

Submission to the Regional Mobile Infrastructure Inquiry

16 August 2022

BAI Communications Pty Limited (**BAI**) welcomes the opportunity to provide a submission to the Australian Competition and Consumer Commission's (**ACCC**) consultation in relation to the Regional Mobile Infrastructure Inquiry.

About BAI

Through its international group of companies, BAI is a world-leading neutral host provider of 5G and connected infrastructure, with a wealth of experience in designing, building and operating complex communications networks, with operations across Australia, Canada, Hong Kong, the United Kingdom, Europe and the United States.

In Australia BAI owns and operates an extensive broadcast transmission network, delivering terrestrial television and radio (including ABC and SBS television and radio services) to approximately 99 per cent of the Australian population, and maintains the NSW public safety network. BAI is therefore deeply experienced in providing wireless services across Australia's vast geography to a dispersed population, and is well aware of the challenging investment economics involved in doing so.

The infrastructure that supports BAI's broadcast transmission network includes over 400 transmission towers which BAI owns or controls. BAI provides passive site-sharing services across this tower network to telecommunications operators including NBN, Telstra, TPG and Optus. BAI also acquires access to over 300 third party towers and other structures for the purpose of installing and operating transmission assets for the broadcast networks that it manages on behalf of its customers.

Having acquired a carrier licence in 2020, and using models successfully deployed by our Group companies overseas, BAI is looking to expand its passive infrastructure offering to include innovative and competitive active sharing services as a neutral host. Most recently, BAI has been selected to lead a working group to scope active sharing partnership models for the first phase of the Department of Regional NSW's (**DRNSW**) Active Sharing Partnership.

Summary of BAI's views on the issues for improving mobile coverage, capacity and competition

The ACCC is tasked with considering measures to improve mobile coverage, capacity and competition, including clarifying what technical and market issues may be impeding these outcomes in the real-world operating environment.

BAI considers that the ACCC should consider two issues in its inquiry:

- (i) whether government-funded mobile blackspot programs could improve coverage outcomes by providing more incentive to innovate through active sharing and neutral host solutions; and
- (ii) whether some regulatory settings disincentivise investment in such solutions.

BAI has set out its view on these matters below, followed by responses to the ACCC's questions.

1. Government funded mobile blackspot programs could improve coverage outcomes by providing more incentive to innovate through active sharing and neutral host solutions

It is well understood, and accepted by the ACCC in its consultation paper, that mobile network operators (**MNOs**) will not be able to create a commercial case for extending their networks into many rural, regional and remote areas without government subsidy.

However, where commercial entities are given the privilege of using public funds to extend coverage, it is important that such funds are used efficiently and in the public's best interests.

Under recent Federal black spot funding programs, funding has been available to both MNOs and Mobile Network Infrastructure Providers (**MNIPs**), being third parties who deploy mobile infrastructure and reach commercial agreement to provide access to that infrastructure to MNOs.

However, despite the availability of funding to MNIPs, almost all funding (97%) from the Federal Government's Mobile Black Spot Program has continued to be allocated to the three main MNOs. In addition, despite the program including a requirement for the MNOs to offer co-location to other MNOs at funded sites, the vast majority of funded sites are occupied only by the MNO that received the funding. For example, the ACCC has noted that only 8% of sites funded by the Federal Government's blackspot program had more than one MNO operating from the site as at January 2021. It is also apparent that Telstra, which already has the most regional, remote and rural coverage, is deploying far more sites using public funds than Optus or TPG.

Given these points, BAI agrees with the ACCC's view that the outcomes of the Mobile Blackspot Program suggest that the co-location framework appears to be insufficient, on its own, to promote competitive outcomes.

In BAI's view, better outcomes for consumers could be achieved if funding were allocated in a way that maximises the prospect of it being used to extend coverage for two or three networks rather than one, including where funding is awarded to an MNIP to provide active sharing services as a neutral host, and/or MNO active sharing models, where at least two MNOs are co-funded on the basis that they will share both active and passive infrastructure. If such options can be successfully deployed, they have the benefit of extending coverage for multiple mobile networks simultaneously, with lower power usage, and achieving very significant overall cost efficiencies.

