

17 April 2013

Mr Sean Riordan
 General Manager
 Industry Structure & Compliance
 Communications Group
 Australian Competition and Consumer Commission
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Dear Mr Riordan

Request to Vary Telstra's Migration Plan to Create a New Exception to Cease Sale

Further to our discussion on 10 April 2013, Telstra wishes to amend the drafting of the variation to the Migration Plan we submitted to you on 4 April 2013 and for which you have sought public comment by 16 April 2013. The proposed new drafting is detailed below and seeks to address your feedback that our original proposal was not clearly enough linked with the placing of an order for connection to the NBN. Telstra has obtained consent from NBN Co to this amendment to the variation to the Migration Plan.

Details of the Proposed Variation

Telstra proposes that the variation be effected by including a new section 17.2 within the Cease Sale Obligation, as follows:

17 No Supply of New Copper Services and HFC Services after a Premises becomes NBN Serviceable

17.1 No supply of Copper Services

Subject to sub-clauses 17.2, 17.3 and clause 21, Telstra will not supply any new Copper Service to a Retail Customer or to a Wholesale Customer using a Separating Network after the Cease Sale Commencement Date for a Rollout Region at a Premises within the Fibre Footprint in that Rollout Region which, at the time the order or request is received by Telstra:

- (a) is NBN Serviceable; or
- (b) is not NBN Serviceable but would require the installation of new copper or other infrastructure (i.e. there is not an "in-place" copper connection at the Premises) except and to the extent that Telstra in its discretion supplies a new Copper Service to the Premises in order to fulfil a USO requirement.

17.2 Copper Services required to retain a telephone number in association with a new NBN Connection

A service will not be treated as a new Copper Service for the purposes of clause 17.1 where a Retail Customer or the end user of a Wholesale Customer wishes to retain their existing telephone number in the course of Migration and:

- a) the Retail Customer, or the end user of a Wholesale Customer, has submitted an order or request (to either Telstra or the Wholesale Customer) which requires an NBN Connection at the relevant Premises;
- b) connection of that Copper Service is reasonably required to enable the telephone number to be retained following NBN Connection of that Premises; and
- c) the telephone number cannot be transferred in the course of NBN Connection by means of an LNP Request.

17.3 No supply of HFC Services

Telstra will not supply any new HFC Service to a Premises using a Separating Network after the Cease Sale Commencement Date for a Rollout Region at a Premises within the Fibre Footprint in that Rollout Region which is NBN Serviceable.

17.4 Commencement and operation of Clause 17

Sub-clauses 17.1, ~~and 17.2~~ and 17.3 do not apply to orders or requests for the supply of new Copper Services or HFC Services received by Telstra prior to the Cease Sale Commencement Date.

We believe the addition of sub-paragraph (a) in Clause 17.2 above addresses the Commission's feedback, and makes it clear that the exception only applies in circumstances where an order for an NBN service is received from a provider which is different to the current provider of the voice telephony service on Telstra's copper network.

We note that Optus has raised some objections to the proposed variation, which we consider require some clarification. When considering this matter it is important to note that where a ULL customer is changing service providers as part of migration to the NBN, the customer's existing phone number can be ported from ULL to the NBN – no interim churn or port step is required in order for the customer to be able to retain their phone number. The proposed variation only deals with the scenario where such a step is necessary in order for the customer to retain their phone number as part of migration to the NBN.

We are confident that given this context, the revised clause 17 as outlined will go some way to addressing Optus' concerns and we are happy to provide a detailed briefing to Optus to clarify the matter.

We would also like to take this opportunity to respond to each of Optus' three concerns.

First, Optus considers the variation will create non-equivalent outcomes. However, we consider that, without the proposed variation, end-users will have a vastly different NBN migration experience depending on which NBN provider they choose. It is not correct to compare the scenario that this variation addresses to the scenario of a churn between ULL providers where no NBN connection is involved. A standard ULL churn will be blocked by cease sale, because the new connection order is for copper-based ULL. However, the variation proposed applies *only where* this is part of a migration order for an NBN-based service (that is, the copper churn is an interim step only, required to facilitate migration to the NBN).

Second, Optus suggests an alternative to the variation is to amend Telstra's IT systems or processes. The proposed variation addresses the issue of an unsatisfactory end-user experience in the most efficient and simplest manner. Telstra will still need to develop the processes required to support this variation, however, Telstra's existing processes are important and need to be retained to promote certainty in managing orders more generally.

Third, Optus suggests the variation will confuse end users. However, in our view the variation will create similar outcomes for end users regardless of which NBN RSP they choose. This is less confusing than end-users having a different experience in migrating to the NBN (in particular, in relation to the ability to retain the end-users existing phone number).

In Telstra's view this amended variation is consistent with the Determination for the reasons set out in Telstra's letter of 4 April 2013. It is Telstra's view that the Commission should accept the amended proposed variation.

If you have any questions, please do not hesitate to contact Trish Cameron on (02) 61294635.

Yours sincerely



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