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Bureau of Communications Research

NBN non-commercial services funding options
Final Consultation Paper

Response by OptiComm
November 2015

Public version

1. Introduction

The government has asked the Bureau of Communications Research (**BCR**) to report on options to fund NBN Co's (**NBN**) provision of non-commercial services. This submission is in response to the BCR's Final Consultation Paper. This is the confidential version of OptiComm's submission and OptiComm requests that it is not made public or published on the BCR's website. A public version of this submission with commercially sensitive material redacted is also provided and can be published by the BCR.

The BCR has assessed the loss that it expects NBN Co will incur from building and operating satellite and fixed wireless services in non-commercial areas of Australia and proposed that this loss is funded by the introduction of a levy on high-speed fixed line network operators servicing residential and small business customers (**NBN non-commercial services levy**). The BCR states that it prefers the funding to be limited to this narrowly targeted segment of the telecommunications industry rather than the broader telecommunications industry, which is in stark contrast to the long established manner currently utilised to subsidise loss making telecommunications services in regional areas by the Telecommunications Industry Levy (**TIL**) and previously by the Universal Service Obligation (**USO**) levy. As an operator of fibre networks in residential and business developments, OptiComm is amongst the small group of carriers that would be required to contribute to the NBN non-commercial services levy if BCR's proposal is implemented.

OptiComm recognises the economic and cultural importance of providing affordable telecommunications services to all Australians no matter where they live or work and that NBN Co is the most appropriate party to provide the necessary infrastructure to facilitate broadband services to the bulk of remote and regional parts of the country. OptiComm agrees that it is reasonable that services in non-commercial areas are subsidised to enable them to be retailed at rates that are comparable to commercial areas in order to provide universal service to the community. The Government's original intention was that NBN Co as an entity would fund non-commercial services through a cross subsidy collected from the NBN's commercial services. Unfortunately, factors that include a significant cost blow out in the NBN's construction costs have resulted in the Government seeking alternative funding for the infrastructure that is needed to provide services in non-commercial areas. Though it is a public policy objective rather than a commercial objective of the telecommunications industry, we accept that there are reasonable arguments in favour of this subsidy being predominantly sourced from the telecommunications industry rather than consolidated revenue, however, we strongly disagree with the BCR's view that the subsidy should be sourced only from NBN Co and carriers that provide high speed fixed-line services to residential and small business customers.

The BCR's proposed NBN non-commercial services levy would represent an extremely material cost to OptiComm, which we consider highly unreasonable and contrary to our legitimate expectations of how non-commercial telecommunications services in regional areas will be funded and how we will be able to operate our business and network within the context of regulation of high speed networks. We consider that the BCR's Final Consultation Paper contains errors in both facts and assumptions that place the BCR's position and economic analysis in question. We consider that limiting the NBN non-commercial services levy to such a narrowly targeted band of carriers risks under-recovery of necessary funds, understates the impact that fixed to mobile substitution will have on NBN's business model, unfairly discriminates against a particular class of carriers, and will result in Australian consumers paying more for high-speed fixed line services than they would if the levy is collected across the telecommunications industry as a whole. OptiComm submits that the NBN non-commercial services levy should be collected in the same manner as the Telecommunications Industry Levy (**TIL**), i.e. as a broad based levy on all spheres of the telecommunications industry including mobile operators.

Attached to this submission is a report from Frontier Economics, which concludes that the currently proposed narrowly targeted levy risks market distortions and that the BCR and the Government should consider broader funding arrangements given the risks to efficiency and completion.

2. Principles for designing funding arrangements

The BCR considered funding arrangements against the principles of transparency, contestability, sustainability, economic efficiency, equity, and competitive neutrality[1]. OptiComm agrees that these are reasonable principles to base funding decisions upon but disagrees with the BCR's conclusions.

(a) **Transparency**. OptiComm agrees that the BCR's proposed funding methodology is transparent, however, we consider that it is relatively simple to achieve this principle and that sufficiently detailed levy contribution criteria would make another funding methodology just as transparent.

