3 February 2017

Philip Mason
Assistant Secretary, Market Structure
Department of Communications and the Arts

Dear Philip,

nbn submission on telecommunications legislative reform package

nbn is pleased to be given the opportunity to respond to the Exposure Drafts of the Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017 and the Telecommunications (Regional Broadband Scheme) Charge Bill 2017.

nbn understands that the Government's policy intention is to strengthen the existing structural framework for superfast broadband services by:

- updating the competition framework to align with Government policy;
- formalising, via a Statutory Infrastructure Provider regime, arrangements to ensure that all Australian premises have reasonable access to infrastructure that supports the delivery of superfast broadband services; and
- establishing a Regional Broadband Scheme to transparently fund the cost of **nbn**'s satellite and fixed wireless networks.

As a Government Business Enterprise wholly owned by the Commonwealth Government, **nbn** understands its particular role in the achievement of the Government's policy objectives. **nbn**'s comments (and suggested alternatives) are directed at achieving legislative drafting which is consistent with the Government's policy intent and the existing industry framework, and not disruptive for the ongoing rollout of the **nbn**™ network.

We understand that the Government intends to pass these reforms as a package. Accordingly, **nbn** has reviewed the various and complex inter-related impacts this legislation will have on the industry, including **nbn**. As currently drafted, **nbn** has significant concerns with the proposed SIP arrangements. **nbn** proposes amendments that simplify the legislation and remove duplication and inconsistencies with the existing industry framework. These amendments are aimed at ensuring that the legislative package will be more likely to achieve the Government's policy intention, including by allowing:

- **nbn** to complete the rollout of the **nbn**™ network in a timely and cost effective manner; and
- all RSPs to innovate and capitalise on the new superfast broadband networks rolled out across Australia.

Most importantly, **nbn**'s proposals seek to ensure that the legislative package achieves the key outcome of ensuring that all Australian premises will have reasonable access to superfast broadband services as soon as practical.

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In summary, in relation to the three elements of the legislative package:

1. **Statutory Infrastructure Provider (SIP)**: **nbn** understands the policy intention of the SIP. However, the current draft legislation will have significant adverse consequences for the successful, timely and cost-effective completion of the **nbn**™ network rollout. In particular, the provisions around 'designated equipment' and those relating to the supply of services over SIP connections must be revisited to align the legislation with current policy and ensure that it does not add significant new cost, time and complexity to the **nbn**™ network rollout and the business of other potential SIPs. These concerns are significant for **nbn**. At Attachment A, **nbn** has proposed some realistic adjustments to the SIP drafting to clarify and simplify the regime for all potential SIPs and addresses a number of other issues with the SIP provisions.
2. **Regional Broadband Scheme (RBS): nbn** is broadly supportive, in principle, of the RBS (especially the inclusion of business services). However, **nbn** has previously made submissions in which we expressed the strong view that fixed wireless networks need to be included in the RBS. **nbn** remains of this view and urges the Government to revisit this issue as soon as possible. At Attachment A, **nbn** expands on these comments.
3. **Level Playing Field Provisions**: **nbn** understands the intent of these amendments and notes that they should provide long term certainty for industry in relation to infrastructure investment and access to wholesale services. At Attachment A **nbn** makes a number of suggested changes to tighten the drafting so that the amendments effectively achieve the policy objectives.

This is a significant piece of legislation for the telecommunications industry and it is fundamental that the legislation, as passed, achieves the Government policy intent so that, in the long term, network operators and RSPs have a clear and well understood regime that does not impose undue complexity or cost. Failure to achieve this policy intent through the legislative scheme will undermine the long term interests of end users.

While **nbn** appreciates the proposed timeframes for the legislative reform package, **nbn** welcomes further engagement in relation to the matters raised in our submission to ensure that the legislation, as passed, achieves the intended policy goals.

Yours sincerely

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Attachment A

Statutory Infrastructure Provider (SIP)

Overview

nbn understands that the proposed SIP regime seeks to provide industry and consumers with certainty that all Australian premises will be reasonably able to connect to infrastructure that supports the delivery of superfast broadband services.

