections and financial hardship arrangements. This is information which is provided by other utilities such as gas, electricity and water.⁹ To encourage retail competition, information such as this should be disclosed by telcos to overcome some of the information asymmetry consumers face, giving people greater confidence in choosing the right provider for them.

The introduction of more transparent public reporting by the telecommunications industry is needed to encourage behavioural change by individual service providers. More granular reporting of the following areas will force industry to be more accountable and create a self-motivating feedback loop:

- Financial hardship, including the number of disconnections and the number of customers that re-enter financial hardship arrangements once successfully completing one set of arrangements, and the number of customers in credit management
- Public identification of individual providers in ACMA reporting of complaints received and resolved by RSPs
- Customer service metrics such as number of first contact resolutions, average wait times by method of contact, and time taken to get an enquiry resolved

More granular reporting will also encourage the ACMA to intervene where there are trends of systemic non-compliance.

Recommendation: The Federal Government should establish wholesale and retail reporting rules in relation to reliability, complaint handling, financial hardship arrangements, and customer service metrics.

The ACCC's Measuring Broadband Australia program provides consumers with accurate and independent information regarding the performance of broadband services. Continuation and further expansion of the ACCC's Measuring Broadband Australia program into other areas will further help to

⁹ For example, https://www.ewon.com.au/content/Document/Annual%20Reports/AnnualReport_19-20_WEB.pdf

improve transparency. For example, the program should be expanded into services for small and medium-sized enterprises (SMEs), a wider range of non-nbn networks, as well as Sky Muster Satellite services. Similarly, this will improve consumer confidence in the market and encourage competition amongst retailers.

Recommendation: The ACCC's Measuring Broadband Australia program should be expanded to cover more networks and services.

All industry data should be made available in an accessible format and set out simply and clearly to maximise public understanding and accountability, consistent with open government principles.

Communications are affordable and measures support access for all consumers

For the majority of consumers, the market is providing affordable communications services commensurate with their needs. Whilst a wealthy country by international standards, Australia is characterised by inequality which leaves sectors of the population facing considerable challenges in affording access to communications services. The latest data from the Australian Digital Inclusion Index found that 14% of all Australians would need to pay more than 10% of their household income to gain quality, reliable connectivity.¹⁰

Subsidised broadband – Currently, the Centrelink Telephone Allowance is the core policy support for individuals and households who require assistance to afford communication services. However, this is not paid to the vast majority of groups who may need assistance, such as individuals on JobSeeker payments and Parenting payments, Youth Allowance, people experiencing homelessness and families living below the poverty line.

An additional subsidy, paid for by the Federal Government to fixed broadband networks, is needed to ensure that accessing broadband is attainable for all low-income households. Subsidised broadband should not impede consumers' ability to choose their preferred retailer. Ideally, the subsidised broadband service should have unlimited data allowances, however if data were to be limited, then access to websites such as education and government services should be unmetered, and speeds should be shaped to allow the end user to stay connected at all times and continue to access essential online services.

It is important to note that currently Sky Muster installation and hardware costs are provided free of charge to remote consumers, which removes a significant barrier to accessing the internet in remote areas of Australia. Therefore it is vital that the Government continue to subsidise installation and hardware for these consumers, to prevent access from becoming prohibitively expensive.

Recommendation: The Federal Government should subsidise broadband for all low income households that are struggling to meet the costs of internet access.

Public Wi-Fi and Public Interest Premises model – For some consumers, access to the internet at home may be unattainable due to a lack of reliable income or through being unable to afford hardware. Therefore, access to public Wi-Fi remains an important tool to combat digital exclusion.

¹⁰ J Thomas et al., 'Australian Digital Inclusion Index: 2021' (Melbourne: RMIT, Swinburne University of Technology, and Telstra), accessed 29 March 2022, <https://www.digitalinclusionindex.org.au/>.

Expansion of public Wi-Fi would allow more people to access the internet regardless of their circumstance. Nbn Co supports public Wi-Fi through its Public Interest Premises (PIP) policy, which allows schools, emergency services, Indigenous organisations, Government facilities and health facilities in the Sky Muster footprint to access data. In remote communities, the PIP model should be extended to overcome the problem of unreliable cash flow in some communities. PIP models vary in design; for example, they can be a shared Wi-Fi service where individuals can use pre-paid vouchers to gain access or where community organisations and centres provide public interest services to community members. Access provided by community centres equipped with computers overcomes affordability barriers of expensive hardware at an individual and household level. The PIP model used to provide access should take into consideration the needs of the community. The service used should be Sky Muster Plus, to support increased access to essential websites by communities.

