

Submission to the Senate Environment and Communications Committee re: *Telecommunications Legislation Amendment (Competition and Consumer) Bill 2019 & Telecommunications (Regional Broadband Scheme) Charge Bill 2019*

Introduction

On 28 November 2019, the Senate referred the *Telecommunications Legislation Amendment (Competition and Consumer) Bill 2019* and the *Telecommunications (Regional Broadband Scheme) Charge Bill 2019* to the Senate Environment and Communications Legislation Committee for inquiry.

Vocus is a specialist fibre and network solutions provider operating Australia's second-largest intercapital network. Vocus is also the fourth-largest retail service provider on the NBN via our Dodo, iPrimus, Commander and wholesale businesses, with over 465,000 connected users (7.5% market share).

In total, the Vocus terrestrial network is 30,000km of high-performance, high-availability fibre-optic cable supported by 4,600km of submarine cable connecting Singapore, Indonesia and Australia and 2,100km of submarine cable between Port Hedland and Darwin connecting offshore oil and gas facilities in the Timor Sea. Vocus owns a portfolio of brands catering to enterprise, government, wholesale, small business and residential customers across Australia and New Zealand.

Executive Summary

Vocus calls on Senators to support the *Telecommunications Legislation Amendment (Competition and Consumer) Bill 2019*, but to oppose the *Telecommunications (Regional Broadband Scheme) Charge Bill 2019*.

Vocus is opposed to the introduction of the Regional Broadband Scheme (RBS) because a new levy on telcos is, in effect, a new indirect tax on broadband consumers – who will ultimately see this cost reflected in their monthly internet bill.

By introducing the RBS before reforming the Universal Service Obligation (USO), around \$1 billion a year will be collected in indirect taxes on consumers to subsidise duplicative networks in regional Australia.

Vocus opposes the RBS on a number of grounds:

1. It is based on costings which are now years out of date.
2. The charge base has changed substantially since initial costings were performed, with no public analysis of the financial consequences.
3. The market has changed since the charge base was decided upon, with mobile services now increasingly competitive to the NBN.
4. Introducing the RBS as an industry levy (rather than being Budget-funded) goes against the independent advice of Government agencies including the Productivity Commission and the Australian Competition and Consumer Commission (ACCC).
5. The RBS effectively imposes a second USO levy on industry – while keeping the existing USO levy in place.

With the exception of the RBS, Vocus broadly supports the Statutory Infrastructure Provider (SIP) obligations and the removal of regulation for networks servicing small business customers contained in the *Telecommunications Legislation Amendment (Competition and Consumer) Bill 2019*.

1. RBS costings are out of date

The concept of what was to eventually become the RBS was initially floated as part of the 'Vertigan Review' in 2014¹, which considered various options to subsidise NBN's loss-making fixed wireless and satellite networks. The Vertigan Review recommended that NBN should seek to disaggregate/divest these loss-making networks because "were NBN Co to instead remain an integrated entity, it would be difficult to determine the subsidy required and on that basis to set an appropriate levy."

The Government responded to the Vertigan Review in December 2014 with its [Telecommunications Regulatory and Structural Reform](#) paper which stated: "The cross-subsidies which are currently embedded in NBN Co's wholesale prices will be replaced by transparent funding provided via contributions sourced from owners of high-speed broadband access networks that target residential and small business customers – i.e. the NBN and networks in commercially viable areas that are comparable to the NBN."

The Bureau of Communications Research (BCR) issued its [first consultation paper](#) on NBN non-commercial services funding options in May 2015, with the Government responding to the [Bureau's final report](#) in December 2016 with the announcement of the Regional Broadband Scheme.

As a result, the legislation introduced into Parliament in November 2019 is based on costing work performed in 2015 when NBN's fixed wireless and satellite network rollouts were still in their infancy, meaning the financial basis of the RBS is based on outdated assumptions and long-term projections rather than real-world data.

When the BCR commenced consultation on the non-commercial services levy, NBN's fixed wireless network had fewer than 50,000 users. When it handed its final report to Government, NBN's first satellite had not even been launched.

