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Telecommunications (Regional Broadband Scheme)
Charge Bill 2019 (RBS Bill)

Telecommunications Legislation Amendment
(Competition and Consumer) Bill 2019 (TCC Bill)

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Internet Australia appreciates the opportunity to engage with the Senate Standing Committees on Environment and Communications regarding the *Telecommunications (Regional Broadband Scheme) Charge Bill 2019 (RBS Bill)*, which seeks to impose a broadband infrastructure tax starting at \$7.10 per month all fixed-line broadband services, in order to assist in funding fixed-wireless and satellite infrastructure to serve regional and remote areas.

High speed and high-quality broadband services are essential for people and businesses in regional and remote areas. Their remoteness and long distances required to be travelled physically means increasingly more importance is placed on interacting virtually – whether for education or health consultations, keeping in contact with family and friends, shopping and logistics planning ordering goods and services to be delivered. Farmers and other primary producers make extensive uses of real-time satellite observations and weather forecasts, as well as accessing markets to buy and sell produce. The ability to stave off loneliness in remote areas by making frequent high-quality contact with loved-ones elsewhere can reduce the pressures of loneliness that leads to relatively high incidences of mental health concerns in regional and remote areas.

Internet Australia has always recognised and supported measures and programs to improve availability and quality of communications services in regional and remote areas, and the Internet Society and its chapter around the world are actively engaged in connecting remote communities and indigenous communities across the globe,¹ with 19 active projects current ranging from Argentina to Uganda, across South America, Asia, Africa and the Americas.²

That said, we are concerned that this proposed Regional Broadband Scheme is largely duplicative of the Universal Services Obligation and Telecommunications Industry Levy scheme, and will result in industry being subject to two independent levy regimes structured very differently, resulting in

¹ Tusheti, Georgia case-study, 2017 - <https://www.internetsociety.org/resources/doc/2017/tusheti-case-study/>

² <https://www.internetsociety.org/issues/community-networks/>



inefficient duplication and costs of compliance on the rest of industry, and therefore on all consumers and customers of telecommunications services.

The USO/TIL scheme is focussed on provision of PSTN telephone infrastructure and standard telephone services, while this new RBS is focussed on providing broadband data (satellite and fixed-wireless) infrastructure and wholesale broadband services, both aimed at extracting funds from providers serving urban areas and directing those funds towards regional and rural infrastructure.

In many respects the USO/TIL structure is superior to the proposed RBS arrangements, as discussed below.

In many respects the new RBS is anti-competitive in structure and scope, and designed more to prop-up the NBN funding regime than to enable open and transparent infrastructure competition to improve and advance broadband service availability in regional and remote areas. There are several ways in which the RBS could be improved, to reduce the impact on the rest of Australian telecommunications services and users while ensuring that regional and rural communities can access the high-quality services they, and the rest of the Australia, expect to be available for them.

About Internet Australia

Internet Australia is the not-for-profit organisation representing all users of the Internet. Our mission – “Helping Shape Our Internet Future” – is to promote Internet developments for the benefit of the whole community, including business, educational, government and private Internet users. Our leaders and members are experts who hold significant roles in Internet-related organisations and enable us to provide education and high-level policy and technical information to Internet user groups, governments and regulatory authorities. We are the Australian chapter of the global Internet Society, where we contribute to the development of international Internet policy, governance, regulation and technical development for the global benefit.

Yours Sincerely

Dr Paul Brooks

Chair – Internet Australia



Submission by Internet Australia

Telecommunications (Regional Broadband Scheme) Charge Bill 2019
(RBS Bill)

And

Telecommunications Legislation Amendment (Competition and Consumer) Bill 2019
(TCC Bill)

Introduction

This submission is in two major parts.

The first part contains high-level comments and observations on the overall structure of the legislation.

The second part contains detailed comments and observations of specific provisions within the legislation that directly address key points identified by Internet Australia.

We would be delighted to answer any questions you may have arising from this submission, and to clarify any aspects that are unclear.



Summary of Recommendations:

Recommendation #1: We recommend that the Government harmonise and merge the new RBS and Statutory Infrastructure Provider regime with the existing Universal Services Obligation, Primary Universal Services Provider and Telecommunications Industry Levy regimes so that there is only one scheme for collecting funds from industry to use for regional and remote infrastructure, not two separate regimes.

