

24 June 2013

Mr Michael Cosgrave
Group General Manager
Communications Group
Australian Competition and Consumer Commission
GPO Box 520
Melbourne VIC 3001

Dear Mr Cosgrave,

Proposed amendments to Clause 17 of Telstra's Migration Plan

NBN Co understands that Telstra has submitted to the Australian Competition and Consumer Commission (ACCC) a minor variation of clause 17 of the Migration Plan as contemplated by section 577BF of the Telecommunications Act 1997. The details of Telstra's proposed variation are set out in a letter to the ACCC dated 14 June 2013.

Specifically, the proposed amendment will clarify that Telstra's cease sale obligation will only apply to premises within a rollout region that has been declared ready for service (RFS), if after the cease sale commencement date, those premises are either:

- NBN Co serviceable, or
- are Frustrated Premises.

NBN Co supports the proposed variation as it further clarifies the scope and operation of Telstra's cease sale obligation.

The proposed variation is consistent with NBN Co's understanding that clause 17 of the Migration Plan would not prevent the provision of new copper or HFC services in situations where, at the time of order, the premises is not capable of being served by NBN Co's fibre network due to reasons other than the premises being Frustrated. In this regard a premises is Frustrated if there is a legal or practical impediment that prevents NBN Co connecting the Premises to the NBN fibre network. A practical impediment includes circumstances where there has been a conscious and persistent refusal by an Owners' Corporation to allow NBN Co access to a multi-dwelling unit (MDU) to install infrastructure that would enable the premises in the MDU to become NBN serviceable.

NBN Co submits that the ACCC should accept Telstra's proposed variation for the following reasons:

- the proposed variation does not fundamentally change the nature or operation of the cease sale obligation. Instead it clarifies the scope and operation of cease sale in respect of premises which are not NBN serviceable. In this regard NBN Co refers to our previous letter to the ACCC dated 26 April 2013 which provides an overview of NBN Co's understanding of the intended operation of the cease sale obligation in respect of premises which are not NBN serviceable;

- because there are currently no premises within NBN Co's fibre footprint which have been classified as Frustrated Premises, the application of cease sale to Frustrated Premises does not require, at least in the short term, any system changes on behalf of either Telstra or access seekers; and
- the proposed variation complies with the *Telecommunications (Migration Plan Principles) Determination 2011 (the Migration Plan Principles)*. Furthermore, if accepted by the ACCC, the final Migration Plan as varied will also comply with the Migration Plan Principles.

NBN Co also submits that for the following reasons the proposed variation is minor in nature and that the ACCC should not need to consult with industry for a full 28 days prior to accepting it:

- the proposed variation seeks to clarify the scope and operation of Telstra's cease sale obligation; and
- the proposed variation does not affect Telstra's disconnection or equivalence obligations.

The remainder of this letter provides additional information about NBN Co's processes for classifying a premises as a Frustrated Premises. It also provides NBN Co's thoughts on why the application of Telstra's cease sale obligation to Frustrated Premises is appropriate. Finally, for the sake of clarity, it briefly comments on Telstra's letter in support of the proposed variation dated 14 June 2013.

Frustrated Premises should be subject to cease sale

A Frustrated Premises is a premises where NBN Co is unable to provide services because of either a legal impediment, or due to a conscious and persistent refusal by the property owner that prevents NBN Co from connecting the premises to our fibre network. In brownfield areas, Frustrated Premises are likely to include:

1. Multi-dwelling units (MDUs) – an MDU (including all premises within the MDU) will be considered Frustrated when:
 - There is a legal impediment that prevents NBN Co from connecting to the premises; or
 - There is a practical impediment – i.e. a **conscious** and **persistent** decision by the MDU Owners' Corporation to refuse the NBN installation from the network access point (NAP) in the street to a premises connection device (PCD) for that premises (regardless of whether the impediment/decision amounts to a valid objection under the Telecommunications Code of Practice 1997).
2. Single Dwelling Units (SDUs) – NBN Co will consider a SDU as Frustrated when there is a legal impediment that prevents NBN Co from connecting to the premises – for example, where a statutory approval is required to install the connection from the NAP in the street via a drop cable to a PCD and the approval is denied.

While NBN Co is committed to ensuring that the incidence of Frustrated Premises is minimised, we expect that Frustrated Premises will be a necessary challenge to overcome as part of the fibre rollout.

Evidence from previous fixed network rollouts clearly suggest that overcoming the challenge of Frustrated Premises requires an effective communications strategy outlining both the benefits of connection as well as the adverse consequences of not connecting. In the case of NBN Co's fibre network, an adverse consequence of not connecting to the NBN is that existing copper and HFC services will be switched off – meaning that current copper and HFC services will be disconnected and that no new copper and HFC services will be supplied (except to the extent they are special services).