(b) **Contestability**. The BCR's proposed funding disadvantages fixed line operators over mobile operators, as being free from the contribution obligation mobile operators have an immediate cost advantage. It disadvantages high-speed fixed line operators over other fixed line operators, for example, as its ADSL network is not subject to the levy contribution Telstra enjoys a distortionary cost advantage for ADSL services that operate at high speeds up to 24Mbps. It also disadvantages a class of carriers over the carriers that are exempt from the funding contribution because they are selling their networks to NBN Co at a future date, allowing them the opportunity to maintain a lower retail price that will increase their ability to retain end-user customers on the relevant network after it passes to NBN Co.

(c) **Competitive neutrality**. Placing such a significant financial burden on the small group of carriers that the BCR considers to be NBN Co's most direct competitors puts them in a distinct competitive disadvantage against NBN Co. The reduction in income will result in competitive carriers having less ability to roll out networks and to compete with NBN Co. The narrowly targeted levy heightens the competitive advantages that NBN Co already has through economies of scale, Government backing, a delayed requirement to achieve profitability, and the ability to rely upon regulation that is not available to non-NBN carriers. A broad industry levy is more likely to achieve competitive neutrality by sharing the financial burden of the levy.

(d) **Sustainability.** The BCR's approach is unsustainable. By relying heavily on contributions from a small targeted group of carriers, undue financial burden is placed upon that group. NBN Co is already overbuilding existing high-speed fixed line networks that are captured by the network. Future SIO numbers are not known, creating uncertainty in regards to how much these carriers will be required to contribute during the course of the levy, raising the potential that the Government will be forced to implement a new contribution scheme.

[1] BCR Final Consultation Paper, chapter 6.

(e) **Economic efficiency**. The narrowly targeted levy will result in carriers avoiding capture by investing in networks that are outside the eligibility criteria.

(f) **Equity**. The narrowly targeted levy is inequitable as it targets a specific and small group of carriers, particularly as those carriers have invested heavily in infrastructure and in business models that are in compliance with and reliance on existing laws and USO funding mechanisms, and cannot reallocate those investments without incurring very significant costs or losses.

3. A broad based industry levy is fairer than a narrow targeted levy

OptiComm has operated as a FTTP developer for over 10 years, significantly predating the concept and commencement of the NBN. OptiComm operates solely as an open access wholesale only provider, in total compliance with the level playing field provisions set out in Parts 7 & 8 of the Telecommunications Act. Since the establishment of NBN Co, we have been placed in the difficult position of having to compete with a very large Government funded entity in order to win orders to install networks in greenfield estates. It is extremely unreasonable that we may now be subject to a very significant new tax on each service in operation (**SIO**) when we have been in total compliance with all relevant rules and that this tax will be considerably higher because the vast bulk of the existing telecommunications industry will not be required to contribute. This is a massive movement of the competitive goalposts and is neither fair nor representative of regulation that is trying to provide a level playing field for NBN Co and other industry players.

The BCR has proposed that the Telstra and Optus HFC networks should be exempted from the funding arrangement in the period before their transition to NBN Co to avoid creating a significant compliance burden to collect revenue over a short, interim period[2]. OptiComm considers that this is unfair and further, we believe the BCR's position is factually incorrect as apart from the actual levy cost burden, compliance is not difficult and it would not be a significant compliance burden to Telstra and Optus at all. All it requires is a person in the Optus and Telstra finance department with a calculator to work out the following calculation: Number of SIOs x $6 = $cost/month payable into the levy.

Broadening the eligibility criteria of the levy will spread and lessen its pain amongst a far larger spectrum of the industry. Though a broad levy will result in a small cost increase across all telecommunications services, it will have the beneficial result that high-speed services on the NBN and other fixed-line networks will be cheaper as they do not need to bear the total cost of the levy for non-commercial services. This approach is far more effective in meeting the government's objective of making the NBN available and affordable for all Australians.

4. A broad based industry levy is more sustainable that a narrow targeted levy

BCR's Final Consultation Paper lists networks that BCR considers are potentially eligible to pay a levy under an NBN equivalent funding arrangement[3]. The list includes:

[2] BCR Final Consultation Paper, p 9
[3] BCR Final Consultation Paper, Table 13, p 60

- NBN Co's network;
- Telstra's Velocity and South Brisbane networks;
- OptiComm's FTTP networks;
- iiNet's VDSL2+ and HFC networks;
- TPG's FTTB network; and
- FTTP networks of other greenfield operators.