Recommendation: Providers of public Wi-Fi and Public Interest Premises programs should expand services to meet the needs of communities.

The pandemic has underlined the need for affordable and reliable broadband, and Wi-Fi is often identified as an important enabling connection technology which can contribute to that end. Allocation of spectrum can influence how Wi-Fi is utilised, and as such, decisions regarding spectrum allocation must be made in close consultation with consumer groups to ensure that consumers benefit from the ways in which different bands of spectrum are allocated or used.

For example, the ACMA has recently decided to increase spectrum available for Wi-Fi services through allocating the lower 6 GHz band to be used by certain devices, including those that use the next generation Wi-Fi equipment, known as Wi-Fi 6e. The benefits of Wi-Fi 6e include a significant reduction in latency, increased speed, greater capacity and an improved ability to support more users at faster speeds. The ACMA decision represents a substantial increase in the spectrum available for Wi-Fi services, at a time when the number of connected devices in households, workplaces and public settings is increasing significantly, together with the demand for greater bandwidth for work, education, health and social connections.

Recommendation: The ACMA should consult closely with consumer groups prior to any decision-making regarding spectrum allocation that will have a significant consumer impact.

Pre-paid broadband— Currently, broadband plans are sold on either a fixed term or a month-to-month contract. Consumers with limited, variable or unreliable incomes may prefer to pay for services on a pre-paid basis. It is important that the value provided by pre-paid services is not significantly different to fixed term or month-to-month contracts, given the cost differential of providing these services will be marginal. Greater flexibility in how consumers pay for their services will go towards making the cost of communications more manageable. This will be particularly beneficial to itinerant households who require more flexibility regarding access to broadband.

Recommendation: The telecommunications industry should continue to expand ways to increase flexibility in how consumers pay for their broadband services, including pre-paid options.

Universal Service Guarantee – The Universal Service Guarantee (USG) is a Federal Government measure designed to give all Australian homes and businesses access to broadband as well as voice services. The USG uses the NBN to deliver broadband services. An important element is the Statutory Infrastructure Provider (SIP) regime, which creates the obligation on network providers to connect premises on request, so that services can be sold by retailers. However, exemptions to this obligation mean there are consumers who are still unable to receive broadband services in Australia. Households who are itinerant, for example those who work in stock camps with no permanent dwelling, are unable to access broadband. Whilst there are some portable solutions available to meet this need, the cost of these options remains prohibitively high. ACCAN considers that the Federal Government should look at where the SIP regime is not currently meeting the needs of all consumers and address these gaps by subsidising emerging technologies to truly ensure every household across Australia has access to fast internet, regardless of their circumstance.

Recommendation: The Federal Government should work towards addressing gaps in universal service to ensure that everyone in Australia has access to fast internet.

Public phones – Public phones remain an important means of communication. They are often used by people when they are highly vulnerable including people who are experiencing homelessness, survivors of family and domestic violence, communities during natural disasters and people in emergency situations, as well as people in rural and remote areas who cannot rely on mobile communications. It is important that public phones remain reliable, are well maintained, and that robust and transparent mechanisms are in place to prevent community harm caused by their removal or relocation. Whilst payphone use has been decreasing, the additional functionality of modifications to provide Wi-Fi hotspots transforms their usage in some communities and is an important measure in overcoming digital exclusion.

Recommendation: The Federal Government should ensure that public phones remain available and reliable as a way of providing access to Wi-Fi hotspots.

Priority Assistance arrangements for broadband are available

Individuals may require additional safeguards to ensure access to data and voice services, such as consumers with life threatening health conditions who require quicker connection and fault response times. Yet current Priority Assistance arrangements and timeframes only apply to fixed voice services, and do not include broadband. Where connection and repair timeframes for Priority Assistance customers cannot be met, consumers are placed on interim services which do not offer the full functionality of their regular connection. Priority Assistance consumers require constant connectivity of both voice and broadband services, for example, to attend telehealth appointments, or monitor health conditions.