Further, we strongly recommend the Government reconsider whether the goals of this new legislation would be more optimally met if the USO and PUSP regime in the TCPSS Act was simply redefined to apply to broadband data services, instead of voice telephony services, as the structure of the USO/TIL/PUSP regime is superior in many respects to the new RBS/SIP regime.

Recommendation #2: We recommend that the RBS base component should be reviewed no less frequently than annually by the ACCC, and the rate 'per line' should be calculated in direct relation to the efficient costs anticipated and budgeted by the SIP, which are likely to vary substantially from year to year. With annual reviews, the provisions relating to indexation in the Bill should be removed as unnecessary.

Recommendation #3: The RBS Bill should include a reduction in NBN Co's wholesale pricing corresponding to the removal of the cross-subsidy component, to ensure Australians are not being charged twice for the cross-subsidy component that will no longer be required to be collected by NBN Co.

Recommendation #4: The TCC Bill (Division 2) should not be restricted to funding only fixed-wireless or satellite network options. The TCC Bill, and grants to eligible service providers, should remain technology-neutral and leave it to the provider to determine, according to local conditions, what technology deployment would provide the required services in uneconomic areas. Fixed-wireless and satellite solutions should only be deployed as technologies-of-last-resort.

Recommendation #5: The TCC Bill (Division 2) should require any recipient of grants under the RBS Scheme to explicitly nominate the service area anticipated to be connected using the grants, and to justify why that service area is – and will remain for a reasonably foreseeable time period – uneconomic to serve via any other means.

The TCC Bill should also require any recipient of grants or funds under the RBS to expend those funds in the uneconomic-to-serve areas, and not use granted funds to provide services outside those areas. subsection 317ZF(3)(e) be expanded to read 'for the purposes of obtaining professional advice, including legal advice, in relation to this Part.'

Recommendation #6: The Bill, if it is to include indexation, should use a Producer Price Index such as the 'Heavy and civil engineering construction index' rather than the CPI, as the costs of wholesale telecommunications networks are not well represented in a CPI basket of goods.



Recommendation #7: Schedule 3 Part 1 Division 1 (service provider determinations) of the TCC Bill should be removed, as the ACMA already has these powers and the regulatory uncertainty resulting from possibly conflicting rules is undesirable.

All other provisions in the TCC Bill where the Minister is given powers or abilities that duplicate powers or abilities of an independent Commonwealth agency should also be removed.



1 High-Level Comments

1.1 Similarity to the Universal Service Obligation

The Australian Government has had a long-standing process of supplementing the funding of loss-making regional and rural infrastructure builds through the Universal Services Obligation³ (USO) since the early 1990s, and recently reviewed by the Productivity Commission in 2017⁴ in light of the increased availability of infrastructure through the NBN program.

As noted by the Productivity Commission in that report:

“The telecommunications universal service obligation (TUSO) is one of several policy instruments to meet the Australian Government’s universal service objectives. It was introduced in the 1990s (when the sector was being deregulated) to ensure ‘reasonable access’ to a standard telephone service and payphones for all Australians on an ‘equitable’ basis, regardless of where people reside or work. At that time, telecommunications was centred on basic telephones, and the TUSO was enacted to benefit consumers by affording them a ‘provider of last resort’ for voice telephony.”

The USO regime was – and still is - focussed on telephone services, because at the time, telephone was the only service – broadband Internet services did not exist at the time. Telephone services, were largely provided on fixed-line infrastructure, consisting of a traditional PSTN twisted-pair copper wire.

The result of the USO was that the USO infrastructure-provider-of-last resort (usually Telstra, although at times this was open to tender) could access funding to build infrastructure to provide services in regional and remote areas where the costs to build such infrastructure were higher than the anticipated revenue, given Australia’s preference for universally similar pricing of retail services in city and country areas.

The funding was and still is drawn from a levy on other providers in the industry (the Telecommunications Industry Levy) under s50(2) of the Telecommunications (Consumer Protections and Service Standards) Act (TCPSS Act)⁵.

Licensed carriers already contribute an amount determined each year by the ACMA in the Telecommunications Industry Levy (TIL) to support loss-making infrastructure builds. In 2019 this amount paid out amounted to over \$350 million⁶ as documented in November 2019.