As currently drafted, clause 17 of the Migration Plan means that if there is 'in-place' infrastructure at a Frustrated Premises in a rollout region that has been declared RFS, Telstra would be able to continue to supply new copper and HFC services to that premises up until the disconnection date. The Migration Plan also provides for Frustrated Premises in a rollout region to be disconnected from the copper and HFC networks at the disconnection date. This will be disruptive for end-user customers in Frustrated Premises

and will place additional operational demands on both Telstra and NBN Co in the period following the disconnection date.

By contrast, Telstra's proposed amendment, which includes making Frustrated Premises subject to cease sale, would bring forward, and increase focus on the, consequence of preventing NBN Co from connecting a premises to the fibre network. This would provide an additional, tangible reason for property owners and other authorities to ensure NBN Co has access to install infrastructure that enables the premises to be serviceable. This would in turn mean that there is likely to be fewer Frustrated Premises, thus facilitating the migration of existing services to the NBN both before and after the disconnection date.

Accordingly, NBN Co believes that making Frustrated Premises subject to the cease sale obligation is appropriate for the following reasons:

- it will demonstrate the adverse consequences of preventing NBN Co from connecting a premises to the fibre network before the disconnection date;
- it will facilitate the migration of end-user customers, especially in MDUs, to the NBN fibre network; and
- it will potentially minimise the number of premises that are Frustrated at the disconnection date.

Attachment A of this letter sets out a hypothetical scenario which illustrates why making Frustrated Premises subject to Telstra's cease sale obligation will benefit residents of MDUs.

NBN Co's approach to Frustrated Premises

NBN Co is currently working with the Department of Broadband, Communications and the Digital Economy (DBCDE) to finalise a set of agreed protocols to guide NBN Co's approach to determining when a premises is Frustrated. When these protocols have been finalised, NBN Co will share them with industry.

While the protocols are yet to be finalised, their development is at an advanced stage. Consistent with the protocols, NBN Co has already established a strict set of internal policies and processes for determining whether a premises is Frustrated, which reflect the manner in which NBN Co anticipates that the protocols will be finalised, and which require NBN Co and our delivery partners to take all reasonable steps to prevent an address from becoming Frustrated. These include:

- NBN Co's delivery partners will make a minimum of three good faith attempts to resolve issues and objections in line with NBN Co specifications and guidelines.
- NBN Co provides ongoing support to the delivery partners and encourages early escalation of issues so that assistance can be provided.
- If NBN Co's delivery partner is unable to resolve the issue or objection then they must submit a form to NBN Co which provides full detail of the actions undertaken and the results. Appropriate evidence must also be supplied to NBN Co.
- NBN Co will review the detail and evidence and reserves the right to make additional attempts to resolve the issue or objection with the property owner or the Owners' Corporation. If NBN Co's attempts are successful then the delivery partner will continue with the survey and installation activity required to connect the premises to the NBN.
- If NBN Co is not able to resolve the issue or objection then 'last chance letters' will be sent to the property owner (and in the case of MDUs, to individual lot owners and residents). These letters will:
 - outline the attempts that have been made to try to resolve the issue;
 - outline the consequences arising from the premises being classified as a Frustrated Premises; and

- ask the owner to come back to NBN Co within 10 business days if they are prepared to agree to an outcome.
- If there is no response to the 'last-chance letter', a proposal will be put forward to an NBN Co governance committee which includes members of NBN Co's senior management.
- If NBN Co's governance committee agrees, the premises will be classified as Frustrated.

In respect of MDUs, NBN Co notes that end-user consumers have an important role to play in ensuring that their building does not become Frustrated. In particular, NBN Co's delivery partners will letterbox drop brochures (which have been printed by NBN Co) for every resident in an MDU so that they are aware that the NBN is scheduled to be installed and that NBN Co will be liaising with their Owners' Corporation for the survey and installation activities. Residents are encouraged to engage with their Owners' Corporation or authorised representative to ensure that they don't prevent the NBN from being installed. If, however, the Owners' Corporation persistently refuses access or is unresponsive to requests from NBN Co to gain access, as noted above, 'last chance' letters will be sent to the occupiers and owners of the MDU premises which will outline the consequences of not connecting to the NBN and ask that they liaise with the Owners' Corporation if they have any concerns.

The adverse consequences of refusing to allow NBN Co, or its delivery partner, to install infrastructure which enables the premises to become NBN serviceable include:

- If NBN Co is unable to connect the premises during the initial rollout schedule, the address will be classified as unable to obtain NBN services on the publicly available NBN interactive map.
- In the case of MDUs, the Owners' Corporation will be charged for costs associated with future inspection, design and installation activities required to connect the building to the NBN if they request a connection at a later date.
- The NBN will replace the existing landline phone, ADSL and Telstra and Optus cable broadband services in the area. This means if residents want to keep making phone calls and accessing the internet using one of these landline services, they will need to switch their service to the NBN.

All of these adverse consequences will be discussed with the property owner or the Owners' Corporation during the attempts to resolve the issues and objections raised.