Priority Assistance obligations need to be updated and extended to include priority connection and repair of broadband data services, including obligations at the wholesale level to meet the

timeframes.¹¹ Additionally, the arrangements need to address the current lack of consumer choice for an end user requiring Priority Assistance.¹²

Recommendation: Priority assistance obligations should be updated to include priority connection and repair of broadband services.

Access to high speeds is equitable

Currently there exists significant variability in speeds available to consumers due to different access technologies, coexistence with legacy services, in-home wiring issues, environmental factors and other network issues. Some consumers with access to Fibre to the Premises (FTTP) and Hybrid Fibre Coaxial (HFC) can purchase plans with very high speeds, with average download rates above 700 Mbps.¹³ Despite this, the NBN is not yet capable of supporting 25 Mbps download speeds to all premises.¹⁴ As consumers demand more from telecommunications networks, upgrades will be required to support higher speeds. This is already being recognised by nbn Co, with the company announcing areas within its Fibre to the Node (FTTN) and Fibre to the Curb (FTTC) footprint which will be eligible for FTTP upgrades if a household purchases high speed plans.

For consumers outside of NBN's fixed line footprint, there remain concerns regarding the adequacy of Sky Muster satellite services. Serving these communities will remain commercially unviable and will continue to require subsidising. As the communications market evolves, and more Low Earth Orbit (LEO) satellite services become available to consumers living in regional, rural and remote Australia, there needs to be consideration of how different technologies can best be used to serve these communities. LEO services are attractive because they provide low latency and improved speeds, but one of the key hurdles to access is upfront and ongoing connection costs. While these costs may fall over time, in the meantime, there needs to be consideration of how best to serve regional, rural and remote consumers given technology advancement.

Recommendation: The Federal Government should work alongside telecommunications network providers to consider how different and emerging technologies can be used to ensure equitable access to high speed services for regional consumers.

Social inclusion is supported by universal digital inclusion

Challenges to digital adoption and equity extend to digital skills and access to devices, especially for school-aged children. Currently, there is a highly inconsistent approach across states and territories regarding provision of devices to students. There needs to be a long-term device supply and replacement program at a national level, so that people who are unable to afford appropriate devices

¹¹ ACCAN, 'Priority Assistance', 2021, <https://accan.org.au/accans-work/policy-positions/1909-accan-priority-assistance-communique-august-2021>.

¹² Telstra is currently the only RSP that is required to provide Priority Assistance arrangements to customers.

¹³ ACCC, 'Measuring Broadband Australia - Report 16', 2022, <https://www.accc.gov.au/system/files/Measuring%20Broadband%20Australia%20-%20Report%2016%20-%20March%202022.pdf>.

¹⁴ NBN Co, 'NBN Co Corporate Plan 2022', accessed 20 April 2022, <https://www.nbnco.com.au/content/dam/nbn/documents/about-nbn/reports/corporate-plan/nbn-co-corporate-plan-2022.pdf>.

are able to access them, with regular updates and replacement models built into the program, as well as technical support.¹⁵ This could be packaged with subsidised internet plans if required. This would assist in overcoming one of the significant challenges people face in accessing the internet.

Recommendation: The Federal Government should establish and coordinate a national long-term device supply and replacement program for school-aged children.

There is also a continuing need to improve digital literacy, through more training and tech support. For example, as more government services move online, there is a need for a dedicated person in every Centrelink office to train people how to use My Gov services. The Be Connected program aims to improve digital literacy skills for older Australians; however, there is no national equivalent program for low use or low access groups. The scope of current Government approaches to digital skills needs to be expanded, particularly to include remote Indigenous consumers, newly arrived migrants, people with disability and people from culturally and linguistically diverse communities. Digital literacy and device lending schemes need to be carried out in a holistic way, so people can learn to use the devices provided to them. For regional, rural and remote consumers, finding tech support specific to their circumstance can be difficult. The Regional Tech Hub provides support, information and troubleshooting advice to regional consumers to realise the benefits of connectivity. The Regional Tech Hub meets the need for ongoing tech support, as opposed to one-off digital literacy courses. However the extent to which digital literacy and capacity building is required in the regions is far greater than the Regional Tech Hub can currently provide. The range of knowledge and technical skills within the regions must be acknowledged and more funding is required to increase capacity for all regional, rural and remote Australians.

