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The Senate
Environment and Communications Legislation Committee

Inquiry into the Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017 and Telecommunications (Regional Broadband Scheme) Charge Bill 2017

Submission by

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Executive summary

On 22 June 2017, the Senate referred the Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017 and the Telecommunications (Regional Broadband Scheme) Charge Bill 2017 to the Senate Environment and Communications Legislation Committee for inquiry and report by 8 August 2017. The legislation should not be supported and should either be amended or rejected. Both Bills are structurally unsound, based on false benefits, anti-competitive and fail basic hurdles, primarily, will the Bills be to the overall long-term benefit of end users, are the Bills anti-competitive and are either of the Bills likely to be amended or made redundant in the short term.

Introduction

This submission argues, albeit too briefly, in favor of the Senate amending or rejecting both Bills being inquired into.

Telecommunications (Regional Broadband Scheme) Charge Bill 2017

This Bill narrowly approaches the government's stated aim to shift the cost burden for regional and remote communications infrastructure from a subsidy internal to NBN Co to an external subsidy that ensures there is a reasonable contribution by the broader industry.

The timing of this Bill being put to Parliament is remarkable in that it is premature and seeks to put in place a funding solution from a narrow base that is anti-competitive, not in the long term interests of end users and will ultimately be affected by other events, and therefore should be rejected.

The Productivity Commission (2017) report into the Universal Service Obligation cannot be ignored and must be considered prior to the funding arrangements for Regional Broadband infrastructure being put in place.

There is a need for implementation of a funding scheme for universal access to government digital services (Gregory, 2016). Government is obligated to provide universal access (data, consumer device and infrastructure) to government digital services to meet non-discrimination and human rights obligations and to ensure that the socially disadvantaged are able to reasonably access government services online from where-ever they live or work.

Increasingly, government funding in regional and remote areas includes funding for backhaul, transit and mobile cellular network blackspot funding (Department of Communications and the Arts, 2016). It should be evident to government that there will be a need for increased public spending on smart devices and machine to machine communications (Internet of Things) in regional and remote areas.

By seeking funding solutions utilizing a piecemeal approach the government risks anti-competitive outcomes similar to that proposed in this Bill. The telecommunications market today is more homogenous than at any time in history and there is little reason why fixed line residential customers should pay for regional and remote telecommunications infrastructure whilst other segments of the market do not contribute.

How many business telecommunication subscribers are now utilizing the Qantas Wi-Fi that is being connected utilizing the NBN SkyMuster satellites?

Equally, how many business telecommunication subscribers are now utilizing the government funded mobile cellular networks, radio relay and other networks in regional and remote areas?

Why should international multinationals be given a free ride over infrastructure funded by telecommunications carriers that offer fixed line connections to residential consumers? It is

discriminatory to afford the international multinationals with an advantage over local business and industry.

It is important to remember that, for example, the mobile cellular networks in regional and remote areas are in some locations now utilizing NBN infrastructure and other government funded non-NBN transit and backhaul infrastructure.

Failure to broaden the funding base provides some sectors of the telecommunications market with an unfair advantage. There is a strong argument that all telecommunications and over the top application and service providers, including providers of international, backhaul, transit, access, Internet of Things, Internet applications and services should contribute to funding national universal access and contribute to the provision of the infrastructure that is used for national universal access in regional and remote Australia.

Argument that this Bill should be rejected because Australia invests more than the international average in the provision of telecommunications infrastructure in regional and remote areas is ludicrous and should be discounted. Telecommunications is now an essential service and funding infrastructure and access to government digital services is a basic right of all Australians.

If the funding is targeted towards future proof infrastructure the life cycle cost would see the overall funding for telecommunications infrastructure and access to government digital services decrease over time, unfortunately, the government has made poor technology choices that will ultimately see the nation fund infrastructure upgrades one or more times over coming decades in regional and remote areas.

This Bill is terminally flawed and should not be supported.

Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017

This omnibus Bill should be rejected as it includes provisions that fail basic hurdles, primarily, this Bill is not in the overall long-term benefit of end users, is anti-competitive and provisions are likely to be amended or made redundant in the short term.

If for no other reason this Bill should be rejected because of the concessions made to Telstra that are not in the long term best interests of end users and are anti-competitive. This is not to say that Telstra should be singled out, but that the telecommunications market is structurally unbalanced and there are provisions in this Bill that undermine efforts to develop and fair and open telecommunications market.

The definition of Local access lines is a technical nonsense.

