

22 April 2013

Mr Sean Riordan  
General Manager  
Industry Structure & Compliance  
Communications Group  
Australian Competition and Consumer Commission  
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Melbourne VIC 3001

**Email: [sean.riordan@accg.gov.au](mailto:sean.riordan@accg.gov.au)**

Dear Mr Riordan,

### **Proposed minor variations to the Migration Plan**

NBN Co supports Telstra's proposal to vary the Migration Plan in order to extend the definition of Initial Release Rollout Regions (the IRRR Variation). As detailed in NBN Co's supporting submission to the ACCC, this variation complies with the Migration Plan Principles.

This letter addresses the following concerns that have been raised by Access Seekers in submissions to the ACCC in respect of the IRRR Variation:

1. That the rationale for the proposed change to the Migration Plan is unclear;
2. That the proposed change removes the requirement for NBN Co to publish on its website the Ready for Service (RFS) Date for that Rollout Region; and
3. That the proposed amendment would benefit Telstra over other Access Seekers.

Each of the concerns is addressed separately below.

#### **1. The proposed IRRR Variation to the Migration Plan is required to enable the expansion of NBN Co's Early Access program without triggering cease sale or the countdown to the disconnection date.**

As detailed in NBN Co's supporting submission, the proposed variation has been requested by NBN Co to enable it to expand its Early Access Program by offering NBN services in up to 82 additional FSAMs before they are declared RFS.

For the purposes of the current version of the Migration Plan, the additional 82 FSAMs identified by NBN Co are not IRRRs but are instead regular rollout regions. Without the proposed amendment the commencement of supply of services by NBN Co (which is referred to as the RFS Date) in any one of the 82 FSAMs will trigger the operation of clause 17 (i.e. cease sale) of the Migration Plan and the 18 month countdown to the disconnection date for that FSAM. The trigger of the disconnection date before the completion of the FSAM will mean that service providers will have a truncated period, after the completion of the FSAM, in which to market their NBN services and to migrate customers. These outcomes would be an unintended consequence of expanding NBN Co's Early Access Program.

The proposed IRRR Variation to the Migration will avoid these unintended consequences arising from the expansion of the Early Access program.

**2. The proposed IRRR Variation to the Migration Plan does not remove the requirement for NBN Co to publish on its website the RFS date for a particular Rollout Region.**

As detailed in NBN Co's supporting submission the proposed IRRR Variation will not affect or remove the requirement for NBN Co to publish on its website the date on which the entire FSAM will become ready for service. If the proposed IRRR Variation is implemented, when each of the 82 FSAMs become ready for service NBN Co will publish on its website the Disconnection Commencement Date (the DCD).

The DCD is currently defined in the Migration Plan as<sup>1</sup>:

*the date determined by NBN Co at its discretion for an Initial Release Rollout Region or Acquired Network Rollout Region and notified by NBN Co and Telstra.*

As per NBN Co's current arrangements for the existing IRRRs, NBN Co will continue to notify access seekers of the DCD for each of the additional 82 IRRRs, by publishing this date on its website at the same time as it notifies Telstra.

**3. The proposed IRR Variation to the Migration Plan will benefit all Access Seekers equally.**

In its submission to the ACCC, AAPT submits that the IRRR Variation<sup>2</sup>:

*... would certainly benefit Telstra, as it gives Telstra the ability to migrate more customers, more quickly. In contrast, it is unclear what the advantage would be to wholesale customers who have been planning on the basis of the current process and existing FSAMs and therefore unlikely to be in a position to take advantage of the proposed amendment in the same way that Telstra will be.*

As detailed in NBN Co's supporting submission, all Access Seekers have had advanced knowledge via an account bulletin titled *Partial FSAM Early Release Update*. This account bulletin, date 19 February 2013, provided Access Seekers with the following information:

- that an expansion of the Early Access program was being considered by NBN Co;
- any decision to expand the Early Access program was subject to a number of commercial and regulatory factors.; and
- a preliminary list of the 82 FSAMs likely to be included in the expansion of the Early Access program.

<sup>1</sup> See Schedule 9 of Telstra's Migration Plan

<sup>2</sup> See <http://transition.accc.gov.au/content/index.phtml/itemId/1082236#toc1>

This account bulletin was released to all Access Seekers (including Telstra) at the same time. Hence contrary to AAPT's comments, information has been available to all Access Seekers since mid February about NBN Co's intentions to expand its Early Access program (subject to regulatory considerations). NBN Co has also provided a public supporting submission to the ACCC which is available on the ACCC's website. Attachment A of this supporting submission provides a finalised list of the 82 FSAMs in which NBN Co may offer NBN services before the RFS date.

Furthermore, all Access Seekers regardless of size or scale will have an equal opportunity to benefit from the expansion of the Early Access program. All Access Seekers will have an equal opportunity to market their NBN service offerings to end-users in each of 82 FSAMs listed in Attachment A of NBN Co's Supporting Submission once they are released by NBN Co.

While NBN Co recognises that some Access Seekers may choose not to take advantage of the early release of some, or all, of the additional 82 FSAMs this will be a consequence of the commercial decisions of individual Access Seekers and will not be a consequence of either a lack of equivalence in Telstra's Migration Plan or because of discriminatory conduct by NBN Co in favour of Telstra.

I trust this sufficiently addresses the concerns raised by Access Seekers in relation to the proposed IRRR Variation.

Yours sincerely,



Caroline Lovell  
Head of Regulatory Affairs and Industry Analysis