Given that all potential SIPs will be structurally or functionally separated, and given **nbn**'s wholesale-only nature, it is important to understand that the SIP for an area will only provide infrastructure and facilitate (via the wholesale provision of some, but not all, necessary inputs) the supply of retail broadband services. The SIP does not provide services that end users directly acquire or use.

We understand that the Government's policy intention reflects the Vertigan Review's expert recommendation that the Government legislate infrastructure provider of last resort obligations for **nbn** once it has commenced service provision in an area.[1] This recommendation focussed on **nbn**'s role as an infrastructure provider and a requirement for **nbn** to connect premises to its network. It did not seek to duplicate (or override) existing parts of the industry framework (such as Part XIC), nor did it seek to expand **nbn**'s role to the connection and supply of services to designated equipment.[2]

As currently drafted, the legislation goes beyond what **nbn** understands to be Government's policy intent and is fundamentally inconsistent with the existing industry framework. The proposed obligations would lead to increased complexity and cost for all SIPs (including **nbn**) and, for **nbn**, would ultimately delay the successful and timely completion of its network rollout as currently planned. We set out below our proposals for realistic adjustments to the reform package in the limited time afforded by the proposed legislative timetable, and which **nbn** anticipates will clarify and simplify the regime for all potential SIPs.

1. Premises Connections (s 360P)

We understand that the legislation is intended to be a high-level obligation and the SIP is intended to have some appropriate flexibility in determining how it fulfils the obligation.

The connection obligation to be imposed on SIPs needs to recognise that there may be limited circumstances where a request to connect to a SIP's network cannot be fulfilled by the SIP on reasonable grounds. The SIP obligation also should not constrain the SIP's network technology choices provided that the SIP makes a superfast broadband connection reasonably available.

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[1] Vertigan et al, *National Broadband Network Market and Regulatory Report* (2014), Recommendation 5 of Volume 1.

[2] In fact, Recommendation 31 of the Statutory Review under S152EOA of the Competition and Consumer Act 2010 recognised existing arrangements for the migration of services to non-premises via the development of White Papers associated with services required to support Special Services which RSPs can acquire (under existing arrangements) as an input to migrate non-premises devices to the **nbn**™ network where commercially feasible.

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The current language in the draft legislation requires the SIP to connect premises "on reasonable request by a carriage service provider". After receiving a request to connect a premises to the SIP's network, the SIP will consider whether and how it can connect the premises to its network. **nbn** recognises the importance of this connectivity, but it is not always a trivial exercise.

Rather than focussing on the reasonableness of the request, the subject of the "reasonableness" test should be on the obligation of the SIP to connect the premises (i.e. whether it is reasonable, in the relevant circumstances, for the SIP to connect the premises, rather than whether the party asking for the service is acting reasonably in making the request). **nbn** proposes an amendment to move the focus from the reasonableness of the request to the reasonableness of connecting the premises.[3]

Further, the legislation is currently drafted such that the primary obligation on the SIP is to connect premises to a qualifying fixed-line telecommunications network. The SIP may only connect premises to a fixed wireless or satellite network if it is not reasonably practicable to meet the primary obligation. However, under **nbn**'s Statement of Expectations, **nbn** is permitted to roll out a network "using the technology best matched to each area of Australia". **nbn** does not undertake the two-step process set out in the draft legislation for each premises it connects. We suggest an amendment to align the legislative drafting with the current policy and the actual manner in which **nbn** is undertaking its network rollout in practice.

Please see below for key proposed drafting changes.

2. Premises Supply (s 360Q)

Each potential SIP will also be an access provider under Part XIC. Hence, SIPs already have obligations to supply a declared service on request by a carriage service provider. For **nbn**, this arises from the Category B Standard Access Obligations (SAOs). For other potential SIPs it arises from the Superfast Broadband Access Service Declaration (SBAS Declaration) made under Part XIC and the Category A SAOs.

nbn recognises that a legislative gap exists where a premises is not already connected to the SIP's network at the time that a service is requested of the SIP. There is currently no legislative obligation for the SIP to connect premises to its network in the existing regulatory framework and, according to the Explanatory Notes issued with the Exposure Draft, it is this gap that the SIP regime needs to address.[4] Section 360P remedies this gap. Once the connection gap is remedied, Part XIC operates to oblige the SIP to supply a service over the connection and s 360Q is not required. This is illustrated below.

