

TELSTRA CORPORATION LIMITED

Response to the Commission's Discussion Paper into varying the final access determinations for the WLR, LCS and PSTN OA – where these services are supplied over the NBN

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01 EXECUTIVE SUMMARY

1. Telstra welcomes the opportunity to respond to the Commission's Discussion Paper on the *Inquiry into varying the final access determinations for the WLR, LCS and PSTN OA – where these services are supplied over the NBN (Discussion Paper)*.
2. As the Commission notes in the Discussion Paper, Telstra wrote to the Commission requesting 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**).
3. 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 developing mass market retail and wholesale NBN voice services and at this time anticipates making these services available (including resale services to wholesale customers) by the end of September 2012.
4. In broad terms, the Commission's proposed variation to the final access determinations (**FADs**) for WLR, LCS and PSTN OA provides sufficient regulatory relief for Telstra in the period up to the commercial release of its NBN resale voice offerings. The Commission's proposal to apply the interim variation for a period up to 31 March 2013 is appropriate, as this will provide for any unforeseen delays in the deployment of Telstra's NBN voice services.
5. Although Telstra broadly agrees with the Commission's preliminary views and proposed approach in the Discussion Paper, Telstra considers that some aspects of the Commission's proposed variation are unnecessarily complex and may lead to unintended gaps in the application of the variation order.
6. Telstra's concerns relate to the Commission's proposal to only apply the variation to NBN greenfield estates (as defined by the Commission) thus excluding its application to NBN brownfield developments. Telstra considers this to be an unnecessarily narrow application of the proposed variation, which introduces a complex (and potentially problematic) definition of NBN greenfield estates and which may unintentionally result in Telstra (and other service providers) being exposed to, yet unable to comply with, the SAOs in certain circumstances.
7. A simpler approach, which Telstra considers would achieve the intended aims of the proposed variation, would be to simply apply interim relief to NBN infrastructure generally. For the reasons set out in section 3 of this submission, Telstra considers this alternative approach provides greater clarity and reduces the risk of Telstra (or other service providers) not being provided with the intended regulatory relief in all relevant circumstances prior to its expiry.
8. Finally, the Commission notes that it is yet to make a decision regarding Telstra's request for the long-term removal of regulation in respect of these services over the NBN. Although Telstra agrees that it is not necessary for the purposes of finalising the present variation inquiry for the Commission to determine to hold a more wide-ranging inquiry to remove resale-based regulation over NBN infrastructure, the need for such an inquiry is clear. Delaying consideration of the removal of the legacy resale regulations (where these apply to NBN infrastructure) until 2014 could unnecessarily hinder new investment and innovation in respect of new services.
9. Appendix A contains answers to each of the questions posed by the Commission in its Discussion Paper.

02 REASONS FOR PROPOSED VARIATION

10. Telstra has sought interim regulatory relief with respect to the provision of regulated resale voice services (WLR, LCS and PSTN OA (preselect and override)) over NBN Co infrastructure for a period of 12 months. That period provides sufficient relief during the development and deployment of Telstra's commercial NBN voice resale services.
11. During the period prior to Telstra launching its NBN voice resale services, Telstra Wholesale will be unable to supply resale voice services in NBN-enabled areas where there is no PSTN connection to the end user.
12. Prior to the launch of its commercial retail and wholesale NBN-based voice offerings (which are targeted for release in September 2012) Telstra will be offering an interim retail voice service over NBN, where PSTN infrastructure is unavailable. This will enable Telstra to fulfil its obligations as Universal Service Provider. For a number of technical, regulatory and operational reasons set out in Appendix A to Telstra's letter to the Commission dated 21 March 2012, Telstra is not in a position to make this interim voice service available to wholesale customers.