In BAI's view, the optimal model for competitive outcomes is a neutral host solution, with the advantages of the neutral host model over MNO active sharing including:

- (i) the neutral host is incentivised to ensure that the capacity of the RAN equipment is utilised to the greatest possible extent, which will mean sharing with as many network operators as are needed to fill all available capacity;
- (ii) in order to achieve sustainable commercial returns, and aligned with consumers' interest in having a choice of providers, a neutral host will look for locations with coverage gaps for more than one MNO, rather than just look to fill coverage gaps within one MNO network;
- (iii) having no retail customer base of its own, there is no risk of a neutral host being incentivised to favour any individual network operator; and
- (iv) while the focus of the ACCC's current inquiry is regional mobile infrastructure, we note also that a neutral host providing active sharing is incentivised to carry fixed wireless broadband services (providing broadband to fixed locations – both to NBN and its competitors), Government Radio Networks, and any other wireless service as well as mobile network services.

In our view there are a number of reasons for why active sharing models, and particularly neutral host models, have not been granted funds in Mobile Black Spot Programs. These include the following:

- (i) the Federal Government programs have generally required that that an application for funding is accompanied by a commercially binding commitment from at least one MNO to use the infrastructure to deliver mobile services for at least 10 years. Our experience has been that it is a challenge for an MNIP to engage with MNOs upfront, who will be themselves bidding for funding in the same program. Engaging with more than one MNO ahead of applying for funding is even more

challenging, as it requires the MNOs to have a common view of their priority locations; and

- (ii) many federal grant guidelines have required that if co-location of more than one MNO is technically possible at a funded site, the applicant must be prepared to offer co-location at incremental cost to an MNO seeking to co-locate. An MNIP does not receive any revenue from the end-users of mobile networks, so (unlike an MNO, which may receive a revenue benefit by extending its network) the neutral host MNIP's business case is based solely on the revenues earned from MNOs and other customers that may take services at a given location. How the 'co-location for incremental cost' requirement would be applied in a neutral host active sharing scenario is not entirely clear, but may deter neutral host MNIP applicants if they are concerned that this prevents them making any monetary return from a second or third MNO, or requires the neutral host to use a different charging methodology between an MNO committing at the time that funding is granted and any MNO that subsequently wishes to be present at a funded site (on a passive co-location or active sharing basis).

BAI understands that there are sound reasons for these requirements: Governments do not want to allocate MNIPs funds when there is a risk that the MNIPs will be unable to reach agreement with any MNOs, and the principle of co-location at cost ensures that one MNO cannot profit from another MNO co-locating at a subsidised site (or discourage co-location through high charges).

In our view there are options which may maximise the prospect of MNIP neutral host solutions successfully bidding for black spot program funding while minimising these risks, including:

- (i) conducting specific active sharing black spot funding programs, as is being conducted by the DRNSW on a trial basis;
- (ii) allowing MNIPs the period until signature of the grant agreement to reach a commercial commitment with one or more MNOs (rather than at the time of application); and/or
- (iii) clarifying the rules applying where an MNO wishes to 'co-locate' at a funded site where the fund recipient is a neutral host MNIP, to make it clear that the MNIP is not precluded from making a return, or locked into a particular charging structure, if it provides passive site sharing or an active sharing solution to additional MNOs.

BAI also considers that there may be more fundamental changes to mobile black spot programs that are worth exploring. BAI would be open to further discussion with the ACCC about such alternatives.

2. Some regulatory settings may deter investment in innovative mobile coverage solutions

As noted above, BAI owns or controls over 400 transmission towers, located all over Australia. It uses these towers for broadcasting transmission, and also provides access to these towers to all of the MNOs and many other service providers.

Providing passive site sharing services does not require a carrier licence. However, in order to offer active sharing services as a neutral host, and other innovative wireless telecommunications services, a wholly owned subsidiary of BAI acquired a carrier licence in 2020.