> Part 8 will be amended to focus largely on individual local access lines to better target regulation. The intention is that any single local access line that:
>
> - forms part of a network (other than the NBN) that is wholly or principally supplying services to residential customers, and
> - is used to supply a superfast carriage service to residential customers in Australia,

When the NBN is completed how many Australian businesses will be connected? I would suggest 80 per cent or more.

How many consumers in regional and remote areas utilize ABN or small businesses to pay for their telecommunications usage?

By attempting to segment the telecommunications market into residential focused and business or industry focused telecommunications is a flawed proposition.

By its very nature NBN Co will seek to offer wholesale access to business and industry and has already commenced this practice with mobile cellular infrastructure products and Qantas Wi-Fi utilizing the SkyMuster satellites (infrastructure with very limited capacity). Are all of NBN Co's customers covered by this legislation or does it make NBN Co uncompetitive when competing against infrastructure providers that are not covered by this legislation due to the incredibly flawed definition of a local access line.

"The Bill amends the existing Part 8 rules so that they no longer apply to local access lines that are part of a telecommunications network used to supply superfast carriage services to small business customers."

Any reasonable accountant would argue that it is imperative that Australians get an ABN and pay for their telecommunications as a small business so that they're not charged the $7.10 per month.

"This means that lines used to supply superfast carriage services to small businesses will no longer be subject to structural or functional separation requirements."

The only beneficiaries of this are the large carriers and is not related to the rationale for the funding arrangement. This is one of several hidden provisions that are not in the long term interests of end users and are anti-competitive. The result provides for Telstra and other carriers to argue that there is no need for structural separation as they're not NBN Co.

"This creates greater flexibility for network operators in the supply of superfast carriage services to small business customers."

This is nonsense and has no technical nor financial justification. If anything this provision undermines NBN Co and should be justification alone to reject this Bill.

"A business network may supply a small number of residential customers, sometimes without the knowledge of the network operator (for example, because a customer has ceased trading as a business while still retaining their service)."

What is the definition of a "small number"? Naturally this statement highlights why this provision would create further uncertainty leading to abuse and anti-competitive behaviour.

The definition of structural separation being applied is nonsense, and has little meaning as the companies that undertake structural separation are not required to actually create two entities working at a distance, but rather remain as one entity that simply have two store fronts, one titled retail and the other wholesale.

At some point the nation will need to confront the UK and New Zealand experience and to consider splitting Telstra into two companies or at a minimum two entities with separate Boards. The concessions made in this Bill further delay this inevitable outcome and this Bill is therefore not helpful.

The Bill fails to require structural separation of certain networks, focusing on fixed line access networks connecting residential customers and seeks to distance business connections from regulation.

The need for this Bill has occurred as a result of the shift to the flawed multi-technology mix NBN, and any legislation that refers to the discredited government NBN related reviews and audits should be rejected. By shifting to a sub-standard NBN technology mix, the government has further complicated the telecommunications market, and shot itself in the foot. Does this legislation achieve anything other than a short-term fix to the problem the government created? No.

This legislation is narrow, focusing on carriers that offer NBN residential connections and is therefore discriminatory and anti-competitive because it does not enforce the same requirements on other sectors of the market.

The statutory obligations clauses should give cause to Senators to run away from this legislation. Are Senators willing to be counted as having voted for a telecommunications network in 2017 that includes:

"Upon reasonable request by a carriage service provider on behalf of an end-user in the service area, a SIP will be required to connect a premises to a superfast fixed-line network (a 'qualifying fixed-line telecommunications network') in order that the carriage service provider can supply:

- retail services with a peak download speed of at least 25 Mbps and a peak upload speed of at least 5 Mbps; and
- carriage services that can be used by end-users to make and receive voice calls."

To vote for this Bill is to become an **active supporter** of the second rate NBN and this is not something that opposition and cross bench Senators should willingly agree to – history will not be kind. This Bill seeks to spread the government's ownership of the NBN lemon to those that vote for this Bill.

Are you willing to vote for a technology solution that offers what is described in the statutory obligations clauses?

This Bill has a number of hidden traps, including the grant of power to the Minister to carry out a raft of actions that are not in the long term interests of end users and anti-competitive. For example:

"The Minister will have the power to make a legislative instrument setting out circumstances in which the SIP obligation does not apply, and requirements for people purchasing a SIP service. This reserve power is similar to the power which exists under the USO regime in the TCPSS Act. For example, a SIP should not have to connect premises to its network where it cannot receive required approvals, or there are safety concerns involved."