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[3] This amendment will also bring the legislative provisions into alignment with the USO legislative obligations which require USO providers to ensure that standard telephone services are "reasonably accessible" to all Australians. See section 9(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).

[4] Explanatory Notes to the Exposure Drafts, page 6.

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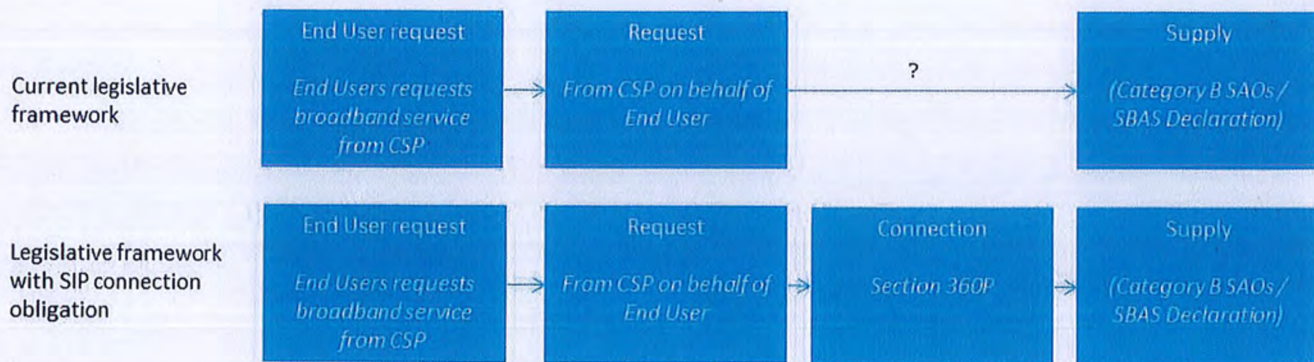

Furthermore, s 360Q would impose a new supply obligation which is inconsistent with the obligations imposed on SIPs, as access providers, under Part XIC. For example, s 360Q is drafted in absolute terms and does not permit the types of reasonable limitations and exceptions that apply to the SAOs under Part XIC.[5]

Removing s 360Q will simplify the SIP regime and focus it on the gap identified above.

Please see below for key proposed drafting changes.

3. Designated Equipment Connection and Supply (ss 360S and 360T)

The proposed obligations on the SIP to connect and supply services to Designated Equipment go further than any policy position ever articulated in respect of a SIP regime or the potential role of **nbn**. In particular, an obligation to connect designated equipment has not been articulated in any of the Statements of Expectations provided to **nbn.** Nor was it flagged in the Government's response to the Vertigan Review. Additionally, the effective operation of equipment over any network is primarily determined by the end user of the equipment and their carriage service provider, not the operator of the network. For all of these reasons, we consider that ss 360S and 360T should be removed.

Removing these obligations will simplify the SIP scheme. It will also align it with longstanding policy regarding **nbn**'s role in providing reasonable access to superfast broadband services to Australians and will preserve **nbn**'s and all SIPs' current business and operational plans. However, in the alternative, these provisions must be amended to be workable.

First, designated equipment at premises will already be served by the premises connection obligation in s 360P and the supply obligation in Part XIC. For example, if a business is connected to a SIP's network pursuant to an RSP request under s 360P and the business wishes to use its retail broadband service to connect an EFTPOS machine, it is certainly able to do so, just as it can use the retail broadband service to connect a regular PC. There is no need for the legislation to specify which types of equipment should operate over the SIP's connection to a premises under s 360P. The majority of equipment listed in the definition of "designated equipment" is provided

[5] For example, in the case of **nbn**, see s 152 AXB(3) of Part XIC, which operates to restrict supply obligations to available capacity and ensure that one access seeker's request does not have the effect of reducing supply to another access seeker.

