

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

Submission in response to  
ACCC

**Proposed variation to  
the NBN Co Special  
Access Undertaking**

Public Version

September 2023

## EXECUTIVE SUMMARY

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1. Optus appreciates the opportunity to provide a brief submission on NBN Co's Special Access Undertaking Variation lodged with the ACCC in August 2023 (August 2023 SAU Variation).
2. The Government has invested billions in rolling out infrastructure intended to supply high speed broadband services to Australians and underpin Australia's Digital Economy objectives. The SAU framework that applies to NBN Co will directly impact the price and service quality of these wholesale and retail services supplied using this NBN infrastructure.
3. Optus has worked collaboratively with NBN Co, industry and the ACCC over the past two years in considering how to approach issues raised as part of this SAU development process.
4. NBN Co has committed to introducing additional reviews and consultation with industry with the intention of addressing service quality issues during the first regulatory cycle. Optus supports processes that will address RSPs' and end-users' concerns over NBN performance, reliability and service quality.
5. Optus looks forward to NBN Co's meaningful engagement to deliver real improvements on known and existing service quality issues – such as: dropouts; line underperformance; extended line remediation timeframes – as soon as possible in the first regulatory cycle.
6. End-users should expect more reliable and better performing services in light of increases in NBN prices as a result of this SAU. There remains a risk that without such improvements, end-users may downgrade their services or seek other options which would further undermine NBN Co's ability to achieve its long-term revenue objectives.
7. As such, it is important that the SAU process be resolved as soon as possible to provide certainty to industry, and ultimately end-users, to allow sufficient time to implement WBA5 this year and to move forward in addressing and uplifting service quality across NBN services.
8. Therefore, Optus considers if the ACCC is satisfied that the August 2023 SAU Variation will address the performance and reliability issues discussed throughout this consultation process and uplift NBN service quality so that there is a clear linkage between price and quality, it should accept the August 2023 SAU Variation as soon as possible.
9. Once the SAU Variation is finalised, Optus also supports the ACCC making a service quality and network performance record keeping rule for superfast broadband networks, in particular the NBN network. A robust and independent reporting and monitoring framework would provide accountability and transparency over NBN service performance and give confidence that measures in the SAU are delivering real and meaningful improvements to end-users over time.

## THE SAU SHOULD BE ACCEPTED TO PROVIDE CERTAINTY

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10. This SAU process has been ongoing since industry roundtables and working groups first began in 2021, with two previous SAU Variations lodged and subsequently withdrawn. The SAU process has now extended well beyond its original deadline (the WBA4 expiry date of November 2022) and the Shareholder Ministers' subsequent deadline that NBN Co should aim to have the process finalised in early 2023 for implementation in July 2023.<sup>1</sup>
11. Industry continues to experience significant uncertainty while this process remains unresolved, and it is essential that industry has certainty over future pricing and that there is sufficient time to prepare for and implement WBA5 later this year.
12. Optus considers that the August 2023 SAU Variation should be accepted as soon as possible to finalise this process and ensure there is sufficient time to implement any other changes needed prior to the proposed 1 December 2023 implementation date for WBA5. This will ensure certainty for industry and enable NBN Co to begin the work it needs to do to address service quality issues.

### **NBN Co should now move quickly to address service quality issues**

13. Service quality has been an ongoing concern throughout the SAU Variation process, with acknowledgement there needs to be clear linkages between price and NBN service quality. The Minister for Communications noted in correspondence to the ACCC that concerns conveyed to her primarily related to the quality and service of NBN services.<sup>2</sup>
14. NBN Co has made various changes over different versions of the SAU Variations related to service standards and introduced processes it submits will address service quality issues. In particular, the August 2023 SAU Variation includes the following:
  - (a) Benchmark service standards for the first regulatory cycle.
  - (b) Service improvement plan – to be published each financial year setting out initiatives NBN Co will undertake during the FY for enhancing the experience of end-users/Access Seekers forecast to involve material capex or opex in that FY, after consulting with RSPs.
  - (c) Service performance review process – requiring NBN Co to conduct of a review of its performance against service standards by the end of FY24 and FY25, consult with Access Seekers as part of that review and publish a report.
  - (d) ACCC-initiated mid-cycle review of benchmark service standards as a result of a systemic service standard event.
15. Optus supports the inclusion of commitments and processes that will address current service quality issues, such as dropouts, underperformance and line remediation, as soon as possible during the first regulatory cycle. New service issues can arise during the term of a WBA/regulatory cycle, so it is important that there is responsive

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<sup>1</sup> Letter from Minister for Finance, Minister for Communications to Chair, NBN Co, July 2022, Available at: <https://www.infrastructure.gov.au/sites/default/files/documents/nbn-co-sau-letter-to-nbn-co.pdf>

<sup>2</sup> Letter from Minister for Communications to Chair, ACCC, July 2022. Available at: <https://www.accc.gov.au/system/files/Letter%20from%20the%20Minister%20for%20Communications.pdf>

engagement from NBN Co on these matters to address new issues promptly and improve end-user experience.

16. The ongoing increases in NBN prices that will occur under the SAU mean that end-users will have higher expectations of their NBN services over time, in terms of quality and performance. End-users will expect existing performance and quality issues to be addressed and for new issues to be resolved quickly.
17. It is imperative for the ongoing success of the Government's investment in high-speed broadband infrastructure, that the quality and performance of NBN services be reliable and represent good value for money for end-users. Otherwise, we consider that those end-users who are in a position to consider alternatives may well do so or further downgrade their NBN services instead of taking up poor quality NBN services whose prices continue to increase over the life of the SAU. Such an outcome would undermine NBN Co's revenue objectives.
18. Optus looks forward to NBN Co's responsive engagement through its proposed consultation on the service improvement plan and the service performance review processes, to deliver real and meaningful improvements to end-users on existing and new service quality issues.
19. Optus notes that if the ACCC is satisfied that NBN Co's commitments in the August 2023 SAU Variation will address service quality issues in a real and meaningful way and that NBN Co's statements that it will not commit to further enhanced service standards unless it is confident of its ability to meet such service standards<sup>3</sup> is in the long-term interests of end-users, then the ACCC should accept NBN Co's August 2023 SAU Variation.

#### **The ACCC should finalise an independent and transparent NBN reporting framework**

20. In late 2022, the ACCC commenced a consultation on making a record keeping and reporting rule (RKR) in relation to service quality and network performance on superfast broadband networks, including the NBN. The ACCC would collect service quality and network performance information from NBN Co and in the future other superfast broadband network providers. The ACCC considered this would assist the ACCC in identifying service issues affecting broadband customers and providing greater transparency through public reporting of this information.<sup>4</sup>
21. Optus considers that an independent and robust service quality monitoring and reporting program would provide transparency and accountability over NBN Co's service quality issues impacting end-user experience. This would give the ACCC and industry confidence that the service performance review and service improvement plan processes included in the August 2023 SAU Variation are delivering real and meaningful improvements to end-users over time.
22. Optus supports the ACCC in progressing and finalising this consultation and implementing this framework.

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<sup>3</sup> See NBN Co Letter to ACCC, Response to issues raised in ACCC Consultation Paper on the variation to NBN's Special Access Undertaking (SAU), 24 March 2023, p. 8.

<sup>4</sup> See consultation information available at: <https://www.accc.gov.au/by-industry/telecommunications-and-internet/service-quality-and-network-performance-record-keeping-rule-for-superfast-broadband-networks>