Recommendation: The Federal Government should fund more training and tech support for people with disability, remote Indigenous communities, people from culturally and linguistically diverse communities, newly arrived migrants and regional, rural and remote consumers.

Consumers are supported to make appropriate choices

Consumers might not choose the best service and device options if they do not have all the relevant information or technical knowledge needed when choosing products and services. Problems arise when consumers make decisions based on imperfect information, or when there are asymmetries between the information available to consumers and network providers or RSPs. The consumer detriment from imperfect information includes consumers failing to participate in the market at all, consumers paying too much, consumers not buying the product or service that best meets their needs, and consumer disappointment due to unexpected levels of quality. High search costs create a barrier to switching, reducing retail competition.

Consumer Data Right (CDR) – In 2017 the Federal Government announced the introduction of the CDR, an economy-wide reform to be implemented in multiple sectors, including telecommunications. At the end of 2021, Treasury commenced work on developing a telecommunications specific CDR. The CDR regime aims to improve customer choice and competition by allowing data to be safely shared

¹⁵ Existing models include the Smith Family's *Digital Access Program*, and Work Ventures.

with trusted partners. This would allow for personalised, accurate comparisons between providers to help consumers to search for the best deal for them and their needs, based on their own usage data. The establishment of a CDR scheme should create a mechanism where people are able to automatically switch onto a more appropriate plan.

Security and privacy protection must be key elements of any CDR regime. There is a need for comprehensive privacy obligations including for third party data recipients. To maximise the benefits of the CDR there needs to be strong accreditation standards in order to protect consumers from misuse or abuse of their data. Furthermore, consumers must be able to access their data for free so it can be shared between service providers and with accredited data recipients of their choice within the CDR regime. In order to maximise the potential benefits of the CDR regime, it must be simple and easy to use and readily accessible. An extensive consumer education campaign will be required to ensure that consumers with low literacy, CALD and non-English speaking consumers, and consumers with disability are able to understand how they can benefit from the CDR and how their privacy and security will be protected.

Recommendation: The Consumer Data Right regime should allow telecommunications consumers to compare products and services in a secure, free of charge, simple and accessible manner.

Independent comparison tool – The CDR will only work for consumers who have existing services. There are many people who will be navigating the telecommunications market for the first time who would benefit from a simple to use independent comparison tool, similar to Energy Made Easy. Additionally, many consumers may find this an easier tool to navigate than the CDR, which may have some inherent complexities that exclude those with lower levels of technical experience.

Recommendation: The Federal Government should fund an independent party to develop and maintain an online comparison tool for telecommunications services.

Accessible Telecoms – This is an independent guide to mainstream and assistive telecommunication products suitable for people with disability.¹⁶ Accessible Telecoms fulfils an obligation for the industry to provide information about devices which are suitable for people with disability.¹⁷ Accessible Telecoms has been operating since 2018 and has seen take up increasing consistently, with its webpage receiving over 91,000 page views in the last year. Accessible Telecoms currently lacks secure funding, despite the current need for the service now and into the future. The service must be appropriately funded to ensure ongoing provision of information for people with disability to allow them to choose the telecommunications products which are most suitable for them.

Recommendation: The Federal Government should work with the telecommunications industry to establish a long term funding mechanism for the ongoing provision of the Accessible Telecoms service.

¹⁶ 'Accessible Telecoms - Home - Accessible Telecoms', accessed 30 March 2022, <https://www.accessibletelecoms.org.au/>.

¹⁷ C628:2019 Telecommunications Consumer Protections (TCP) Code, para 4.3.1 (j)

The needs of small businesses are supported

Often small and medium sized businesses (SMEs) receive poor advice and are misinformed about telco offerings.¹⁸ The Consumer Data Right must provide a mechanism where SMEs are able to switch to better, more appropriate plans, with the use of their data. Additionally, the Measuring Broadband Australia program should be expanded to include SME services, to assist SMEs in making decisions around which provider to choose.