In addition to our processes for classifying a premises as Frustrated, NBN Co has developed a process by which the property owners or the Owners' Corporation can have a Frustrated Premises re-classified to a premises which is NBN serviceable. In particular, NBN Co will accept requests to proceed with installation work for premises which have been previously classified as Frustrated. NBN Co will receive these requests via the NBN Co Contact Centre which will trigger an internal process which includes engaging a delivery partner to complete survey and cabling activity of the premises.

Finally, it should be noted that, even though the protocols are yet to be finalised between NBN Co and DBCDE, the processes described above have already been established by NBN Co and are operational. The implementation of these policies and processes by NBN Co and our delivery partners has been highly effective – to date no premises within NBN Co's fibre footprint has been identified as Frustrated.

Clarification in respect of 'Non Serviceable Premises'

NBN Co notes that Telstra's letter to the ACCC in support of the proposed variation introduces the concept of a Non Serviceable Premises. We further note that all references to Non-Serviceable Premises are as a capitalised term, which may suggest to some that 'Non-Serviceable Premises' is a defined term in the Migration Plan.

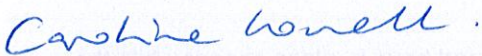
Non-Serviceable Premises is not a defined term in any of the following relevant documents:

- Telstra's Migration Plan;
- Telstra's Structural Separation Undertaking (SSU); and
- NBN Co's Wholesale Broadband Agreement (WBA).

Accordingly for the sake of clarity, NBN Co wish to point out that the relevant test for determining whether cease sale applies to the provision of a new copper or HFC service to a premises (as per clause 17 of the Migration Plan), is whether that premises is NBN serviceable. A premises will be NBN serviceable, if it is shown in NBN Co's service qualification system as being either Service Class 1, 2 or 3. If however, NBN Co's service qualification system shows the premises as being Service Class 0 then that premises will not be NBN serviceable.

If you have any questions or would like to discuss any of the matters raised in this letter please do not hesitate to contact either myself or James Endres

Yours sincerely,



Caroline Lovell
Head of Regulatory Affairs and Industry Analysis

Attachment A: The benefits arising from Telstra's proposed changes to cease sale

To understand the benefits of making Frustrated Premises subject to Telstra's cease sale obligation consider a multi-dwelling unit (MDU) comprised of 20 individual premises. Assume the following:

- The MDU is currently served by Telstra's copper network only.
- The MDU is located in a rollout region that has been declared RFS and that Telstra's cease sale obligation has commenced.
- The Owners' Corporation of the building has refused NBN Co's delivery partner access to the building for the purpose of installing infrastructure which will allow the building to become NBN serviceable. Hence, the building has been classified, as per NBN Co's established processes as a Frustrated Premises.
- That, as at the RFS date, two of the 20 apartments are vacant and have in-place copper while the remaining 18 have existing copper services.
- That shortly after the RFS date the two vacant apartments become occupied by residents that wish to order a new voice and broadband service bundle.

Application of the current Migration Plan

In this scenario applying the current clause 17 of the Migration Plan would mean that:

- The building would be SC0 at the RFS date. Hence, the building would not be NBN serviceable and cease sale would not apply to the extent that there is 'in-place' copper.
- As the two vacant apartments have an in-place copper connection the two new residents would be able to order a new voice and broadband service bundle from their preferred service provider.
- All existing copper services would remain active up until the disconnection date.

Application of the current Migration Plan to the above scenario would mean that before the disconnection date the Owners' Corporation may feel little pressure from owners or residents to provide NBN Co's delivery partners with access to the building to undertake work to facilitate connection to the NBN.

If the building continues to be Frustrated no residents will have the opportunity to migrate to the NBN. Hence on the disconnection date all services (with the exception of special services) to all 20 premises within the building will be disconnected. Furthermore, the building will likely seek connection to the NBN after the disconnection date, which is likely to be at a time of peak demand for NBN Co's delivery partner in that rollout region. This may mean that residents in the building may experience delay in being connected to the NBN after their existing copper services have been disconnected.

Application of the varied Migration Plan

Application of the varied Migration Plan to the above scenario would result in the following outcomes for the residents of the building. In particular:

- The building would be SC0 at the RFS date. Because cease sale will apply to Frustrated Premises the two new residents in the building will be unable to order a new voice and broadband service either over Telstra's copper network or the NBN.
- However, the two new residents will be able to order a standard voice telephone service (STS) from Telstra as per its Universal Service Obligation (USO).
- All existing copper services would remain active up until the disconnection date.

Applying Telstra's Migration Plan varied as proposed to the above scenario would mean the new residents of the building will have stronger incentives to encourage the Owners' Corporation to allow connection of the building to the NBN. Pressure by owners and residents on the Owners' Corporation will highlight to all residents and owners of premises in the building the adverse consequences of the building

being a Frustrated Premises. This is likely to encourage the Owners' Corporation to apply to NBN Co to have the building connected to the NBN prior to the disconnection date.

If connection of the building occurs before the disconnection date it is likely that some residents will migrate to the NBN, meaning that fewer residents will have their existing telephone and broadband services disconnected. Hence, fewer residents would experience service disruption.

