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Benjamin Bourne
Assistant Director
Mobile Black Spot Program Planning and Development
Department of Infrastructure, Transport, Regional Development and Communications

By email: MBSPRound5@communications.gov.au

Dear Mr Bourne

Re: Mobile Black Spot Program Round 5A Draft opportunities grant guidelines

The Australian Competition and Consumer Commission (ACCC) welcomes the Department of Infrastructure, Transport, Regional Development and Communication's (the Department) consultation on the draft guidelines of Round 5A of the Mobile Black Spot Program (MBSP).¹

The ACCC is the economy-wide competition regulator responsible for enforcing the *Competition and Consumer Act 2010* (Cth). We protect Australian consumers by fostering competitive, efficient, fair and informed Australian markets, including telecommunications markets. This includes our work under Parts XIB and XIC of the CCA in relation to preventing anti-competitive conduct in the telecommunications markets and regulating specific telecommunications services for the long-term interests of end-users (LTIE).

The ACCC supports the Government's ongoing commitment in improving telecommunications services for consumers and businesses in regional and remote areas of Australia, through programs such as the MBSP. In particular, the ACCC welcomes the Government's initiative to make the promotion of competition a key design principle in Round 5A. Competition will deliver improved coverage and quality of services, and more choice for regional consumers and businesses.

The ACCC's comments on specific elements of the draft guidelines are provided below.

Incentives to deliver competitive outcomes

In the ACCC's submission in response to Department's discussion paper on the design options for Round 5A (Discussion Paper), we noted that government programs such as the MBSP must consider competition outcomes. This is because the inclusion of competition

¹ Department of Infrastructure, Transport, Regional Development and Communication, *Mobile Black Spot Program – Round 5A – Draft grant opportunities guidelines*, November 2020. (Draft Guidelines)

consideration in these programs means that not only will they provide immediate benefits to consumers in the form of new or improved coverage, they will also be able to bring about longer term benefits associated with competitive markets over time.²

Consequently, the ACCC supports the Government's intention to prioritise solutions that provide coverage from more than one mobile network operator (MNO), regardless of whether the funding recipient is an MNO or a mobile network infrastructure provider that has a service agreement with MNOs. In particular, the ACCC supports the proposed removal of funding caps for mobile coverage solutions through which more than one MNO will provide mobile coverage and connectivity.³ The ACCC considers that this will provide incentives for MNOs and mobile network infrastructure providers to collaborate in delivering multi-MNO solutions while providing flexibility for each MNO to determine the type of infrastructure sharing models that will work for them in individual cases. The ACCC believes the removal of the funding cap will be particularly significant in attracting investment in marginal areas where the economic return is low, particularly if the potential revenue from investment is to be shared with a competitor.

The ACCC noted in its previous submission that it is important to make clear how the prioritisation of multi-MNO outcomes would be taken into account in the value for money assessment. In particular, the ACCC noted that the ability of different operators to attract third-party co-contributions should not undermine the consideration of important objectives, such as the delivery of multi-MNO outcomes.⁴

In this regard, the ACCC understands that the proposed solutions will be ranked according to the cost to the Commonwealth per square kilometre of coverage to be provided by the proposed solutions. The draft guidelines provide that the relevant measure of coverage to be provided will include new handheld coverage (i.e. not overlapping with any existing mobile coverage) and coverage that is new for a MNO but overlaps with another MNO's existing footprint (overlapping coverage), with the latter given only half the weight as the former. Where more than one MNO will be providing the new handheld coverage, the coverage will be counted cumulatively. However, overlapping coverage will only be counted once, even if the proposed solutions enable more than one MNO to provide the relevant coverage.⁵

The ACCC considers that the proposed way in which new handheld coverage is assessed is conducive to the delivery of multi-MNO outcomes. The fact that new handheld coverage will be counted cumulatively for proposed solutions that involve more than one MNO, will mean that everything else being equal, a multi-MNO solution will be ranked higher than a single-MNO solution.

However, the ACCC considers there is merit in reconsidering the weight to be given to overlapping coverage, particularly in instances where an MNO is proposing to provide coverage that is new to them but overlaps with the existing footprint of another MNO who has been the only one providing services in the relevant coverage area. In these cases, the proposed overlapping coverage will bring choice, and infrastructure competition to consumers and businesses in the area for the first time. This is because the presence of a competitor will increase the first MNO's incentives to offer more and improved coverage. The ACCC considers that it is important, and consistent with the policy objective of promoting competition in regional and remote Australia, to give due weight to the benefit that such improvement will likely bring.

² ACCC, *Submission to Mobile Black Spot Program Discussion paper*, June 2020, pp. 1–2.

³ Draft Guidelines, p. 8.

⁴ ACCC, *Submission to Mobile Black Spot Program Discussion paper*, June 2020, p. 4.

⁵ Draft Guidelines, pp. 18–19.