Solely as a result of holding a carrier licence within the BAI group:

- (i) BAI's towers are subject to the facilities access regime in Part 34B of the Telecommunications Act 2007 (Cth), even if BAI does not itself use its towers for any active telecommunications services; and
- (ii) revenue that BAI earns from providing access to its towers to the MNOs and wireless internet service providers may be subject to the Telecommunication Industry Levy under the levy calculation rules set out in the Telecommunications (Eligible Revenue) Determination 2015.

Part 34B of the Telecommunications Act was introduced to ensure that facilities access regulation continued to apply to the Telstra towers divested with the sale of what is now Amplitel, and to other similar tower divestments. BAI considers that the imposition of facilities access obligations on BAI under Part 34B of the Telecommunications Act is an unintended and unnecessary consequence of this legislation. BAI is confident that it can continue to provide access to its towers to carriers on commercially negotiated terms (as it has done for decades) and considers this to be an unjustifiable regulatory imposition. Given that tower owners that do not have a carrier licence within their corporate group are not subject to the regime, this legislation has also created an uneven playing field.

As BAI has previously advocated, our view is that simple amendments to this legislation, so that it only applies to telecommunications towers used to provide carriage services by the carrier entity in the Group, would be both sensible and in line with good regulatory practice while still delivering the Government's stated objectives.

BAI holds similar views about the Telecommunications Industry Levy. Due to holding a carrier licence in its corporate Group, the levy is payable if BAI (which extends to entities within the BAI Group that are not carriers or carriage service providers) earns \$25m or more in 'eligible revenue' in a year. BAI understands that ACMA takes the view that 'eligible revenue' should include revenue earned from providing passive access to towers to customers such as the MNOs and other telecommunications operators, even though that activity does not require a

carrier licence. The result of this outcome is that a corporate Group with little revenue, or even nil revenue, from providing services as a carrier may find itself with a substantial liability for the Telecommunications Industry Levy. This fundamentally affects the business case for acquiring and holding a carrier licence for the purpose of providing innovative telecommunications services.

This would appear to be an unjustifiable regulatory imposition with a potentially negative impact on investments that would extend coverage and competition in mobile services. While BAI is fully committed to deploying active sharing solutions and other innovative telecommunications services, there is undoubtedly a strong case for amending these rules or providing for an exemption.

3. Response to the ACCC's questions

Where BAI has a view on the ACCC's questions in relation to access to towers and associated infrastructure it has set this out below. We have not provided answers to the questions relating to mobile roaming during emergencies.

1. What are the typical costs incurred in providing telecommunications towers and associated infrastructure? Can you quantify these costs by providing examples?

2. What costs are involved (for example, in setting up and maintaining) business practices and systems needed to support the provision of access to towers and associated infrastructure?

In BAI's experience the costs incurred in providing towers and associated infrastructure include land access costs (leases, licences and so on), construction and maintenance costs, the cost of administering site access, and the cost of maintaining a team to administer customer accounts.

These costs vary greatly due to many variables. For example, one of BAI's sites in Queensland is only accessible by a cable car that BAI operates and maintains at significant expense.

3. What costs are involved in accessing land required for the establishment and operation of telecommunications tower infrastructure? Do these fees differ depending on the owner of the land (for example, public v private ownership)?

BAI's arrangements for accessing land vary from freehold title to leases and licences and across both public and private landlords, with very significant variations in the access costs depending on location, market conditions and landlord.

4. What are the typical commercial arrangements for access to towers and associated infrastructure?

BAI typically enters into a 'Memorandum of Terms' with each customer wishing to access its towers and associated infrastructure. A 'Site Licence' incorporating the Memorandum of Terms is then entered into for each location at which access is granted, setting out the specific licence to use BAI's infrastructure and associated technical details.

5. What role do specialist entities such as land aggregators, both commercial and government, play in acquiring access to land or the sites of towers?