³ <https://www.communications.gov.au/what-we-do/phone/phone-services/universal-service-obligation>

⁴ <https://www.pc.gov.au/inquiries/completed/telecommunications/report>

⁵ <https://www.acma.gov.au/telecommunications-funding-arrangements>

⁶ <https://www.acma.gov.au/sites/default/files/2019-11/Telecommunications%20Overall%20Levy%20Target%20Amount%29%20Statement%202019.pdf>



The RBS and its related statutory infrastructure provider (SIP) regime can easily be seen to be similar to the current TIL/USO arrangements, in that an amount of money is levied on the broader industry to form a pool of funds that can be spent by other telecommunications providers to provide infrastructure and services in uneconomic loss-making areas.

The new Statutory Infrastructure Provider (SIP) regime is almost identical in intent to the existing Primary Universal Services Provider (PUSP) regime defined in Subdivision B of the TCPSS Act.

The TIL/USO scheme is focussed on provision of PSTN telephone infrastructure and standard telephone services, while this new RBS/SIP is focussed on providing broadband data (satellite and fixed-wireless) infrastructure and wholesale broadband services.

Internet Australia has long argued through many reviews of the USO that, with the coming into being of the NBN, the USO scheme should be redirected towards the provision of broadband data infrastructure in regional and rural areas, as telephony services are no longer tied to voice-only lines and can be easily carried over data services, just as all NBN voice is carried in the form of Voice-over-IP. Targeting the USO at broadband infrastructure would then have the dual effect of enhancing access to both telephone and Internet services, rather than only telephone services, as Australians should expect in the 21st century.

While we support the Government acknowledging that broadband data services in regional and remote areas are worthy of funding to ensure availability to all citizens, doing so by creating yet another new scheme instead of simply modifying the existing scheme to apply to broadband data infrastructure seems unnecessarily complex, confusing and duplicative, given the USO/TIL scheme seems to be intended to continue to operate in parallel.

Recommendation #1

We recommend that the Government harmonise and merge the new RBS and Statutory Infrastructure Provider regime with the existing Universal Services Obligation, Primary Universal Services Provider and Telecommunications Industry Levy regimes so that there is only one scheme for collecting funds from industry to use for regional and remote infrastructure, not two separate regimes.

Further, we strongly recommend the Government reconsider whether the goals of this new legislation would be more optimally met if the USO and PUSP regime in the TCPSS Act was simply redefined to apply to broadband data services, instead of voice telephony services, as the structure of the USO/TIL/PUSP regime is superior in many respects to the new RBS/SIP regime



1.2 Amount levied is not transparent, or related to actual costs

The amount levied under the USO/TIL structure is calculated through a transparent process, and varies according to annual reviews of efficient expenditure. The ACMA determines annually how much the Primary Universal Services Provider (PUSP) will be permitted to recover from the pool of funds for providing infrastructure and services in uneconomic areas, and therefore how much will be charged to industry⁷ to replenish the funds:

"The TIL is based on the costs incurred by the Universal Service provider in the prior year. Contributions to the TIL are proportional to each participating person's eligible revenue for the previous financial year. The calculation of this levy is set out in the Telecommunications (Consumer Protections and Service Standards) (Levy Formula Modification) Determination 2019, made under subsection 50(2) of the TCPSS Act." (ACMA website "How is the TIL assessed")

By contrast, the RBS appears to be set to a dollar amount per line that is arbitrary and indexed to rise in future years. There is little scope for the charge to be easily decreased, other than by a review by the ACCC every 5 years, and then a disallowable instrument from the Minister. We consider 5 years to be an excessively long time between reviews, given the NBN infrastructure is planned to be completed within 12 – 18 months of the commencement of the legislation, from which time the expenditure should be relatively low in operations and maintenance costs of the underlying infrastructure (towers, transmitters, satellites, etc.). The costs of construction, and the unit rates of hardware, software and maintenance, can be expected to change rapidly on timescales of half-years at this crucial point towards the end of the deployment.

Further, by virtue of being charged on a 'per line' basis, the impost on industry will organically rise as the number of services-in-operation in urban and regional areas rises due to population growth, without any relation to whether or not the costs incurred by the SIP rise or fall. This structure ensures the RBS impost will creep up and tend to over-recover the efficient costs of the SIP, and thus unreasonably affect the costs and prices of wholesale and retail services for all Australians. The RBS is also proposed to be indexed to a CPI rate that bears no relation to any index relevant to the construction of telecommunications infrastructure.