In saying this, the ACCC recognises that, in some cases, there could be tension between the objective of delivering new mobile coverage to areas that do not already have it and promoting competition in areas that already have some mobile coverage, and that this is ultimately a policy decision for the Government.

However, if the Department is minded to retain the current weighting to apply in the assessment and ranking of proposed solutions, the ACCC considers that the subsequent value for money assessment for each of the proposals should consider the overall extent to which the proposed solution is likely to promote competition. This should also include the extent to which competition may be improved in areas where overlapping coverage is proposed to be provided and how this would affect incentives for operators to expand and improve their coverage in the future.

Measuring new handheld and overlapping coverage

The Draft Guidelines note that the new handheld and overlapping coverage in proposed solutions be assessed against 3G and 4G handheld coverage as shown on public coverage maps, and where not yet available on coverage maps, the predicted coverage for 3G and 4G sites funded under previous rounds of the MBSP and other State and Territory co-contribution programs.⁶

The ACCC reiterates its view expressed in its previous submission to the Discussion Paper that relying only on public coverage maps may not always present a fully accurate picture of the new coverage outcome that is likely to be provided by a proposed solution due to technical limitations.⁷ As such, the ACCC suggests that in assessing the new coverage outcomes, the Government should consider evidence of on the ground experience where available to supplement assessments based on public coverage maps, e.g. by working with local communities, consumer groups and the MNOs. The ACCC considers that this evidence-based approach would enable the Government to make a more accurate assessment of the real-life impact of a proposed solution, leading to decisions that are more likely to deliver the desired outcomes to regional Australia.

Backhaul access and pricing

The ACCC previously submitted that the program should consider fall-back terms and conditions for access to backhaul services that are consistent with the operation of the Domestic Transmission and Capacity Service (DTCS) in cases where one MNO requires backhaul from a funded site to their nearest designated physical point of interconnection.⁸ The ACCC notes that the Draft Guidelines include a set of minimum requirements on backhaul access and pricing. The ACCC supports this approach as it would clarify the terms and conditions on which any grantee must provide backhaul services to a co-locating MNO. In this regard, the ACCC considers that some of the proposed terms on backhaul access and pricing could be further clarified.

First, the ACCC welcomes the use of the regulated prices for the DTCS as reference for parties to negotiate access to backhaul. The ACCC considers that for any comparison to be meaningful, and for the minimum terms to be consistent with the operation of the DTCS, the definition of backhaul under the terms of the program should include reference to the DTCS service description. Specifically, we note that mobile backhaul for the purpose of the DTCS

⁶ Draft Guidelines, p. 19.

⁷ ACCC, *Submission to Mobile Black Spot Program Discussion paper*, June 2020, p. 5.

⁸ ACCC, *Submission to Mobile Black Spot Program Discussion paper*, June 2020, pp. 3–4.

is transmission from the mobile base station to the nearest Point of Interconnection (PoI) on the access seeker's network.⁹

Second, for avoidance of doubt, the reference to the ACCC's DTCS FAD in clause 4.2.21 could explicitly mention the recently finalised DTCS FAD 2020 and the DTCS calculator that was published by the ACCC,¹⁰ which would enable interested parties to calculate the regulated price for mobile backhaul for the purpose of comparison with any offers made by the grantee.

Finally, the ACCC notes that the proposed terms for backhaul access appear to make a distinction between fibre and microwave backhaul. For instance, clauses 4.2.19 and 4.2.22 appear to suggest that the grantee would only need to provide backhaul to a co-locating MNO if it owns and controls a fibre network that connects the funded site and the grantee's network. On the other hand clause 4.2.23 appears to impose some requirements on the grantee to provide backhaul over microwave only in certain circumstances. The ACCC considers that these clauses as currently drafted do not provide sufficient clarity regarding the circumstances under which backhaul must be provided by the grantee to a co-locating MNO or certainty that a co-locating MNO would be able to access backhaul to a funded site on reasonable terms. The ACCC notes that by comparison, the DTCS is agnostic regarding underlying technology by which backhaul services are provided. The ACCC encourages the Government to consider a technology neutral approach to the provision of backhaul services under the program.

Thank you for the opportunity to make this submission. The relevant contact officer is Ms Clare O'Reilly, General Manager, Mobiles, Transmission and Consumer who can be contacted at clare.o'reilly@acc.gov.au or (02) 9230 3854.

Yours sincerely



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⁹ See DTCS service description at: <https://www.accc.gov.au/public-registers/telecommunications-registers/s152aq-declared-services-register/domestic-transmission-capacity-service-1>.

¹⁰ The DTCS FAD 2020 and the DTCS calculator are available on the ACCC website at: <https://www.accc.gov.au/regulated-infrastructure/communications/transmission-services-facilities-access/domestic-transmission-capacity-service-final-access-determination-inquiry-2019-2020/final-report>.