

14 June 2013

Mr Sean Riordan  
General Manager  
Industry Structure & Compliance  
Communications Group  
Australian Competition and Consumer Commission  
Level 35, The Tower  
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Melbourne Vic 3000  
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Dear Mr Riordan

### **Request to Vary Telstra's Migration Plan for the Application of Cease Sale**

Telstra requests approval from the Australian Competition and Consumer Commission (the Commission) to a minor variation of the Migration Plan as allowed by s 577BF of the *Telecommunications Act 1997 (Cth)*. The effect of the variation would be to simplify the Cease Sale obligation and ensure it is applied only to Premises that are either NBN Serviceable, or are determined by NBN Co to be Frustrated Premises (and are noted as such in NBN Co's service qualification system).

Telstra understands that there has been concern raised by industry about the potential operation of Cease Sale in its current form. Particular concerns have been raised about applying Cease Sale when a Premise is not yet NBN Serviceable by NBN Co, especially if this represents more than a very small number of premises at any given time.

Telstra believes that making the above changes to Clause 17 of the Migration Plan will ensure a better end-user experience in migrating to the NBN fibre, and will provide greater certainty about when Cease Sale will and will not apply. Currently there are no Premises identified as Frustrated Premises in NBN Co's service qualification systems. Moreover, Telstra understands it is NBN Co's intention that the number of Frustrated Premises will be small and it will be some time before NBN Co identifies Frustrated Premises publicly. Accordingly, from 1 July 2013 and for a limited period thereafter, Cease Sale will only apply to NBN Serviceable premises.

Telstra proposes to implement this change from 1 July 2013.

Telstra has obtained consent from NBN Co for this variation to the Migration Plan.

Telstra notes that this change will allow the continued processing of orders for new copper based services according to business as usual processes in NBN Fibre Rollout Regions until the order stability period for the region for Premises that are not Frustrated nor NBN Serviceable. Telstra notes however that this does not alter the requirement for Telstra to disconnect services that are not Special Services on the Disconnection Date for the relevant rollout region. Accordingly, it is important for industry to promote the migration of customers to the NBN ahead of the Disconnection Date for their rollout region. This is because premises passed by NBN fibre will be disconnected from Telstra's network from the Disconnection Date, even if they are not serviceable by NBN Co.

We believe that as this proposed change limits the application of Cease Sale from its commencement on 1 July 2013, and allows requests for Telstra's copper services to proceed to be connected in a business as usual fashion for Premises that are not NBN Serviceable or Frustrated Premises, this is a minor change only to the Migration Plan, and that, the Commission should not need to consult with industry for a full 28 days prior to accepting the variation.

### **Details of the Requested Variation**

Telstra has set out the proposed amended drafting in Attachment 1 in both marked up and clean versions.

The effect of the variation is to exclude premises that are not NBN Serviceable or that are not Frustrated Premises from the Cease Sale obligation, thereby allowing requests for new Telstra services to those Premises to proceed in accordance with business as usual processes.

### **Reason for the Requested Variation**

Telstra is requesting the variation in response to industry concerns, and its own concerns, about the potentially poor end-user experience that could arise from the application of the current Cease Sale obligation from 1 July 2013, particularly to Premises which are not NBN Serviceable. Telstra believes the approach suggested by the revised drafting will promote a better experience for customers and for industry, as it will allow for services to be requested on Telstra's network in accordance with standard practice, unless the Premises is NBN Serviceable, or Frustrated.

### **How the Revised Cease Sale Obligation Will Operate**

#### *NBN Serviceable Premises*

There are no proposed changes to the operation of the Cease Sale obligation to NBN Serviceable Premises: Cease Sale will continue to apply from 1 July 2013, or 10 business days after the Ready for Service Date of a fibre rollout region, as per current arrangements. This means that for Premises which are NBN Serviceable, requests for a new service should be fulfilled on NBN fibre rather than on Telstra's copper or HFC networks. Telstra will reject most orders for a new copper service to be supplied at those premises (e.g. requests for a new voice or broadband service will fall under this definition, as will requests for an existing service to churn to a new provider and any upgrade in speed which requires new technology).