Consumers are treated fairly

Fair treatment by retail service providers is a key tenet of a well-functioning market that can deliver trusted, available and inclusive products and services.¹⁹ Yet the complex patchwork of telecommunications protections is not robust enough to reflect the essentiality of telecommunications, nor the importance of keeping people connected. It is vital that fairness underpins the relationship between providers and their customers.

The Telecommunications Consumer Protections (TCP) Code includes rules about how telcos communicate with their customers. These require telcos to monitor average wait times and to keep average wait times to a 'reasonable minimum'. Telcos are also required to monitor the level of first contact resolution of customer service enquiries. However, despite these requirements, and improvements in the levels of retail competition, poor customer service remains a fundamental problem.

Customer service may not be the primary factor when consumers are comparing services and making decisions to purchase a product. For some consumers, customer service only really matters when something goes wrong, while others feel that there is little differentiation in the market when it comes to customer service. For these reasons, retailers have historically not competed on customer service, and it has often lagged behind other service attributes.

At present the costs of poor customer service are unfairly carried by consumers who spend a disproportionate amount of time resolving telco issues. Research undertaken by ACCAN between February 2019 and February 2020 found that consumers spent 7.6 million hours in contact with their telecommunications provider in order to resolve issues. Using a survey which showed the average time consumers spent in contact with their provider to resolve issues, and previous research which placed a value on consumers' time, ACCAN estimated that the time consumers spent trying to resolve issues with their providers cost between \$106 - \$132 million between February 2019 and February 2020.²⁰ While industry may argue that there needs to be a balance in providing sufficient customer service without driving up the costs of services to consumers, it is clear from this research that consumers are already bearing the cost.

¹⁸ Telecommunications Industry Ombudsman, 'Addressing the Causes of Small Business Complaints - Systemic Investigation Report', 2020, https://www.tio.com.au/sites/default/files/2020-06/TIO%20Addressing%20the%20causes%20of%20small%20business%20complaints%20-%20Systemic%20Investigation%20Report%20June%202020_4.pdf.

¹⁹ L Solomon and B Martin-Hobbs, 'Five Preconditions of Effective Consumer Engagement – a Conceptual Framework' (Consumer Policy Research Centre, 2018), https://cprc.org.au/wp-content/uploads/2021/11/Preconditions_Full_Report.pdf.

²⁰ ACCAN, 'Still Waiting Analysis Report v.1.1', 2020, <https://accan.org.au/files/News%20items/Still%20waiting%20analysis%20report%20v.1.1.pdf>.

Imposing appropriate minimum customer service requirements through directly enforceable instruments will not preclude telcos from competing on customer service, yet will provide a safeguard against really poor customer service. Customer support should be available through multiple contact methods, including voice, and there needs to be an equivalence of outcome regardless of the method of contact used by the consumer. While experiences will vary depending on the contact method used by the consumer, customer support processes and procedures must ensure equivalence of experience to the greatest extent possible. Additionally, customer service should be aware of and meet the accessibility needs of all consumers.

Key areas where customer service needs to be improved are:

- Informing customers when there is going to be an outage
- First contact resolution of customer service enquiries
- Reduced length of wait times on customer support phone lines
- Prompt implementation of promises of resolution

Recommendation: The Federal Government should lift the quality of customer service in the telecommunications sector through improving and directly regulating consumer protection rules.

Consumer protections are appropriately enforced

Consumer protections are not effective if penalties for non-compliance are not an incentive to follow the rules, and if the rules are not actively enforced. Consumer protection rules must be contained in a directly enforceable consumer protections framework, made up of industry standards and service provider determinations rather than industry codes as is currently the case.²¹

There is a need for greater regulatory oversight and auditing of providers' customer service, and higher penalties for non-compliance with consumer protection rules, to provide a genuine disincentive for breaches. There is also a need for greater regulatory oversight and auditing of providers' approaches to vulnerability. Consumer issues concerning choice, competition, fairness and access to services should be addressed through a suite of directly regulated service provider determinations and standards.

A key area where it is necessary for consumer protections to be adequately enforced is financial hardship arrangements, which are presently in the TCP Code. The rules cover what telcos must do if customers have difficulty paying bills, how they handle credit and debt management and financial hardship. A crucial issue is non-compliance with existing financial hardship rules. The ACMA needs to more rigorously enforce the TCP Code obligations, and penalties need to more adequately reflect the potential of consumer harm when financial hardship is mismanaged.