A fair proportion of these networks predated the NBN and would have been accounted for when the Government calculated NBN Co's internal cross subsidy arrangements. The obvious newcomer in the list is TPG's FTTB network, which, based on the BCR's figures, at this stage is relatively small.

Using publicly available data sourced from internet searches the BCR estimated that there are currently about 463 200 eligible SIOs apart from NBN Co's SIOs and that this number will grow to about 550,000 SIOs by FY2022. OptiComm cannot comment on the accuracy of the SIOs credited to the other carriers, however OptiComm has considerably less than the 147,000 SIOs credited to it in the BCR's table.

[c-i-c begins - OptiComm SIO figures redacted - c-i-c ends]

If its media claims are to be believed, the 3200 TPG FTTN SIOs listed in the BCR's table will grow considerably as it rolls out its network, however at this stage that is not certain and we do not know if the combination of the December 2014 carrier licence conditions requiring structural separation and provision of a $27/month wholesale service on fixed-line high speed networks[4], and the BCR's proposed additional levy will alter TPG's plans. It is clear however that the carrier licence conditions and the levy must materially reduce the profitability of TPG's proposed FTTB network and that these factors would be closely considered in its reassessment of its business plans.

With regard to other networks on the BCR's list:

- We understand that NBN Co has already overbuilt iiNet's HFC network in Ballarat and it has recently been reported that NBN Co's rollout schedule includes overbuilding iiNet's HFC networks in Geelong and Mildura as well as the iiNet FTTN network in Canberra[5]. We consider it fair to say that competing at the infrastructure level with a Government backed juggernaut like NBN Co places the ongoing viability of iiNet's HFC and FTTN networks under pressure if not doubt.

- It is also reported that NBN Co is overbuilding fibre or FTTN networks operated by OPENetworks and TPG[6], which must surely be an impediment to the sustainability of those networks and their ability to fund the NBN non-commercial services levy.

[4] https://www.comlaw.gov.au/Details/F2014L01699
[5] https://delimiter.com.au/2015/10/17/nonsensical-farce-nbn-massively-overbuilding-canberras-fttn-with-more-fttn/
[6] http://www.itnews.com.au/blogentry/when-nbn-and-tpg-are-battling-for-your-broadband-budget-410089

- It has recently been reported that negotiations to sell Telstra's South Brisbane FTTP network to NBN Co have broken down and that NBN Co has already commenced overbuilding at least part of Telstra's network with more fibre[7].

BCR's proposed recovery model appears to be based on tenuous data that places the ongoing sustainability of non-NBN Co contributions at risk as the BCR quite clearly does not know how many eligible SIOs exist now and there is considerable uncertainty regarding how many non-NBN SIOs will exist at any future time. We are for instance surprised that the BCR has sourced and relied upon SIO data about iiNet's VDSL2+ network from a Whirlpool chat forum. Though a useful website for industry discussion, Whirlpool is not usually regarded as a credible news site as it contains a lot of unsubstantiated opinion, and is definitely not reliable enough to be used as a basis for decisions that are vital to an industry and our economy. Recovery of the very large sums needed to fund the NBN non-commercial services must be absolutely certain for decades and basing decisions on data that is simply not credible and is easily shown to be materially incorrect is a recipe for failure and under-recovery that will result in the Government enduring the embarrassment and expense of having to find alternate means to fund broadband services in regional areas.

Though the subject of complaints about over-recovery by Telstra, TIL arrangements are an established and effective means to source industry funds to subsidise telecommunications services in high cost regional areas and the same methodology is as appropriate now for broadband as it has been for nearly two decades for the standard telephone service. The funding criteria should not be restricted to NBN-like fixed line services but should encompass the industry as a whole with an eligibility criteria based upon a threshold level of telecommunications revenue. Implementing a broad based funding structure will ensure that there is always sufficient funds from the levy to adequately subsidise NBN's non-commercial services because the actual eligibility is clear and it is far more certain that the relevant companies will be in a financial position to make the contribution.