6. Are there any other considerations that contribute to/determine these commercial and other fee arrangements for access to towers and other infrastructure?

7. What other matters do providers of towers and associated infrastructure consider in deciding to provide towers and/or provide access to towers?

A key consideration will be the commercial viability of the location in terms of attractiveness and returns from potential tenants.

8. Are current commercial arrangements for access to mobile towers and associated infrastructure effective? If not, why and what could be done to improve their effectiveness?

9. Are current regulatory arrangements for access effective? If not, why and what could be done to improve their effectiveness?

10. Has the recent divestiture of tower infrastructure by MNOs impacted on the effectiveness of current commercial and regulatory arrangements? Please provide details and examples.

As an access seeker, BAI considers that the commercial and regulatory arrangements for accessing mobile towers and associated infrastructure are effective. As an access provider we note in our submission above that the application of facilities access regulation to BAI under Part 34B of the Telecommunications Act is unwarranted.

11. What costs do providers of towers and associated infrastructure incur in providing active and/or passive mobile infrastructure? Can you quantify these costs?

To the extent that 'passive infrastructure' includes towers, see question 1 above.

In relation to active mobile infrastructure, BAI anticipates that the categories of costs will include the cost of establishing sites (including site access and equipment), the cost of backhaul, incremental overhead costs and, in a shared active network model (either neutral host or MNO led), the cost of interconnecting with and integrating with multiple MNO networks.

12. How does the cost of providing new, or upgrading existing, mobile tower (both active and passive) infrastructure impact the decision to invest in infrastructure that can be used to supply mobile telecommunications and other radiocommunications services?

Any investment by any MNO or MNIP would be subject to commercial business case.

13. How does the cost of access to mobile towers impact the decision to provide access to mobile telecommunications and other radiocommunications services?

14. Are there additional costs specific to rural, regional, remote or peri-urban areas?

The cost of accessing tower assets is one variable of many in any decision for deploying services. BAI anticipates that the cost of access to towers will not be a significant factor influencing whether to deploy at a particular location, providing the commercial business case is acceptable.

15. What are the implications of MNOs divesting their tower assets on the current commercial and other fee arrangements for access to towers? How have these changed as a result of the divestment of tower assets by MNOs? Do you expect these to further change in the future and why?

16. How has the recent divestment of tower infrastructure by MNOs impacted: (i) the scope of access offered (ii) the terms and conditions of access, and (iii) the commercial and other fee arrangements for access

BAI typically has long term agreements in place for accessing third party towers, so it is too early to tell how the recent tower divestments might impact future commercial arrangements. However, BAI does not currently have any reason to believe that it will be materially harder to reach acceptable commercial terms with the newly divested tower companies than it was when they were vertically integrated.

17. How does the cost of providing mobile towers and associated infrastructure affect the provision of greater mobile coverage?

Coverage gaps exist where an MNO has been unable to create a commercial business case for building sites to fill the coverage gaps. The cost of mobile towers and associated infrastructure is one element of such a business case. Other costs include the costs of the radio access network and the on-going costs of backhaul, power and maintenance.

18. What kinds of measures would promote improved mobile coverage?

See cover paper to this submission which identifies some measures that BAI considers would result in improved coverage and competition.

19. To what extent will the matters raised in the consultation paper impact, or be impacted by, the extension of 5G coverage?

In BAI's view the economic challenges of deploying in regional, rural and remote areas will be increased by 5G's need for smaller cells and network densification. In our view this makes it even more important that innovative solutions are considered.

20. How are consumers impacted by a lack of mobile coverage? What are the impacts for indigenous people in regional and remote areas?

21. In what areas could mobile coverage be improved?

While BAI is unlikely to have a unique perspective on these questions, we believe that it is undisputed that the benefits to regional communities of improving connectivity are significant, and include better economic, social, health and education outcomes.

BAI would be very happy to provide any additional information that the ACCC may require. Should the ACCC wish to discuss this response please contact our General Counsel, Emma McCormack, at emma.mccormack@baicommunications.com.