Today, almost five years later, the fixed wireless and satellite networks are largely complete and have been the subject of evolving changes to their coverage footprint², speeds³, and products⁴ – meaning the assumptions which underpinned the 2015 costings are out-of-date.

In 2019, Government has access to real-world capex and opex costs associated with NBN's non-commercial services, providing it with a solid basis to reassess the costings of 2015 and provide an accurate, up-to-date assessment of the magnitude of the subsidy required (and to reassess the most effective means of providing that subsidy).

2. Changes to RBS charge base

There have been numerous changes to the proposed RBS charge base since the BCR's costing work, but no public assessment of the financial impact of these changes. As a result, the original levy amount proposed in the BCR's costings will no longer reconcile with the overall amount of subsidy required for NBN's loss-making networks.

The BCR report said the levy "should be calculated according to the number of high-speed fixed-line SIOs [services in operation]". It calculated that each high-speed fixed-line SIO would contribute around \$6.80 per month in FY2015 real terms, equivalent to around \$7.30 per month in nominal terms in FY2018 and \$8.00 per month nominal by FY2022.⁵

¹ Independent cost-benefit analysis of broadband and review of regulation Volume I – National Broadband Network Market and Regulatory Report p20-22

² <https://www.itnews.com.au/news/nbn-co-redirects-200m-wireless-capex-into-hfc-4tfc-532718>

³ <https://www.nbnco.com.au/corporate-information/media-centre/media-statements/nbn-co-unveils-new-plans-for-fixed-wireless-network>

⁴ <https://www.nbnco.com.au/blog/the-nbn-project/sky-muster-plus-to-bring-data-relief-to-regional-australians>

⁵ BCR NBN non-commercial services funding options, Final Report, March 2016, p8

Numerous changes have occurred since then which will have a material impact on the amount expected to be raised:

1. The legislation introduced into Parliament has changed the charge base from 'SIOs' to 'chargeable premises associated with a local access line'.
2. Enterprise services have been included in the charge base.
3. A charge concession period has been introduced for the first 25,000 residential and small business premises, and the first 55,000 'recently connected greenfield premises' on a carrier's network.
4. The charge amount has now been capped at \$7.10, as distinct from the original costings which envisaged a variable amount.

The Senate should not vote in favour of a Bill which introduces a new tax without any public assessment of the impact of these changes on the amount to be raised.

3. Changes to the broadband market

In the BCR's 2015 costings, mobile services were not included in the RBS charge base "as they are not considered by the BCR to be close substitutes to fixed-line services at this time."⁶

The broadband market has changed substantially since that time, and in 2019 5G services now offer unlimited data at NBN-equivalent speeds (50Mbps) for \$70 per month⁷ – equivalent in speed, capacity and price to NBN retail broadband products.

If the intention of the RBS is to impose a levy on 'NBN-comparable' services, then the narrow focus of the levy base on fixed-line services capable of providing speeds of 25Mbps or more has been outdated by rapid developments in technology since 2015.

The likely effect of limiting the RBS charge base exclusively to fixed-line high-speed broadband services will be to further incentivise private-sector investment in mobile and fixed-wireless services (which will increasingly be capable of undercutting NBN prices, as they will not be subject to the RBS levy), and to further disincentivise investment in fixed-line services – despite each technology being capable of delivering NBN-comparable services.

4. Subsidies should be Budget-funded

Introducing the RBS as an industry levy (rather than being funded through consolidated revenues) goes against the independent advice of Government agencies including the Productivity Commission and the ACCC.