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at premises which are covered by the connection obligation under s 360P, and such equipment should be removed from the definition.

Secondly, in respect of the non-premises designated equipment that remain (i.e. road traffic management and control systems and ATMs outside premises), the SIP can only, in practice, *connect* a service at a particular location. It cannot be responsible for connecting the specific equipment or ensuring the "effective operation" of designated equipment. This is true for **nbn**, which must operate at the lowest practical layer of the network stack. This is the same for other SIPs who will likely be offering a Layer 2 Bitstream Service. Additionally the SIP will often not directly connect the designated equipment to its network, as designated equipment is often of a sensitive nature. Often the SIP will bring its network to an agreed location and the carriage service provider or end user will perform the final connection of the designated equipment.

In most relevant cases, products that **nbn** launches must be developed pursuant to existing regulatory and contractual frameworks. Other SIPs will also need to follow their own product development processes. Otherwise this obligation will adversely affect **nbn**'s and other SIPs' broader rollouts and business cases. Accordingly, any obligation needs to be qualified by reference to commercial considerations. Qualifying the obligation with reference to commerciality is also necessary to align the legislation with the intent expressed in the Explanatory Notes provided with the Exposure Draft, which is not presently the case. The Explanatory Notes state that:

> *"The Bill provides for SIPs **to be able to negotiate** to connect designated equipment (such as health monitoring devices, ATMs, EFTPOS machines and traffic lights), upon reasonable request. **This obligation is subject to commercial agreement. If commercial agreement is not possible, the owners of the designated equipment could approach another carrier to provide the carriage services**"* (our emphasis added).[6]

Finally, the obligation to connect non-premises designated equipment must be limited to areas where the SIP has a qualifying fixed-line network footprint, as such equipment would not usually be capable of being served by fixed wireless or satellite networks.

Please see below for key proposed drafting changes.

4. Publication of Offers (ss 360P(10), (11), 360W and 360X)

The SIP has a primary obligation to connect a premises under s 360P(1). How the SIP fulfils this obligation, including whether and how it enters into terms with developers, carriage service providers and other interested parties, is a matter for the SIP to determine. There is no need for the legislative obligations proposed in ss 360P(10), (11), 360W and 360X to publish and comply with terms and conditions. This view is consistent with the

[6] Explanatory Notes to the Exposure Drafts, page 8.

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current USO framework which does not require the universal service provider to fulfil the USO on terms and conditions that are published or complied with.

Furthermore, the proposed legislation sets up a scheme of contracting that is potentially inconsistent with the obligations that already exist under Part XIC.[7] Under Part XIC, **nbn** publishes a standard form of access agreement. **nbn**'s main SFAA (i.e. the Wholesale Broadband Agreement) already contains provisions governing connectivity to the **nbn**™ network.

Under Part XIC, an access seeker may request **nbn** to enter into an access agreement in the form of the SFAA and **nbn** must do so. In effect, **nbn**'s SFAA then becomes the access agreement between **nbn** and the access seeker. Under this access agreement, both **nbn** and the access seeker have rights and obligations.

The contractual scheme contemplated by the proposed legislation (ss 360P(10), (11), 360W and 360X) is quite different and is not workable. Under ss 360P(10), if the SIP and the carriage service provider have an agreement with each other for connectivity, then the connection is not provided on the basis of that agreement but on the basis of the published agreement on the SIP's website.[8] **nbn** does not understand why this would be the case. Furthermore, only the SIP is required to comply with the agreement, not the carriage service provider. Under such a scheme, the SIP could determine the terms of connection without regard to contractual arrangements with a carriage service provider and the carriage service provider could request a connection on published terms without being bound to pay any charge applicable under those terms.

S 360P(11) then appears to set out a 'deemed contract' arrangement. If **nbn** and the carriage service provider do not have an agreement between each other for connectivity, there is deemed to be a contract between them. This is different to the scheme in s 152CJA(2) of Part XIC, where the parties actually form an agreement between each other.

