

5 June 2012

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Dear Ms O'Brien

Inquiry into varying the final access determinations for the WLR, LCS and PSTN OA – where these services are supplied over the NBN, Discussion Paper - Submission

I refer to the Commission's *"Inquiry into varying the final access determinations for the WLR, LCS and PSTN OA – where these services are supplied over the NBN – Discussion Paper"*, dated April 2012 (**Discussion Paper**).

Telstra wishes to further clarify its submission in response to the Discussion Paper dated 11 May 2012 (**Telstra's Submission**) and to address matters raised in the submissions of other interested parties – in particular those of Optus and AAPT.

Background

As the Commission notes in the Discussion Paper, Telstra requested temporary relief from the standard access obligations (**SAOs**) with respect to WLR, LCS and PSTN OA (for the preselect and override call cases) (collectively, voice resale services) where these services would be required to be supplied over the National Broadband Network (**NBN**).

Telstra is seeking interim relief as currently it is not in a position to offer voice resale services to its wholesale customers over NBN infrastructure. Telstra is currently providing an interim voice service to retail customers over the NBN in areas in which it is unable to provide services over its own access network, as it is required to do in its role as universal service provider.

Telstra does not necessarily consider that this interim voice service (or other voice services supplied over the NBN Uni-D port) is caught by the existing voice resale service descriptions. However, Telstra nevertheless seeks greater regulatory certainty during the period prior to the launch of Telstra's mass market retail and wholesale NBN voice services. Telstra still anticipates making these services available (including resale services to wholesale customers) by the end of September 2012.

Although the Commission's proposed variation to the final access determinations (**FADs**) for WLR, LCS and PSTN OA is likely to provide regulatory relief for Telstra in the period up to the release of its NBN resale voice offerings, Telstra remains concerned that the Commission's proposed drafting of the interim variation raises unnecessary regulatory risks and uncertainties.

The interim variation should apply to services supplied over NBN infrastructure

In Telstra's view, a simpler drafting approach than that proposed would be to apply the proposed variation to services supplied over the NBN in all NBN enabled areas, including

those areas in which Telstra is unable to supply resale services over copper infrastructure. For greater simplicity, and to avoid unintended gaps in the application of the proposed variation, Telstra considers that the proposed variation should be amended as follows:

4.1A The category A standard access obligations in section 152AR of the Competition and Consumer Act 2010 do not apply to the provision of WLR or LCS or PSTN OA (preselect and override) over National Broadband Network ~~greenfield estates~~.

4.1B Clause 4.1A commences on [date to coincide with date of variation] and ceases to have effect on 31 March 2013.

The removal of the words “Greenfield estates” does the following:

- First, it directly addresses the key issue that Telstra will not be in a position to provide wholesale voice services over the NBN – irrespective of whether the end user is located in an NBN greenfield estate, or an NBN brownfield estate – until the release of Telstra’s NBN voice services (currently scheduled for release in September 2012).
- Second, it avoids the complication of having to define NBN greenfield estates. As Telstra set out in its submission to the Discussion Paper, there is no agreed, single definition of what precisely constitutes an NBN greenfield estate and different definitions have the potential to inadvertently exclude premises to which the interim variation may otherwise have been considered to apply. (This issue is discussed further below).

Third, it is consistent with the approach adopted by the Commission in the FADs for Fixed Line Services in which the Commission explicitly carved out resale voice services supplied over the NBN from the applicability of the FADs. In that regard, the Commission:

“concluded that the case for access regulation of NBN wholesale aggregation services over the long-term is not clear. The ACCC has decided to specify that these FADs do not apply to services provided by a carrier or carriage service provider over the NBN...”¹

In drafting the FADs, the Commission inserted the following clause 1.2 to exclude services provided over the NBN:

1.2 These FADs do not apply to services provided by a carrier or carriage service provider over the National Broadband Network.

Contrary to the submissions of Optus, in proposing a simpler drafting of the interim variation, Telstra is not seeking to avoid its regulatory responsibilities to supply resale voice services over its own access network. In Telstra’s view (and entirely consistent with the approach adopted by the Commission in the FADs) a variation that applies to services supplied over the NBN (irrespective of whether those services were located within areas defined as NBN greenfield estates or NBN brownfield estates – however they may be defined) would not affect the ongoing standard access obligations with respect to WLR, LCS and PSTN OA for the supply of those services over Telstra’s own network (whether copper or fibre).