5. A broad based industry levy complies with the government's Terms of Reference and policy paper

BCR's research responds to Terms of Reference issued to it by the Government, which followed a December 2014 Government policy paper called *Telecommunications Regulatory and Structural Reform*. Amongst other things, the Terms of Reference state:

- *The BCR will provide advice on options to replace the current arrangement, where NBN Co funds non-commercial services through an internal cross-subsidy, with direct funding arrangements based on industry contributions.*

- *Consider options for structuring the funding arrangements, including:*

  b. eligibility requirements of contributors (based on revenue, services in operation or other criteria)[8]

Quite clearly, BCR is tasked with reporting how the telecommunications industry can

[7] https://delimiter.com.au/2015/10/26/telstra-unable-to-sell-south-brisbane-fttp-to-nbn-co/
https://delimiter.com.au/2015/10/23/nbn-co-secretly-overbuilding-telstras-south-brisbane-fibre-with-more-fibre/
[8] BCR Final Consultation Paper, p.81

contribute to the funding of NBN non-commercial services and to consider what will make an industry participant eligible to contribute. The Terms of Reference do not state that eligibility should be limited to high-speed fixed line operators. This narrowly targeted view of eligibility appears to come from the December 2014 policy paper, which the BCR has referred to and which states:

> *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.*[9]

And

> *The Government will task the Bureau of Communications Research in the Department of Communications with providing advice on the amount of non-commercial service funding required to provide for NBN satellite and fixed wireless services. The intention is that new funding arrangements will be put in place that are competitively neutral across telecommunications carriers. The Government will implement an industry contribution and explicit funding mechanism for NBN satellite and fixed wireless services (expected implementation date 1 January 2017).*[10]

Given that the BCR's task is set out in the Terms of Reference, the BCR should have closest regard to those terms as they definitively state what is required of the BCR. The Terms of Reference do not state that eligibility should be limited to the owners of high-speed fixed line networks and we do not know if the Government's policy position shifted between making the December 2014 policy paper and tasking the BCR to investigate funding models. However, we do understand that the December 2014 policy paper is related to the Terms of Reference and even though the policy paper is extrinsic material that the BCR feels it should be considered. The December 2014 policy paper states that the levy should be sourced from NBN Co and the owners of high-speed broadband access networks that are comparable to the NBN. It does not provide a description of what attributes make a network comparable to the NBN and it does not state that a network must be a fixed line network to be comparable. OptiComm disagrees with the BCR's position that only fixed line networks are comparable to the NBN and firmly believes that mobile broadband networks are comparable to the NBN, provide services that are substitutes to services provided over the NBN, and accordingly fit within the December 2014 policy paper's proposed eligibility criteria.

Mobile broadband is a substitute for fixed line broadband and with advances in technology the potential for consumers to choose mobile over fixed is increasing. As a fixed line provider, this is a reality that OptiComm has to deal with and we consider that it needs to be recognised in deciding how to implement a levy to subsidise the cost of regional broadband. The fact is that there will be a significant percentage of consumers in areas serviced by the fixed line NBN that will buy a mobile broadband service and not an NBN service. This is a commercial reality in areas serviced by existing high-speed fixed-line networks and we expect that NBN Co is well aware of

[9] Australian Government, *Telecommunications Regulatory and Structural Reform,* December 2014, p.6
[10] Australian Government, *Telecommunications Regulatory and Structural Reform,* December 2014, p.12

the drain that it suffers to mobile and wireless competitors. In the greenfield estates serviced by OptiComm, we have a take-up rate of approximately [c-i-c OptiComm take up figures redacted c-i-c], i.e. about [c-i-c OptiComm take up figures redacted c-i-c] of premises passed by our fibre network choose not to connect to it despite the fact that there is no alternative fixed line network. We do not have access to detailed data about the consumers or their reasons for choosing not to acquire a service on our network, but anecdotally it is our understanding that these consumers are predominantly young people that have chosen to use mobile phone and mobile broadband instead of a fixed line service. This ties in with the BCR's position that lower income earners are more likely not to have a fixed line service[11] as households consisting of younger people are more likely to have a lower income, but in our experience it is more a factor of age than income. The point that can't be ignored is that as these young people age and earn more, it cannot be taken as a certainty that they will acquire a fixed line service. These are people that have grown up with mobile phones, smartphones, and tablets. They are very used to a mobile rather than a fixed service and may be willing to pay more or to forego potentially larger data allowances of fixed plans for the flexibility of mobility.