Finally, the system of publishing offers under ss 360W and 360X is directly duplicative of **nbn**'s obligation to publish an SFAA under s 152CJA(1) of Part XIC. In relation to other SIPs, the ACCC's Declaration and Final Access Determination makes publicly accessible the terms and conditions of the relevant service. The duplication between the proposed new SIP obligations to publish offers and the existing SFAA and ACCC declaration regimes is unnecessary and is likely to lead to additional complexity and cost for both **nbn** and its customers (with adverse implications for retail competition). Accordingly **nbn** believes that the relevant SIP provisions should be removed.

Please see below for key proposed drafting changes.

5. Other issues

In addition to the above, **nbn** has the following comments.

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[7] See ss 360P(10), (11), 360W and 360X.

[8] This contractual scheme under s360P appears to create inconsistency with the existing operation of Part XIC, including with access agreements made in accordance with that Part.

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- The definition of "qualifying fixed-line carriage service"[9] uses the phrase "normally 25 megabits per second or more" to describe the required download transmission speed of the service. The Explanatory Notes state that the word "normally" is akin to "usually"; it recognises that circumstances may arise that temporarily displace usual download transmission speeds. **nbn** agrees that there are circumstances where usual download transmission speeds are not achievable. These are described in some detail in **nbn**'s Wholesale Broadband Agreement. **nbn** suggests an expansion to this explanation of "normally" in the legislation's Explanatory Memorandum to make it clear that there are a range of factors (some of which may persist for extended periods, but be outside the SIP's control) which affect the download transmission speeds which a network operator reasonably expects will be achieved through the supply of a carriage service.
- A declaration regarding a provisional interim service area cannot be revoked or varied.[10] It is unclear why this is the case. There may be circumstances where a service area may need to be varied for operational reasons in particular. We suggest that this constraint is removed.
- A SIP may notify the Secretary that it is likely that it will no longer be able to fulfil its SIP obligations.[11] The Explanatory Notes provide that the SIP obligation will then move to **nbn**. Greater consideration needs to be given to how a SIP responsibility should be transferred. In some cases, an alternative SIP may be appropriate. Even if it is appropriate to move a SIP obligation to **nbn**, **nbn** is unlikely to have network in the area covered by the previous SIP and would not ordinarily be able to step in and operate or integrate a third party network. Accordingly, **nbn** may not be able to automatically take up this responsibility and it may be unreasonable to expect **nbn** to do so. Further consideration needs to be given to appropriate transitional arrangements, at a minimum, if this is to occur.
- The proposed legislation sets out a range of amendments to Part XIC, which are apparently intended to ensure that SIP standards and rules prevail over various instruments and agreements recognised under Part XIC.[12] These provisions are unnecessary and they potentially interfere with access agreements, other contractual arrangements and ACCC instruments. In relation to access agreements and other contractual arrangements, the SIP is already obliged by statute to comply with the SIP standards and rules. A contract entered into with an RSP cannot derogate from this statutory obligation. But any inconsistency is an issue for the SIP to resolve. The RSP should not be disadvantaged by the contract (or parts of it) becoming void and the SIP released from those contractual obligations. Similarly, inconsistencies between SIP obligations and ACCC regulatory instruments will be a matter for the ACCC and, if needed, ordinary principles of statutory interpretation will apply. **nbn** believes that these inconsistent provisions are therefore unnecessary and can be removed.

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[9] Proposed s 360A.

[10] Proposed ss 360D(7) and 360H(13).

[11] Proposed s 360R.

[12] Proposed ss 152BCCB, 152BDCB, 152BEBH, 152BEBI and 152CBID.

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- The proposed legislation (i.e. s 360U and s 360V) allows the Minister to determine standards, benchmarks and rules by legislative instrument that must be complied with by statutory infrastructure providers. We understand that such determinations are intended as a reserve power in case a SIP fails to discharge its SIP obligations to an appropriate standard. We think that any such determination would need to be tailored to address specific issues, and so it would need to apply to a specific service area or SIP. Accordingly, we suggest that ss 360U and 360V should allow the Minister to determine standards, benchmarks and rules that apply to a particular service area or SIP, and provide for the Minister to consult with relevant SIP before making the determination. **nbn** notes that such a requirement to consult would be consistent with s 64 of the Act, which requires the Minister to consult with an affected carrier before declaring a licence condition in respect of that carrier.