Complications in the definition of NBN greenfield estates – issues raised by AAPT and Optus

¹ ACCC, FAD Fixed Line Services Final Decision, p. 165

As Telstra set out in its submission to the Discussion Paper, defining NBN greenfield estates is complex. For this reason (and the other reasons set out above) Telstra considers that the interim variation should apply to all services supplied over the NBN. However, if the Commission remains minded to apply the interim variation to greenfield estates only, it is important that the Commission's definition of greenfield estates does not introduce unanticipated regulatory risks. In their submissions to the Discussion Paper, both Optus and AAPT suggested amendments to the Commission's proposed definition of NBN greenfield estates.

In Telstra's view, Optus' submission overly simplifies aspects of the greenfield estates definition and reinforces the difficulty in determining an appropriate definition. For example, Optus refers to Telstra having responsibility for installing infrastructure in **all** developments of less than 100 premises.² However this is an oversimplification of the greenfields policy. The policy anticipates that Telstra will be responsible for installing infrastructure in these estates unless NBN Co is ready to deploy infrastructure:

*For developments of less than 100 premises, whether broadacre or infill, Telstra will be responsible for delivering infrastructure and services, **pending NBN Co being ready to provide a fibre service in that area that is capable of connection to the premises.***³

As there may be developments of less than 100 premises that are reticulated by NBN Co, the demarcation between developments of <100 / 100+ premises is not a reliable basis on which to define the interim variation. If NBN Co has used its discretion to build in an estate of less than 100 premises, then Telstra could not comply with the SAOs in these estates until it is able to provide a wholesale service across the NBN.

Optus also suggests that the Commission should reference NBN Co's Monthly Ready For Service Rollout Plans (**Rollout Plans**) in setting a limit on the application of the interim variation. The Rollout Plans themselves show that they are not a reliable source on which to base the interim variation. In that regard, the February list at <http://www.nbnco.com.au/assets/documents/q-s/rollout-info-monthly-feb-12.pdf> contains the following disclaimer:

The Rollout Plans reflect NBN Co's position as at [date]. The Rollout Plans are provided for information purposes and are intended to be a guide only. The contents of the Rollout Plans should not be relied upon as representing NBN Co's final position on their subject matter, except where stated otherwise. Any views expressed by NBN Co in the Rollout Plans may change as a consequence of NBN Co finalising formal technical specifications, or legislative and regulatory developments. Any dates provided are indicative only. Any such dates are subject to change and are dependent upon a number of factors. The Rollout Plans may be withdrawn without notice.

The Rollout Plans contain forward looking statements. These forward looking statements contain known and unknown risks and uncertainties, many of which are beyond our control, and may involve significant elements of subjective judgement and assumptions as to future events which may or may not be correct. We make no representation or warranty, express or implied, as to the currency, accuracy, reliability or completeness of the information in the Rollout Plans. (emphasis added)

² Optus Submission, p 4.

³ Department of Broadband, Communications and the Digital Economy, *Fibre in new developments: policy update*, 22 June 2011, p 3.

Given that NBN Co notes that the rollout plans are a guide only, and should not be relied upon as a final position on their subject matter, it is apparent that the interim variation and the definition of greenfield estates should not be tied to these plans.

In its submission to the Discussion Paper, AAPT submitted that:

AAPT considers that the ACCC's proposed definition of an NBN greenfield estate should be amended as follows:

NBN Greenfield estates means new developments that can be either broadacre or infill premises connected to the NBN and where there are no coppers service available within that estate or in the surrounding area.⁴ (emphasis added)

The change proposed by AAPT could result in the interim variation not applying to premises in which Telstra does not have copper infrastructure (and is not able to deploy copper infrastructure). For example, where the NBN is deployed to a particular estate, the fact that copper is available in the surrounding area does not mean that Telstra can connect a copper service to a particular premises in that estate. Where NBN Co is responsible for the infrastructure in a development, Telstra may be limited in its ability to use NBN Co infrastructure to supply copper services – or to deploy its own pit and pipe infrastructure to run copper lines. For this reason, AAPT's suggested amendment should not be implemented. In any event, it is also noted that AAPT's submission does not effectively address the definitions of broadacre and infill.

In summary, Telstra considers that the proposed definition of NBN greenfield estates set out in the Discussion Paper, and by Optus and AAPT, are problematic. In Telstra's view, the more effective approach is to simply apply the interim variation to services supplied over the NBN. Such an approach would result in clearer drafting, greater regulatory certainty and be consistent with the approach that the Commission has already adopted in the FADs.

Conclusion

Telstra hopes that this supplementary submission assists the Commission in finalising its Inquiry. Telstra welcomes the opportunity to discuss the issues set out within this submission in more detail with the Commission.

Please contact Alister Montgomery on (03) 8649 2008 or Alister.Montgomery@team.telstra.com should you have any queries in relation to this request.

Yours sincerely,



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⁴ AAPT Submission, p 4.