Accompanying this is the fact that mobile technology is constantly improving. 4G mobile broadband already purportedly offers speeds of 150Mbps[12]. Telstra claims that its network provides speeds of up to 50 Mbps on 4G devices and 75 Mbps on newer 4GX devices. These speeds are purportedly available around all capital cities and many other cities and towns, i.e. quite widely spread. A study by British firm OpenSignal in January 2015 found the average Sydney user of its app on Vodafone's 4G network could download at 33.9 Mbps, Telstra customers could download at 20.7 Mbps and Optus at 18.3 Mbps[13]. It is difficult to accept that with average speeds that are directly comparable to speeds on NBN fixed line plans that mobile broadband is not comparable to an NBN service and is so easily disregarded by the BCR in its assessment of eligibility to contribute to the NBN non-commercial services levy[14]. Quite clearly, the distinction that the BCR sees is of little significance to large numbers of consumers that acquire mobile broadband services on the basis that such services meet the same purpose for them as a fixed-line service. Of course, several manufacturers are already working on 5G mobile broadband technology, which will provide significantly higher speeds that 4G can now, with speeds of 1 Gbps being considered likely[15]. It is expected that 5G will be commercially available in 2020 though Verizon claims that it expects to be making 5G commercially available to some extent in the US in 2017[16]. In any event, 5G will be a reality very early in the life of the NBN non-commercial services levy and it is of course likely that further advances in mobile technology will follow with corresponding impacts on NBN Co's market share.

Following Telstra, Vodafone has announced that it will be offering voice and video over LTE by December this year. The industry expects that Optus will follow suit in the near future. Until recently, low data caps have been viewed as a limitation of mobile broadband as it restricts the use of the service for data intensive applications such as video on demand. However, new mobile broadband plans are removing this

[11] BCR Final Consultation Paper, p.55
[12] http://www.gizmodo.com.au/2015/01/this-is-the-year-of-super-fast-mobile-broadband-in-australia/
[13] http://www.smh.com.au/digital-life/mobiles/exceptionally-fast-vodafone-comfortably-trumps-telstra-optus-in-4g-mobile-speed-tests-20140123-31aym.html
[14] BCR Final Consultation Paper, p.8.
[15] https://en.wikipedia.org/wiki/5G
[16] http://www.cnet.com/news/verizon-to-hold-worlds-first-crazy-fast-5g-wireless-field-tests-next-year/

limitation. Vodafone's largest data cap is 50 GB/month for $140[17]. On 4 November 2015, Optus introduced a new mobile broadband plan, clearly "out-competing" Vodafone by offering 50 GB data for $70/month. Optus's mobile broadband plan actually offers more data than some comparable plans on the NBN. It is a realistic 100% substitute for some NBN plans offering similar speeds and download allowances at a similar price, but with the advantage of mobility. For example, iiNet offers a 25/5 NBN 50 GB data fibre plan for $64.90/month[18].

50 GB provides over 70 hours of standard definition streaming per month, which is more video streaming than most people would actually watch. Quite clearly, consumers will be able to substitute a fixed line broadband service for mobile broadband and it represents a competitive threat to the NBN. Communications Day had this to say about Optus's $70/50 GB plan:

> Optus has launched a new wireless broadband service running on its 4G network, targeting homes in areas with poor broadband connections as well as households on the move such as renters, and those that need a service up and running quickly. With a competitive monthly charge of $70 and data allowance of 50GB, the new offering could further the trend towards wireless-only households, particularly among younger users. Research from the Australian Communications and Media Authority has shown that 25% of under 25s were "wireless only", compared to 95% of over 65s who still had a fixed-line internet connection. That reflects the trend in other markets: ownership of a fixed line is far lower amongst younger age groups. In the US the Center for Disease Control and Prevention,
> which depends on accurate telephone surveys, found that in 2013 41% of adult-only households had no landline. More recent US research now puts that figure at 44% for those aged between 25 and 40 years old.[19]

The Communications Day article went on to say that Optus's plan would only be suitable for light users of video streaming services like Netflix, which at High Definition can use up to 3 GB/hour. However, this comment fails to consider the fact that consumers can select their streaming definition preference on Netflix and other video streaming services, i.e. they can choose to watch in Standard Definition rather than High Definition in order to preserve their data allowance. Standard Definition provides very good viewing quality that is fine for most uses and is perfectly acceptable to most consumers.