Statutory Infrastructure Provider (SIP) proposed drafting changes

Amend s 360P(1) to read:

> *The statutory infrastructure provider for a service area must where reasonable, on request by a carriage service provider on behalf of an end-user at premises in the service area, connect the premises to a qualifying telecommunication network.*

Remove s 360Q.

Remove ss 360S and 360T. In the alternative, remove s 360T and amend s 360S(1) as follows:

> *The statutory infrastructure provider for a service area must where reasonable and commercially feasible, on request by a carriage service provider on behalf of the owner or operator of particular non-premises designated equipment in the service area, connect the designated equipment to a qualifying fixed-line telecommunications network.*

Remove ss 360P(10), (11), 360W and 360X.

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Regional Broadband Scheme (RBS)

The proposed drafting seeks to implement the RBS, which is broadly consistent with the recommendations made by the Bureau of Communications Research (BCR). As the Department is aware, **nbn** had significant input into the BCR's work and the formulation of those recommendations. However, there are several points which **nbn** has previously made in relation to the RBS which we would like to reiterate here:

- **nbn** strongly believes that fixed wireless network operators should be included in the levy. New entrants are building their business models around the assumption that fixed wireless networks do, and will, compete with **nbn** going forward.[13] Additionally, we note that the Vertigan Review did not distinguish between fixed networks and fixed wireless networks but instead favoured a regime which was sustainable and technology neutral as well as being transparent.
- **nbn** notes the Government's policy is not to include 5G and other mobile services, on the basis that these are currently not substitutable for fixed line services. We understand that the Government intends to keep this under review and that the Minister may review this aspect of the RBS if industry conditions change. **nbn** is of the strong view that there should be a statutory requirement for the Minister to cause a review of this issue at an appropriate juncture (and **nbn** is confident that the difficulties sometimes associated with requirements to undertake review activities at particular times, or intervals, can be overcome in this context). Such a review mechanism is commonplace in legislation[14] and will clearly signal to prospective investors that if existing or future technologies come to adversely affect **nbn**'s ability to sustainably fund the provision of **nbn**'s fixed wireless and satellite services, then those technologies may be required to contribute to the levy.
- The drafting includes business services in the RBS. We reiterate our strong support for this approach. It makes the levy more efficient by broadening its base to include all superfast broadband services. This is consistent with achieving regulatory symmetry between network operators of superfast broadband networks.

Following the passing of the legislation, there will be considerable work required to implement the RBS including by the Department, the ACCC and the ACMA. In order that the RBS can be implemented in a timely manner which is consistent with other arrangements such as the SAU, **nbn** suggests that these organisations be required to consult with **nbn** during the implementation phase and in respect of the first year Assessment.

Finally, **nbn** notes that the RBS would require **nbn** to apply on an annual basis for an offset certificate. Given that this RBS contemplates industry funding of **nbn**'s fixed wireless and satellite services we suggest that **nbn** is provided with a long term offset certificate that may be revoked by the Minister if appropriate.

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[13] For instance, Spirit Telecom offers high speed residential services using fixed wireless technologies in competition with fixed line operators; and Superloop has signalled its intention to acquire BigAir and scale up to a gigabit wireless end-user service that would bypass the **nbn**™ network.