Recommendation: Penalties for non-compliance with consumer protection rules should adequately reflect the potential of consumer harm.

²¹ See: Telecommunications Consumer Protections Code 2019

How should wholesale prices of broadband be set?

Presently, there are two key regulatory frameworks which govern the prices high speed broadband networks can charge for access to services. The first and most prominent is nbn Co's Special Access Undertaking (SAU) which establishes a baseline from which nbn Co and RSPs can make commercial arrangements for access. Initial prices in the SAU were set at levels similar to prices for copper and HFC services. The SAU was accepted in 2013 prior to the Federal Government's decision to introduce the Multi-Technology Mix, so the maximum regulated prices only apply to FTTP, Fixed Wireless and Satellite.

The SAU prices consisted of two components, the Access Virtual Circuit (AVC) which is the fee for accessing the network, and the Connectivity Virtual Circuit (CVC), the price of bandwidth. Because RSPs were not purchasing enough CVC, and services were congested, NBN introduced a pricing model of bundling both AVC and CVC costs with a certain amount of CVC included, ensuring a minimum standard of service quality. Over the last decade, retailers moved to selling unlimited plans because consumers valued budget certainty. Yet as usage of the network grew, retailers had to purchase more CVC to prevent congestion, resulting in price increases.

ACCAN considers that the following principles need to be taken into account when setting nbn Co's access prices:

- **The social benefits of the network** – Widespread high-speed internet adoption has positive externalities for the wider economy, such as cost savings in governments' service delivery, growth in service industries, new and innovative applications and services, e-commerce, reduction of excess inventories and optimisation of supply chains. Additionally, through increasing social inclusion, the internet can reduce societal costs. Network externalities - where the benefit to each individual using the network increases with the number of other users on the network - also exist in broadband markets. It is for this reason that provision of a government subsidised low income product is justified.
- **The cost of providing the service** – Nbn Co's prices should be reflective of its efficient costs. Currently, the notion of the Initial Cost Recovery Account (ICRA), within NBN's SAU, allows for upfront losses to be accumulated and nbn Co is given the opportunity to recover these losses in the future. This framework does not necessarily mean that efficient costs, and thus allowed revenues, are linked to prices, unlike the models adopted for other regulated utilities. The ICRA poses a significant risk that there will be no meaningful revenue constraint and future end users could be disproportionately burdened by nbn Co's ability to increase prices. There is a need to establish a sustainable long term revenue constraint, reflecting the efficient cost of providing the service.
- **Affordability of the service** - Statutory Infrastructure Providers provide an essential service. For that reason, they should be required to provide an appropriate service at an affordable price to households with limited incomes.²² The Federal Government has recognised the need for nbn Co to affordably meet the needs of end users in the latest Statement of Expectations given to the nbn Co, but as of yet it has remained silent in regard to alternative SIP networks.²³
- **Investment is required to support the evolving nature of the network and meet the needs of consumers** – As demand for services changes over time, the minimum requirement under the USG/SIP regimes will need to be updated and infrastructure providers will need to invest in order to meet these obligations. Nbn Co's regulatory framework should provide appropriate

²² Noting that ACCAN's No Australian Left Offline is calling for a 50Mbps subsidised service, or equivalent, for low income households. <https://accan.org.au/accans-work/our-focus/1866-our-focus-nalo>

²³ Senator Simon Birmingham and Hon Paul Fletcher MP, 'Statement of Expectations', 2021, <https://www.nbnco.com.au/content/dam/nbn/documents/about-nbn/policies/soe-shareholder-minister-letter-2021.pdf>.

incentives for nbn Co to efficiently invest in the network over time, for example in the expansion of the fixed line network and network upgrades to support higher speeds.

- **The degree of competition** – Wireless providers may be creating a degree of competition for nbn Co at the margins. Yet it is important that inefficient bypass of fixed line infrastructure is avoided by creating appropriate incentives for nbn Co to promote efficient use of the network and resolve issues with NBN’s pricing.

Recommendation: Nbn Co’s wholesale prices should reflect the efficient cost of providing the service, as well as the social benefits and essential nature of the service, in order to promote the efficient use of the network.