1.3 Amount required for uneconomic services is likely to change rapidly

Further, it is likely in early years that some communities that might be currently considered uneconomic to serve, become economic to serve and thus ineligible for subsidy. One way this could come about is through leveraging other newly-built infrastructure, such as optical fibre lines to nearby population centres. By 're-hubbing' uneconomic communities to nearby economic centres, the costs of backhauling traffic from the uneconomic areas would be reduced through shorter long-distance transmission lines, and the costs to serve the nearby economic-to-serve communities would also reduce through leveraging shared infrastructure and improved economies of scale. The

⁷ <https://www.acma.gov.au/telecommunications-funding-arrangements>



NBN and other private networks (e.g. the Vocus/Nextgen Networks long-distance optical fibre backbone network, and all the backhaul infrastructure built for the various Mobile Blackspot Program grants) has resulted in a significant amount of rural and regional long-haul optical fibre and microwave network construction in the past decade - we should expect subsequent waves of network optimisation to occur as network designs take advantage of new infrastructure nearby.

The RBS is anticipated to be levied (or at least calculated) monthly, so a review of the quantum of the base component no less frequently than annually would be more appropriate to ensure changes in costs either up or down will be more closely tracked by the RBS costs to industry.

Recommendation #2

We recommend that the RBS base component should be reviewed no less frequently than annually by the ACCC, and the rate 'per line' should be calculated in direct relation to the efficient costs anticipated and budgeted by the SIP, which are likely to vary substantially from year to year. With annual reviews, the provisions relating to indexation in the Bill should be removed as unnecessary.

1.4 No reduction in urban wholesale rates due to removal of cross-subsidy

The Explanatory Memorandum for the RBS Charge Bill 2019 states:

*Fixed wireless and satellite technologies are the quickest and most cost effective way of providing broadband services to regional Australia. However, these networks are expected to incur a net loss of \$9.8 billion (in net present value terms) over thirty years. NBN Co currently funds these net costs through an **internal cross subsidy from its fixed-line networks. This cross subsidy is not sustainable and ongoing funding for essential regional broadband services is at risk.** (emphasis added)⁸*

The funds collected from other carriers will be collected by Government, and provided to NBN Co as the SIP to "support NBN Co's ability to fulfil its obligations under the Statutory Infrastructure Provider provisions proposed in Schedule 3 to the TLA (CC) Bill."⁹

As NBN Co will be receiving funds to offset the current cross-subsidy for regional services out of the revenue received from urban services, and non-NBN network operators will be providing extra funding for this purpose, the wholesale charge for urban services should be reduced by the amount of the reduced cross-subsidy to ensure the cross-subsidy is not 'double-dipped' from the pockets of retail providers, which will then be passed on to the Australian public. If NBN's wholesale charges in urban areas do not reduce as an outcome of this program, then all Australians will still be paying for the existing cross-subsidy.

⁸ Telecommunications (RBS) Charge Bill – Explanatory memorandum, P2

⁹ Ibid, P3



If the RBS is established in the form proposed, we would expect to see a corresponding reduction in NBN Co's prices to account for the removal of the cross-subsidy.

Recommendation #3

The RBS Bill should include a reduction in NBN Co's wholesale pricing corresponding to the removal of the cross-subsidy component, to ensure Australians are not being charged twice for the cross-subsidy component that will no longer be required to be collected by NBN Co.

1.5 The SIP regime is promoting wireless technologies above superior technologies

Part 3 of the TCC Bill contains provisions for the granting of funds to NBN Co (or another eligible funding recipient). There are a number of significant structural issues with this regime.

The TCC Bill specifically only allows the use of funds to build fixed wireless or satellite infrastructure, and cannot be used to provide any other form of superior technology. The TCC Bill and regime appears to assume that fixed wireless and satellite networks are, and always will be, the lowest cost and optimal method of servicing regional and remote areas. This is at odds with the principal of technology neutrality, and removes any incentive for NBN Co or another funding recipient to install any better technology, even if it would be more cost-effective and provide superior services in those local conditions.

This regime, in effect, provides a perverse incentive for NBN Co to maximise the footprint of its fixed-wireless and satellite areas, even into areas where it would be more economic in the long term to install a superior fixed-line technology, maximising the digital divide that already occurs on the boundaries between technology zones.