[14] See, e.g., Sections 151CL and 152EOA of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

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Level playing field provisions

nbn notes the Government's long-standing policy intention to amend the level playing field provisions to "make the default structural separation requirement clearer and more effective as a baseline for industry, while at the same time creating new and competitive opportunities".[15]

nbn supports amendments which provide certainty for industry and for networks built or extended from 1 July 2017. However, **nbn** would like to make the following points about the current drafting:

- It is **nbn**'s strong view that those network operators that seek to compete directly with **nbn** should do so subject to regulatory symmetry, regardless of technology choices made by those operators. Accordingly, the proposed level playing field provisions should apply to all superfast networks (including, e.g., fixed wireless networks). Excluding some networks on a technological basis is inconsistent with the principle of technological neutrality which is embraced by the Government and broadly adopted in policy and legislation. It has the potential to skew investments in superfast broadband networks. We note that the Government's response to the Vertigan Review did not provide for the exemption of some network operators based on technology considerations.
- We understand that it is the Government's intent that the non-discrimination obligations should apply to all networks whether they came into existence, or were altered or upgraded, pre or post 1 January 2011. However, there are two instances in the current drafting where the non-discrimination obligation is not effectively applied to all networks. First, the non-discrimination obligations in proposed ss 151ZF and 151ZG of the *Telecommunications Act 1997* (Cth) (**Telco Act**) do not apply to structurally separated entities in respect of lines built/altered/upgraded between 2011 and July 2017. These network operators previously had to comply with the non-discrimination obligations in ss 152ARA and 152ARB of the CCA. As these CCA provisions are repealed under the proposed legislation, these networks should be captured in proposed ss 151ZF and 151ZG of the Telco Act. Secondly, the non-discrimination obligations that apply to small networks under s143A(3) only relate to the supply of designated carriage services and not to related activities (i.e. there is no s 151ZG equivalent). We assume this is a drafting oversight and will be corrected.
- In light of the historical operation of the existing level playing field provisions, **nbn** supports the removal of the existing 1km exemption.
- **nbn** welcomes the inclusion of 'home-based business' within the concept of a residential customer but is concerned that the definition, as currently drafted, will not be effective to achieve the policy intent. As currently drafted, it does not appear to capture the many businesses where the relevant service or offering of the business is actually provided outside the residence, but the administration of the business is carried out at the residence. **nbn** assumes that the drafting of the legislation (and its Explanatory Memorandum) will make it clear that such businesses are within the definition of home-based businesses.

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[15] Explanatory Notes to the Exposure Drafts, page 1.

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- We note from the Explanatory Notes that where operators are subject to a functional separation undertaking approved by the ACCC, all of an operator's superfast fixed-line networks would be subject to the functional separation requirements, regardless of when they were built or further altered or upgraded.[16] As currently drafted it is unclear whether the legislation achieves this objective.
- The ACCC approval of functional separation undertakings will have important structural and competition implications for industry. Accordingly, it is important that the approval process is rigorous, predictable and transparent and that the ACCC has an ongoing effective monitoring and compliance role. This is consistent with the ACCC's role in respect of other undertakings (such as **nbn**'s Special Access Undertaking) and other aspects of the competition framework. In this respect we recommend that:
  - in addition to the ACCC being required to 'have regard to' the long term interests of end users when deciding to accept a functional separation undertaking, the ACCC should also be required to be satisfied that the undertaking provides for the functional separation of the company in an appropriate and effective manner;
  - the ACCC should be required to undertake a longer period of public consultation than the period provided for in the current drafting (10 days). This will improve the ACCC's decision-making by ensuring that industry has an appropriate window to raise relevant matters for its consideration;
  - the ACCC should be required to publish the reasons for accepting an undertaking. This will maximise transparency and support confidence in the ACCC's decision-making;
  - the ACCC should be required to undertake public consultation in relation to the renewal of a functional separation undertaking, or variation of an undertaking following the ACCC giving a revocation notice. This will also maximise transparency and support confidence in the ACCC's decision-making;
  - Part 8 should be amended to ensure that it is a mandatory requirement of functional separation undertakings that the ACCC can obtain information to monitor compliance; and
  - parties affected by the ACCC's decisions should be able to seek appropriate enforcement. This is especially so where those third parties may be affected by non-compliance with non-discrimination obligations.
- Changes to the carrier licence condition in Schedule 2 of the Exposure Bill are drafted on the basis that the original carrier licence condition is in place, rather than the amended declaration recently issued by the Minister. This needs to be re-aligned.

[16] Explanatory Notes to the Exposure Drafts, page 5.

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