Comms Wire said this about Optus's $70/50 GB plan:

[17] http://www.vodafone.com.au/personal/mobile-broadband/sim-only
[18] http://www.iinet.net.au/internet/broadband/nbn/plans/ accessed 5 November 2015
[19] Communications Day, Wednesday 4 November 2015

> The price and data allowance makes the new plan a viable alternative to fixed line solutions. The new Optus wireless plan offers a serious wireless alternative to fixed line plans - offering 50GB of data for just $70 a month. With an increasing number of new renters leaving the nest each year, the mobile operators are starting to make a serious dent into the fixed line broadband market.[20]

There has been a steady increase in mobile data caps coupled with a steady decrease in fees over the past few years and this now appears to be accelerating. We consider it is reasonable to expect that there will be an extrapolation of these improvements in mobile broadband plans in the near future and that consumer perceptions of the limitations of mobile broadband will quite quickly erode. Mobile broadband is already comparable to fixed-line broadband, even though in our view fixed-line still provides a superior service. With purported technological advances, mobile broadband will become an increasingly strong competitor and substitute for services on the NBN, it is somewhat naïve to ignore its obvious potential. Fixed wireless broadband should also not be ignored as a substitute for NBN fixed-line services. Big Air claims to provide high availability, symmetrical broadband services with speeds of up to 1Gbps on its fixed wireless network[21]. Big Air's potential to compete in the NBN world appears obvious to the market given that it has experienced a 50% increase in its share price since July 2015[22] and increased its revenue by 50% to $62.7 million in FY15[23], however it is ignored in the BCR's assessment.

We also believe that there is no cogent reason to exclude ADSL services from eligibility to contribute to the levy. For years consumers in cities and towns have enjoyed high quality ADSL broadband services that consumers in regional area have longed for but been unable to obtain. The speeds that are currently available on ADSL are comparable to and very frequently faster than the speeds that will be available on NBN fixed wireless and satellite services. For example, ADSL1 provides speeds of up to 8 Mbps, ADSL2 provides speeds of up to 12 Mbps and ADSL2+ provides speeds of up to 24 Mbps, which is faster than the speeds that NBN Co will offer in non-commercial regions. ADSL2+ is very widely available in Australian cities as demonstrated by iiNet's published speed maps[24]. We consider that there is no reasonable explanation that the people who have had the long term benefit of good quality services on ADSL networks and will soon have access to even better technology on the NBN should not have to contribute a small amount to the provision of services in Australia's vast non-commercial areas. At present that narrowly targeted levy will result in the Government collectively a relatively small amount, which will not increase until the NBN rollout ramps up considerably. The inclusion of ADSL services in the levy base will provide access to immediate funding for NBN's non-commercial services, which will be gradually replaced by NBN Co's contribution as the NBN is rolled out and ADSL is replaced. We expect that this is an attractive proposition to a Government that must be looking at how it can reduce the costs of the NBN.

[20] Comms Wire, Wednesday 4 November 2014
[21] http://www.bigair.com.au/fixed-wireless-network
[22] http://www.asx.com.au/asx/research/company.do#!/BGL - accessed 27 October 2015
[23] http://www.asx.com.au/asxpdf/20151023/pdf/4329mlrx1ptycp.pdf
[24] http://www.iinet.net.au/iinetwork/bb2-speeds.html

The narrowly targeted levy is not 'competitively neutral across telecommunications carriers', which was stated as an intention of any levy in the Government's December 2014 policy paper[25]. Firstly, the introduction of such a significant levy makes it far more difficult for the affected carriers to compete with the Government backed NBN Co, this is particularly relevant to small companies like OptiComm. Secondly, the narrowly targeted levy would make it more difficult for the affected carriers to compete with non-affected carriers including mobile and wireless broadband operators.

OptiComm is disappointed with the BCR's detachment from commercial reality, as demonstrated by its statements that a monthly $6 per SIO levy is a 'modest contribution from non-NBN fixed line network operators' and its seeming belief that an estimated 22% increase in costs can be absorbed by lower margins or reduced product offerings[26]. These costs represent a very significant impost on OptiComm and if imposed will be the subject of legal scrutiny as there is no doubt that it negatively impacts the value of our business and assets.