#### *Frustrated Premises*

The other category of customers to which Cease Sale will apply is Frustrated Premises. Telstra understands this category will include those Premises where NBN Co has been refused access in order to supply services, although Telstra understands the definition is still to be settled by NBN Co and the Department of Broadband, Communications and the Digital Economy (the Department). The drafting of the proposed variation ensures that:

- when NBN Co settles on a definition of Frustrated Premises with the Department, NBN Co will release this information to industry in its service qualification system promoting a clear understanding of what Premises are determined to be Frustrated; and
- Cease Sale will not apply to Frustrated Premises until NBN Co has taken the necessary steps to identify Frustrated Premises in its service qualification systems,

and Telstra has implemented the necessary changes to its systems and processes to apply Cease Sale to those Premises. Telstra will ensure industry and the Commission are informed of the proposed date that this will be achieved.

We have been informed by NBN Co that there are currently no Premises classified as Frustrated Premises in NBN Co's service qualification system. We also understand that the number of Premises which are likely to be identified as Frustrated Premises will be a much smaller category than Non-Serviceable Premises.

Telstra understands NBN Co will shortly inform industry about the types of premises which it expects will be classified as Frustrated Premises.

### *USO Exception*

Telstra must meet its regulatory Universal Service Obligation (USO). The proposed revision of Clause 17 therefore ensures that if Telstra is requested to supply a standard telephone service (STS) to a Frustrated Premises, it can do so by supplying a voice service using its copper network. In accordance with the USO, this obligation would only be able to be met via Telstra's Retail business unit and:

- there would be no broadband or other service able to be supplied at the same time, or subsequent to, the supply of the STS;
- there would be no churn permitted of the STS;
- the exception does not require that Telstra use copper to supply a service – it can use alternatives such as wireless or satellite solutions if these are more suitable in order to meet its USO;
- as with other voice services, any new STS supplied by Telstra Retail would be subject to standard disconnection rules and would be disconnected on the Disconnection Date for that rollout region, in accordance with Telstra's obligations under the Migration Plan.

Telstra believes the above addresses some of the concerns raised by industry in relation to the operation of the USO exception to the current Cease Sale obligation. As we expect only a limited number of Premises to be Frustrated Premises, and the number of requests for an STS that is required to be supplied in satisfaction of the USO at those Premises to be an even smaller subset of those, of which some will be met by wireless or satellite in any case, we believe there should be no concern with the limited operation of this exception, which is required in order to ensure Telstra can meet its USO.

### *Non-Serviceable Premises*

As noted above, the effect of the proposed change to the Cease Sale obligation will be that Premises that are Non-Serviceable will no longer be subject to Cease Sale, provided they are not Frustrated Premises. That is, Telstra and the rest of industry will be able to request new services, and the churn or transfer of existing services to those Premises, in accordance with business as usual processes. This will assist in ensuring a smoother migration to the NBN for customers who, under the existing Cease Sale rules, may not have been able to have their request for a new service satisfied by either NBN Co or Telstra. It will also enhance certainty and clarity in the rules for which Cease Sale will apply.

It should be noted that the removal of Non-Serviceable Premises from the Cease Sale obligation does not amount to an obligation upon Telstra to supply services upon request. Telstra's supply of services to those Premises will occur according to business-as-usual processes, and in accordance with its existing regulatory obligations.

### *Special Services*

For the sake of clarity, Special Services continue to remain excluded from the operation of Cease Sale.

### **Telstra is not seeking through this amendment an extension to the Cease Sale Commencement Date**

Telstra is working to implement the variation from the Cease Sale Commencement Date of 1 July 2013. Whilst we consider a short delay could have been accommodated, NBN Co did not agree.

We are making minimal change to our IT systems and no changes to our IT interfaces with Wholesale Customers. We expect that only minimal changes to processes are required to accommodate the change. In addition, there are relatively few Premises that are affected by the Cease Sale clause in the early days after the 1 July 2013 Cease Sale Commencement date.

Whilst we were prepared to consider a short delay to the Cease Sale Commencement Date, Telstra believes any extensive delay to the Cease Sale commencement date has the potential to cause confusion amongst the industry and customers. It would also risk creating a disincentive for customers to migrate to the NBN until the last possible moment, thereby risking more customers remaining on Telstra's network at the final Disconnection Date. Therefore there is a need for industry to encourage end-users to look to the NBN for fixed network solutions, rather than facilitating a greater reliance upon Telstra's network, which could ensue from a further deferral of Cease Sale.

