

10 October 2022

Department of Infrastructure, Transport,  
Regional Developments, Communications and the Arts  
GPO Box 594 Canberra, ACT 2601

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## **Submission regarding the exposure draft of SIP Legislation**

Uniti Group Limited (and its subsidiaries including Opticomm Pty Limited) (**Uniti**) wishes to provide its appreciation to the Department of Infrastructure, Transport, Regional Developments, Communications and the Arts (the Department) for requesting responses from Uniti to the exposure draft of the legislation amending the SIP regime (Part 19 within the *Telecommunications Act 1997* (Cth) (**Act**)) (the **Proposed Legislation**) issued by the Minister on 31 August 2022, and further, for making yourselves available this week to discuss the Proposed Legislation with Uniti. We welcome the opportunity to provide our views on the Proposed Legislation.

Further to our discussion with you both earlier last week, provided below are suggested considerations for the Department and the Minister with respect to the Proposed Legislation and certain further points related to the current operation of the SIP regime. For ease of reference, we have provided headings which replicate the 'key items' discussed between us.

### **1. Bringing private networks in new developments into the SIP regime**

We note the intention of the Proposed Legislation to extend the Statutory Infrastructure Provider obligations to capture Carriage Service Providers (**CSPs**) who are involved in the deployment of telecommunication network infrastructure which will enable the supply of eligible services to premises in new developments, and that other general CSPs (being those who are not involved in such activities) will continue to not be subject to the SIP regime. Uniti supports this approach.

### **2. Anticipatory Notices under current SIP regime**

The Proposed Legislation does not amend the current requirements of the SIP regime (Part 19 in the Act) for a carrier to provide an anticipatory notice to the ACMA within 10 business days of the carrier entering into a contract for the deployment of telecommunications network infrastructure (which will enable the supply of eligible services to premises in a particular area) within a development.

Uniti submits that the current requirement to provide notice within 10 business days of entering into such contract, and the subsequent publication of that anticipatory notice data by the ACMA to the public, requires further consideration by the Department.

In effect, this requirement results in a carrier's contractual pipeline being disclosed to the public. Uniti appreciates the intention of this requirement is firstly to enable residents to be notified that a telecommunications network will be installed in their area, and secondly to ensure nbn Co (as the default Statutory Infrastructure Provider under the Act) is aware that such area will have a telecommunications network installed by another carrier who will then become the Statutory Infrastructure Provider for that area, however Uniti considers the current trigger point for anticipatory notices to be issued (being the entering into of a relevant contract) to be premature and submits that a later trigger point – such as developer application approval (for the development at which the



telecommunications network will be installed), registration of a masterplan, granting of a construction certificate by a local government authority or similar – would be more appropriate.

Beyond providing the contracting carrier with greater comfort the contract they have signed with a developer will not be poached by another carrier, this later trigger point would also ensure the ACMA is being notified of developments which have a then high-likelihood of being undertaken and completing. It is not uncommon for such contracts to be entered into for developments that may be three to five years away (or even longer), which is well in advance of the development planning and approvals process being commenced or completed with the relevant authorities. In some cases signed contracts to deploy telecommunication network infrastructure at new developments are subsequently cancelled or varied.

The requirement to provide the Anticipatory Notice should also apply to NBN Co in the same manner as applicable currently to carriers and potentially to CSP's pursuant to point 1 above and as amended should this occur as a result of the Exposure Draft. Carriers (and potentially CSP's) compete with NBN Co and the disclosure of customer contracts for the deployment of telecommunication network infrastructure subject to the SIP regime should apply equally to all market participants.

### **3. Overbuilding under current SIP regime**

Further to the above point, Uniti is aware of certain carriers in the industry who intentionally install secondary telecommunications networks where other carriers have already installed telecommunications network infrastructure subject to the SIP regime, with a primary intention of avoiding any obligations under the SIP regime and (in certain cases) essentially operating a closed network.

Uniti submits such secondary networks should be subject to the SIP regime. From the point of view of an end user, they would then have two Statutory Infrastructure Providers to choose from and decide on who to approach. Alternatively, should the carrier installing the secondary telecommunications network become the Statutory Infrastructure Provider for that area – as technology evolves and upgraded networks are installed, this could lead to end users being serviced by the most current technology in the market (as opposed to a potential legacy network subject to the SIP regime).

Uniti submits there can and should be more than one SIP, which will enable the supply of eligible services to premises in a particular area, particularly where a Carrier (and potentially CSP's) have installed telecommunications network infrastructure.

Furthermore, all SIP's nominated for the supply of eligible services to premises in a particular area must be obligated to construct the telecommunications network infrastructure in accordance with regulatory standards including the construction of compliant pit & pipe infrastructure and cable pathways ensuring another SIP can provide eligible services to premises in the designated SIP area.

### **4. Confirming that SIPs can be required to pay compensation**

Under the Proposed Legislation, if a Statutory Infrastructure Provider contravenes a designated compensable standard determined under subsection 360U(1), the Statutory Infrastructure Provider is liable to pay damages to the customer for the contravention.

Section 360VE provides a 14-day period for the payment of damages where a Statutory Infrastructure Provider has reason to believe an event has occurred which is reasonably likely to result in the Statutory Infrastructure Provider being liable to pay damages. Uniti contends this 14-day period is too short, and proposed a longer period be adopted in the Proposed Legislation. With respect to this, Uniti notes that where the Statutory Infrastructure Provider has determined it is not liable for the event, subsection 360EV(3) provides the Statutory Infrastructure Provider with a 14-week period in which to advise the customer of that decision.



Uniti further notes that, in many circumstances, the relationship between the Statutory Infrastructure Provider and the affected customer will be one of a wholesale network operator and the end-user of a retail service provider. In this respect, and having regard to Part 8 of the Act, where the Statutory Infrastructure Provider is a carrier and not a CSP, the ability under the Proposed Legislation for the Statutory Infrastructure Provider to credit the affected customer's account would not be practicable. Uniti considers further clarity on this point, or for the Proposed Legislation to obligate a CSP to pass on any SIP damages related credit from the Carrier to the intended end-user, would be preferable.

Should any clarification or further commentary be sought, we would be happy to assist.

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**Uniti Group Limited**