If approvals cannot be achieved or there are safety concerns, the alternative is to provide a satellite connection. To consider a situation where a SIP should not have to provide a connection in 2017 is unacceptable. This is an example where the legislation is poorly drafted.

"Targets for NBN Co

The Bill provides two targets that NBN Co, as a SIP, must take all reasonable endeavours to meet. These are expressed as the intention of the Parliament and are:

- NBN Co's fixed-line networks are capable of being used to supply fixed-line carriage services with peak download speeds of at least 50 Mbps and peak upload speeds of at least 10 Mbps to at least 90 per cent of premises in areas that, according to NBN Co's website, are serviced by those networks."

This statement is technically incorrect. FTTN cannot provide 50/10 Mbps to between 10 and 20 per cent of premises and connection speeds will degrade over time as is typical of copper based networks. This statement does not indicate if the connection speeds are to be attained once, once a year, once a month or just based on laboratory testing.

If you're one of the 10 per cent identified that cannot get 50/10 Mbps should you be happy? After spending $50 billion or more is it satisfactory that the government is providing a substandard outcome to as many as 500,000 premises across the nation?

Again, Senators on the cross bench should consider very carefully what voting for this legislation will mean. This is about ownership, this is about voting for and justifying a second rate NBN.

Is it arguable that this is a GST like vote and is reasonable to remind Senate cross benchers what effect the GST vote had on the Australian Democrats?

Further Discussion

The following are paragraphs from an earlier article (Gregory, 2017) about the Bills.

> But the industry levy is only targeted at carriers providing high speed broadband over local access lines, which is a term found in the Telecommunications Act 1997 (Act) to describe fixed-line connections.
>
> Apparent exclusions to the industry levy include mobile broadband services, fixed-wireless broadband services, satellite broadband services, exchange based xDSL broadband services and inactive super-fast carriage services.
>
> It is inexplicable as to why companies offering super-fast broadband using FTTN/B and FTTP to residential customers should be levied, whilst companies offering super-fast broadband using fixed-wireless (microwave) and mobile broadband are not.
>
> The draft legislation and the report that it is based upon are now out of date and have been overtaken by the effects of the Turnbull Government's shift to a second rate, multi-technology mix NBN.
>
> There is no justification for the mobile network operators to be exempt from the industry levy as they are also competitors to NBN Co that will benefit by not contributing to the provision of fixed-wireless and satellite broadband services in regional and remote areas.
>
> Over the next decade the mobile network operators will rollout 5G and potentially super Wi-Fi providing gigabit connections speeds.
>
> Armed with this technology the mobile network operators will ramp up their competition with NBN Co and in regional and remote areas they will seek to capitalize on their ability to offer gigabit connections whilst NBN Co offers download speeds of between 25 Mbps and 50 Mbps.
>
> The government appears to be, yet again, sidelining the Productivity Commission. By now the Minister for Communications and the Arts Mitch Fifield will have received the Productivity Commission report into the telecommunications universal service, that was recently completed after a year-long study.
>
> By pushing ahead with the telecommunications levy and other aspects of the flawed telecommunications reform package the government will make future telecommunications reforms much harder to implement, as there will first be a need to unwind the mess that this government has created.
>
> Part of the lunacy is the government's decision to remove small business customers from Part 8 of the Act.
>
> This change would only benefit the larger telcos at a time when further division of the telecommunications market is unwarranted.
>
> The Department of Communications and the Arts explanatory notes to the draft legislation state that "this means that lines used to supply superfast carriage services to small businesses will no longer be subject to structural or functional separation requirements."

> "This creates greater flexibility for network operators in the supply of superfast carriage services to small business customers."
>
> This is simply nonsense.
>
> Companies focused on supplying super-fast broadband to small business will be able to do so without the need to provide infrastructure sharing and this sets the scene for the larger carriers to be able to target business customers without the need to open their networks to wholesale based competition.

Note

Unfortunately, submissions to government inquiries are currently not able to be counted as academic outputs. The Australian Research Council specifically identifies submissions to government inquiries as ineligible for the Excellence in Research process. For more time to be allocated by academics to preparation of submissions to government inquiries, there is a need for urgent changes to rules about measuring the submission as a research outcome and having impact.

Telecommunications policy is key to Australia's participation in the global digital economy. I would have preferred to have the time to commit to reasonably prepare a logical and well-argued technical submission but time does not permit given that this submission must take a low priority due to the circumstances identified.

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