NBN Co has very tangible advantages over its direct competitors. Its Government backing provides it with the enviable ability to roll out an ubiquitous network without the requirement of making a profit for many years. It is able to roll out networks faster and cheaper than its rivals because of amendments to the *Telecommunications (Low-impact facilities) Determination 1997*, which apply only to NBN Co and allow it to install a greater range of network facilities without landowner permission or planning consent. Several laws have been amended and carrier licence conditions imposed that are directly aimed at impeding the ability of other carriers to compete with NBN Co[27]. The imposition of this additional levy exclusively on NBN Co's fixed-line competitors will further impede the ability of a small group of carriers to compete with NBN Co by diminishing their profitability. As it stands, the purpose of the BCR's proposed targeted levy appears to be as much an attack on carriers that the BCR considers to be cherry picking NBN Co's market share as to assist in funding the subsidy for NBN non-commercial services.

6. A broad based industry levy reflects entrenched industry policy for funding non-commercial services

In 2012, the previous Universal Service Obligation levy and the National Relay Service levy were replaced with the TIL, which since this year is administered by the Department of Communications. The TIL funds standard telephone services (**STS**) in non-commercial areas, a telephone service enabling people with speech or hearing impediments to make and receive calls, emergency call services, and other public policy telecommunications objectives. Contributions to the TIL are assessed on the eligible revenue of all carriers. Though the TIL enables the provision of fixed lines in regional areas, the levy is also imposed on mobile carriers who contribute a significant amount to the levy.

The USO or TIL is a well-established mechanism to fund non-commercial services in regional Australia. The essential difference between the TIL and the funding mechanism under discussion is that the TIL primarily funds telephony and the new levy will fund broadband. This distinction is becoming increasingly irrelevant to both

[25] Australian Government, *Telecommunications Regulatory and Structural Reform,* December 2014, p.12
[26] BCR Final Consultation Paper, p.10
[27] For example: Parts 7 & 8 of the Telecommunications Act.

consumers and service providers. On the NBN voice most calls will be via IP. Fixed-line communication is increasingly via email or the internet and social media. PSTN call levels have steadily dropped for years and many consumers use mobiles as their primary source of communication. Fixed line voice calls are still very important but they are no longer as singularly vital as they were when the USO was envisaged. This is a result of the technological advantages that mobile and fixed line broadband offer as a communications tool over the STS. This is recognised and addressed by the Government's commitment to ensuring that broadband is universally available and affordable in all parts of Australia. This Government commitment is based upon the same principles that led to establishment of the USO. The same reasons that the USO (or TIL) is funded by all carriers that earn above a revenue threshold also exist in regards to funding the NBN non-commercial services levy, making a broad contribution base rather than a narrowly targeted base the appropriate funding methodology.

The recently released Regional Telecommunications Review 2015 considered that the existing USO funding model is problematic, stating that the STS is rapidly becoming obsolete because:

- Consumers are increasingly switching from making voice calls via the PSTN to using mobiles, VoIP and social media apps as primary communications tools.
- As the NBN rolls out, it will replace Telstra's copper network as the universal fixed access network.
- The STS and USO funding fail to target the areas of greatest need in regional Australia.
- The USO agreement between the Government and Telstra locks onto an STS of declining relevance.
- Carriers are faced with an additional levy for NBN non-commercial services.
- Loss making services in regional Australia and losses associated with safety net services should be dealt with in one scheme.[28]

The Regional Telecommunications Review 2015 recommended development of a new Consumer Communication Standard for voice and data[29] and replacing the TIL with a levy to support loss-making regional infrastructure and services, with scope to include subsidies for the non-commercial NBN services[30]. We agree with the Regional Telecommunications Review 2015 views and recommendations in this regard and submit that it is a preferable option to the BCR's proposal. This would also mean that Retail Service Providers, amongst the largest potential benefactors of the Regional Telecommunications Infrastructure build, will also contribute.

7. Conclusion

OptiComm urges the BCR to reconsider its proposed funding methodology and in line with the Regional Telecommunications Review 2015, to propose that a broad based industry levy be utilised to assist with subsidising NBN non-commercial services. For the reasons outlined in this submission and the attached report from Frontier Economics, we believe that a broad based levy better reflects the principles for designing funding arrangements than the currently proposed narrowly targeted levy.

[28] Australian Government, *Regional Telecommunications Review 2015*, chapter 4.
[29] Australian Government, *Regional Telecommunications Review 2015*, Recommendation 8
[30] Australian Government, *Regional Telecommunications Review 2015*, Recommendation 9