The Productivity Commission commented on the proposed RBS levy in its 2017 report on the USO, stating: "In principle, the choice of funding model for non-commercial services should seek to minimise distortions in the telecommunications market, the risk of which is heightened with a narrowly-based long-term industry levy. As such, the Government may need to revisit the merits of alternative funding arrangements for nbn's non-commercial services."⁸

The ACCC has repeatedly publicised its preference for direct budget funding rather than an industry levy. In its 2017 Communications Sector Market Study draft report the ACCC said: "Our preference is for direct budget funding as it would be the least distortionary alternative and not serve as a means of protecting the NBN from network competition."⁹

In its 2018 final report, the ACCC made the recommendation that: "Greater substitution across technologies would also bring into question the suitability of the RBS charge as a

⁶ BCR NBN non-commercial services funding options Final Report, p7

⁷ [Optus 5G Home Broadband website](#)

⁸ Productivity Commission Telecommunications Universal Service Obligation Inquiry Report April 2017, p17

⁹ ACCC Communications Sector Market Study [Draft Report](#), October 2017, p27

mechanism to fund non-commercial NBN services. We propose direct budget funding as it would be the least distortionary alternative and not serve as a means of protecting the NBN from network competition.”¹⁰

The Government’s 2014 Vertigan Review also made it clear that: “By far the best option for funding any ongoing subsidy would be through consolidated revenue.”¹¹

5. The USO should be reformed (or removed) before the RBS is introduced

If passed, the RBS will lock in a new tax to subsidise NBN’s regional fixed wireless and satellite networks, while an existing tax to subsidise Telstra’s regional copper network will continue to be collected for more than a decade after the NBN rollout is complete.

Combined, these two taxes will raise around \$1 billion annually from industry to subsidise networks serving the same users in regional Australia. That is \$1 billion in indirect taxes on consumers, as these costs will be built into their monthly phone and internet bills.

The \$253m USO payment and the \$741m RBS levy will equate to \$994m in regional communications subsidies in 2020-21, and over \$1 billion in 2021-22¹² – and will continue to increase each year.

The existing tax – the Telecommunications Industry Levy (TIL) – subsidises the cost of the USO (amongst other things). The majority of the TIL goes towards Telstra’s USO Standard Telephone Service contract – effectively a \$253m annual payment to Telstra to continue operating its regional copper network until 2032, with the majority of the TIL paid by Telstra to itself.

The new tax – the RBS – subsidises the cost of NBN’s fixed wireless and satellite networks by applying a levy on all fixed-line operators of \$7.10 per connected premises, per month. According to the Department of Communications’ 2019 Portfolio Budget Statement, the RBS is expected to raise over \$741m in 2020-21, with the majority of the RBS paid by NBN to itself.

But despite the fact that today Telstra pays most of the TIL to itself and NBN will pay most of the RBS to itself, Telstra and NBN will increasingly be paying each other to operate these duplicative networks.

Telstra (the sole recipient of USO payments) paid \$157m into the TIL in 2018-19. NBN paid just over \$11m into the TIL for 2018-19, based on its 2017-18 eligible revenues of \$1.17b¹³. NBN’s Corporate Plan projects revenues of \$5.6b in 2022 – meaning that if NBN’s TIL payment increases in proportion to its revenue growth, NBN will be paying more than \$50m annually to subsidise Telstra’s regional copper networks from 2022-2032.

Meanwhile, NBN (the sole recipient of RBS payments) is expected to pay around 95% of the RBS¹⁴, which means that out of the anticipated \$741m to be raised in 2020-21, roughly \$37m will be paid by industry. Telstra will pay its portion of that \$37m since the levy is also applied to Enterprise fibre lines where Telstra has the dominant market share.

By implementing the RBS before reforming (or removing) the USO, these inherent flaws in both subsidies will be cemented rather than corrected. The Productivity Commission commented on this issue in its 2017 USO report, stating: “The funding of nbn’s non-commercial services should, moreover, not be considered independently of universal service policy reforms.”¹⁵

¹⁰ ACCC Communications Sector Market Study [Final Report](#), April 2018, p9

¹¹ Independent cost-benefit analysis of broadband and review of regulation, Volume I, p21

¹² Department of Communications and the Arts 2019-20 Portfolio Budget Statement, p23

¹³ [ACMA Eligible Revenue Assessment 2017-18](#)

¹⁴ Department of Communications [RBS Factsheet](#)

¹⁵ Productivity Commission Telecommunications Universal Service Obligation Inquiry Report April 2017, p16