Fixed-wireless and satellite solutions are appropriate to use in areas with low population density, however their performance, reliability, scalability and ability to expand to meet future needs are always inferior to fixed-line technologies, and should always be treated as a technology-of-last-resort to be deployed only where a better technology would be uneconomic to build for the low population density. In localised areas where higher population density enables a better technology to be deployed at a lower localised cost than fixed-wireless or satellite, it should be – which will then take pressure off the restricted bandwidths available on the fixed-wireless and satellite platforms for the customers that truly have no other option.



Recommendation #4

The TCC Bill (Division 2) should not be restricted to funding only fixed-wireless or satellite network options. The TCC Bill, and grants to eligible service providers, should remain technology-neutral and leave it to the provider to determine, according to local conditions, what technology deployment would provide the required services in uneconomic areas. Fixed-wireless and satellite solutions should only be deployed as technologies-of-last-resort.

1.6 Grants to SIP providers are not targeted to un-economic areas

The entire rationale of the RBS and SIP regimes is predicated on providing additional funds to assist in providing services in uneconomic areas, where the costs-to-serve exceed the anticipated revenue due to low population density.

However, there appears to be no requirement for recipients to spend grants in areas that are uneconomic to serve. The legislation appears to make the assumption that all areas served by fixed-wireless or by satellite technologies are inextricably and inevitably uneconomic to serve by other means, and so the only requirement of grants is that they be spent on wireless technologies.

This assumption is dangerous, and ill-founded, and only serves to encourage providers to use inferior but cheaper fixed-wireless or satellite solutions to serve customers in areas where better technologies would normally be indicated, and to ‘creep’ wireless service zones into the fringes of towns where other technology has been deployed, and should otherwise be extended as the town grows to avoid a further digital divide between customers in the centres of towns and those on the edges.

RBS funds should only be expended to serve customers in uneconomic areas – it should not become a funding conduit to provide inferior technologies in economic-to-serve areas.



Recommendation #5

The TCC Bill (Division 2) should require any recipient of grants under the RBS Scheme to explicitly nominate the service area anticipated to be connected using the grants, and to justify why that service areas is – and will remain for a reasonably foreseeable time period – uneconomic to serve via any other means.

The TCC Bill should also require any recipient of grants or funds under the RBS to expend those funds in the uneconomic-to-serve areas, and not use granted funds to provide services outside those areas.

2 Detailed Comments

2.1 Indexation – CPI is inappropriate

Section 18 of the RBS Bill refers to an *indexation factor*, and an *index number*, which is defined in section 3 of the RBS Bill as the All Groups Consumer Price Index (CPI) published by the Australian Statistician.

This index number is used to inflate the base component of the RBS charge annually.

We submit that, if the charge is to be indexed (and we have argued above it should not be indexed, but should be reviewed annually) the CPI is not an appropriate index to use, as the RBS base component costs are wholesale telecommunications costs of infrastructure. A more appropriate index would be a Producer Price Index such as the Heavy and civil engineering construction index.

Recommendation #6

The Bill, if it is to include indexation, should use a Producer Price Index such as the ‘Heavy and civil engineering construction index’ rather than the CPI, as the costs of wholesale telecommunications networks are not represented in a CPI basket of goods.

2.2 New powers enable the Minister to override the ACMA

Section 99(1) of the Telecommunications Act 1997 already provides that the ACMA may make rules to apply to service providers that are called a *service provider determination*.

The TCC Bill (Schedule 3) inserts a new subsection 99(1A) that enables the Minister to also make a service provider determination, and then a new subsection 99(6) that states that a service provider determination made by the ACMA ‘has no effect to the extent to which it is inconsistent with a service provider determination’ made by the Minister.

In effect, the political nature of Government is giving itself powers to override the objectives and decisions of an independent Commonwealth statutory agency. Such a situation increases regulatory uncertainty for the industry, as any service provider subject to a service provider determination, or



seeking a revised determination, will need to negotiate with two organisations rather than one, and may be subject to rules being changed for political purposes rather than industry structural reasons as determined by an independent agency.

If the Minister wishes a service provider determination to be changed, it would be preferable if the Minister acted through the ACMA to action this.

Recommendation #7

Schedule 3 Part 1 Division 1 (service provider determinations) of the TCC Bill should be removed, as the ACMA already has these powers and the regulatory uncertainty resulting from possibly conflicting rules is undesirable.

All other provisions in the TCC Bill where the Minister is given powers or abilities that duplicate powers or abilities of an independent Commonwealth agency should also be removed.

Thankyou for your attention.

Ends