### **Requested Change is a Minor Variation**

Telstra believes that the proposed change to the Cease Sale obligations is minor in nature for the following reasons:

- the change amounts to a limitation on the application of the Cease Sale obligation, and therefore allows more transactions to proceed as business as usual, with less impact on end-users;
- there is no change to the Cease Sale Commencement Date. ;
- there is no change to the Disconnection Dates for any Rollout Regions passed by the fibre footprint;
- only a small set of Rollout Regions will be impacted; and
- the public will benefit from approving the variation because more end users will be able to obtain copper services from their selected retail provider.

Telstra believes that the proposed change to the Cease Sale obligations is consistent with the *Telecommunications (Migration Plan Principles) Determination 2011* and in particular general principles 8 and 21.

Given the 1 July Cease Sale Commencement Date is fast approaching and we are in the process of adjusting training and communications accordingly in anticipation of the amendment being approved, we request the Commission's urgent consideration of this proposed amendment. In the meantime, Telstra will provide further communications to its Wholesale Customers about how Cease Sale will operate, in order to promote clarity and certainty.

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

Yours sincerely



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Corporate Affairs  
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## Attachment 1

### Clause 17 –Proposed amendments: marked-up version

## 17 No supply of new Copper Services and HFC Services after a Premises becomes NBN Serviceable

### 17.1 No supply of Copper Services

- (a) Subject to sub-clause 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) (i) is NBN Serviceable; or
- (b) ~~(ii) 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. is a Frustrated Premises.~~
- (b) Nothing in this clause 17.1 prevents or restricts Telstra (in its discretion) from supplying a new standard telephone service in fulfilment of a USO requirement at a Frustrated Premises.
- (c) As soon as reasonably practicable after the date when NBN Co commences to identify Frustrated Premises in the NBN Co service qualification system, Telstra will notify the ACCC and NBN Co of the date from which it reasonably considers it will be able to implement the requirements of clause 17.1(a)(ii) and 17.1(b), which clauses will then commence on and from that date, unless a later date is approved by the ACCC.

### 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, 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.

### Amendments to relevant definitions in Schedule 9 -Dictionary

<b>NBN Serviceable</b>	means a Premises within the Fibre Footprint that NBN Co has determined is serviceable by the NBN Co Fibre Network, under and in accordance with the Definitive Agreements, and as shown in the NBN Co service qualification system by being one of Service Class 1, 2 or 3 (for clarity, Premises which are identified as Service Class 0 in the NBN Co service qualification system are not NBN Serviceable);
<b><u>Department</u></b>	<u>means the Department of Broadband, Communications and the Digital Economy or any other Department with administrative responsibility for the NBN;</u>
<b><u>Frustrated Premises</u></b>	<u>means a Premises that is identified in the NBN Co service qualification system as being Frustrated;</u>
<b><u>Frustrated</u></b>	<u>means where NBN Co determines that the Connection of a Premises to the NBN is not reasonably practicable, where applicable, in accordance with any direction, determination, protocol or guideline made by the Minister or otherwise agreed between NBN Co and the Department;</u>

## Clause 17 – Proposed amendments: clean version

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### 17 No supply of new Copper Services and HFC Services after a Premises becomes NBN Serviceable

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  - (i) is NBN Serviceable; or
  - (ii) is a Frustrated Premises.
- (b) Nothing in this clause 17.1 prevents or restricts Telstra (in its discretion) from supplying a new standard telephone service in fulfilment of a USO requirement at a Frustrated Premises.
- (c) As soon as reasonably practicable after the date when NBN Co commences to identify Frustrated Premises in the NBN Co service qualification system, Telstra will notify the ACCC and NBN Co of the date from which it reasonably considers it will be able to implement the requirements of clause 17.1(a)(ii) and 17.1(b), which clauses will then commence on and from that date, unless a later date is approved by the ACCC.

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- (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
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<b>Frustrated</b>	means where NBN Co determines that the Connection of a Premises to the NBN is not reasonably practicable, where applicable, in accordance with any direction, determination, protocol or guideline made by the Minister or otherwise agreed between NBN Co and the Department;