Non-nbn fixed line superfast broadband services are regulated via the Superfast Broadband Access Service (SBAS) Declaration and subsequent access determination. This is to ensure that RSPs have the right to access SBAS with appropriate price and non-price terms. To date, SBAS prices have been regulated in the form of anchor prices benchmarked to nbn Co’s pricing for similar wholesale access services. We consider that the ACCC should continue to adopt this approach to ensure that no consumer is worse off based on the network their premises is connected to.

Recommendation: The ACCC should continue to set anchor prices of non-nbn networks, benchmarked against nbn Co’s pricing for similar wholesale access services.

How should regional broadband be maintained and improved?

Traditionally, regional, rural and remote areas in Australia have not had access to the same levels of connectivity as their city counterparts. Low population densities mean that it is often unprofitable for private operators to build telecommunications infrastructure in these areas. The Australian Digital Inclusion Index consistently shows a marked digital divide between metropolitan and regional areas.²⁴ The Government has aimed to reduce the regional digital gap through multiple policies - the NBN, the Mobile Black Spot Program (MBSP), the Regional Connectivity Program, and to a lesser extent the Peri-Urban Mobile Program.

The MBSP aims to improve mobile phone coverage in regional and remote Australia. The Program is supported by co-contributions from state and local governments, mobile network operators, businesses and local communities. Whilst the MBSP has been successful in delivering more base stations and small cells to regional and rural Australia, there has been recognition that the needs of communities will be best met through a mix of technologies and solutions, and that a broader range of infrastructure solutions should be eligible for funding. The Regional Connectivity Program aims to address this issue by providing place-based solutions to digital connectivity issues in the regions through a range of mobile and broadband services. ACCAN supports this more flexible approach, as not all communities require the same connectivity solutions.

²⁴ Thomas et al., ‘Australian Digital Inclusion Index: 2021’.

Evolution of the Regional Broadband Scheme

The Regional Broadband Scheme is a long-term funding mechanism for NBN's non-commercial fixed wireless and satellite networks. ACCAN supports the Regional Broadband Scheme but considers that if any further expansion of the scheme is necessary, that this should be funded by Government, via the Budget. This would reduce the current regressive nature of the scheme, which sees every end user paying the same value towards the scheme regardless of their income level, meaning low income households are currently paying a higher proportion of their income towards supporting regional communications than high income households.

Re-establish the Communications Fund

Despite the proven success of the MBSP and the Regional Connectivity Program, there is no long-term commitment to improve the quality of telecommunications services to regional, rural and remote consumers. There needs to be a dedicated regional Communications Fund to support delivery of the recommendations made following three yearly Regional Telecommunications Reviews, by providing funding for investing in regional communications infrastructure. The establishment of the Fund would future proof telecommunications in regional Australia.²⁵ The Fund should be flexible so it could also be used to support investment in digital inclusion, so that people are able to use the infrastructure when it is in place.

For regional programs, the funding requirements and policy rationale for Government support is enduring, and consequently enduring commitment should be made to funding. The re-establishment of the Communications Fund will eliminate the need for ad-hoc program funding to be found within general revenues for recurrent programs. The re-established Communications Fund could be capitalised through the allocation of a proportion of overall spectrum auction revenues, as well as a proportion of the sale of funds received from the NBN.

Recommendation: For the Federal Government to re-establish the Communications Fund to fund essential communications programs that support digital inclusion in regional, rural and remote Australia.

Conclusion

With the NBN declared built and fully operational, many households in Australia have greater access to higher speeds and a wider range of retail providers than ever before. It is therefore a suitable time to take stock of the current areas in which consumers still face frustrations, harms and hurdles in gaining access to fixed broadband services. Underpinning this analysis is the shift in the way consumers use and rely on broadband services. Telecommunications is widely regarded as an essential service and therefore consumer protections and safeguards must be brought in line with this thinking. In order to maximise the benefits of fixed broadband, the policies discussed in this policy position must be implemented to ensure fixed broadband networks are available, affordable and accessible for all consumers, and must be addressed as a priority before future governments contemplate the sale of the National Broadband Network.

²⁵ The Communications Fund was established in 2005 from the sale of Telstra and abolished in 2009. <https://www.anao.gov.au/work/performance-audit/establishment-and-management-communications-fund>

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.