03 APPLICATION OF PROPOSED VARIATION TO NBN GREENFIELD ESTATES

3.1. The variation should apply to "greenfields" and "brownfields" estates

13. The Commission proposes to vary the FADs by inserting the following two new clauses:
 - 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.*
14. The proposed new clause 4.1A specifically restricts the applicability of that clause to "National Broadband Network greenfield estates", which is in turn defined.
15. Telstra considers that the Commission's proposal to apply clause 4.1A to only NBN greenfield estates is unnecessarily narrow. From a technical perspective, Telstra (and other resale service providers) face the same issues with the supply of voice resale services over the NBN irrespective of whether these services are supplied in brownfield or greenfield areas. In order to supply voice resale services over the NBN it is necessary to develop and deploy an NBN-based service. The technical requirements to provide these services in brownfield or greenfield areas are the same.
16. The Commission's rationale for its proposed approach is that in non-greenfield NBN areas, Telstra will be able to supply voice resale services over traditional PSTN infrastructure. That is so; unless Telstra is unable to provide services over existing copper infrastructure. For example, once the copper cease sale obligation provisions apply in a particular NBN brownfields area, Telstra will be unable to provide new wholesale or retail voice services via the copper infrastructure.¹ In the event that the cease sale obligations were to apply in a particular area prior to the release of Telstra's NBN resale voice services,

¹ See Telstra's NBN Migration plan, clause 17.1 (available at: <http://www.telstra.com.au/abouttelstra/download/document/tls787-telstra-ssu-and-migration-plan.pdf>)

Telstra would be unable to provide a voice resale service in the area at that time. As Telstra anticipates releasing its resale NBN voice services in September 2012, this scenario is unlikely, but the possibility of this (or a similar scenario) cannot be discounted.

17. In Telstra's view, a simpler drafting approach – which would remove the regulatory risk outlined above – would be for the Commission 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, the Commission should amend its proposed variation 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.*

18. By removing “greenfield estates” from clause 4.1A, the proposed variation would cover all instances where Telstra (and other service providers) would otherwise be required to provide resale voice services over NBN infrastructure prior to March 2013. Importantly, this amendment would not remove Telstra's obligations (or the obligations of other service providers) to provide resale voice services in those areas in which copper or other PSTN infrastructure was available. In those areas, Telstra would continue to supply (and be obliged to supply) WLR, LCS and PSTN OA preselect and override services.

3.2. The proposed definition of “NBN greenfield estates”

19. As set out above, Telstra considers that the Commission should extend the application of the proposed variation to all NBN infrastructure. However, if the Commission is minded to maintain its proposed drafting and only apply the variation to NBN greenfield estates, Telstra considers that the definition of NBN greenfield estates should be amended.

20. The Commission proposes to define NBN greenfield estates in the Discussion Paper as “*new developments that can be either broadacre or infill premises connected to the NBN*”.

21. The Commission proposes to further clarify this definition by defining the terms “broadacre” and “infill” developments as follows:

- *A **broadacre** estate is a type of greenfield development where new premises are built on currently undeveloped land (i.e. where no copper services are currently available in the surrounding area).*
- *An **infill** estate is a type of greenfield development where new premises or a redevelopment (i.e. demolition and rebuild) are built on currently developed land that is surrounded by established areas.*

22. These definitions currently do not appear in the proposed variation instrument set out in Appendix C to the Discussion Paper. Telstra submits that these definitions (subject to the amendments set out below) should be included to clarify the meaning of “NBN greenfield estates”.

23. Telstra is concerned that although the definition of NBN greenfield estates proposed by the Commission correlates with definitions used by NBN Co and the Department of Broadband, Communications and the Digital Economy (DBCDE), it may not cover all areas in which NBN Co may deploy a network but where Telstra does not have copper infrastructure.

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24. To address this concern, Telstra proposes the following amendments to the definitions:
- *A broadacre estate is a type of ~~greenfield~~ development where new premises are built on currently undeveloped land, ~~(i.e. where no copper services are currently not available in the surrounding area development)~~.*
 - *An infill estate is a type of ~~greenfield~~ development where new premises or a redevelopment (i.e.e.g. demolition and rebuild) are built on currently developed land that is surrounded by established areas, where copper services are not available in the development.*
25. The amendment to the broadacre and infill definitions is intended to clarify that the SAOs should only apply where Telstra has copper infrastructure in a particular development. The fact that Telstra has copper in the surrounding area should not have a bearing on the application of the SAOs.
26. The removal of “greenfields” from both the broadacre and infill definitions will avoid circularity within the definition.

04 LIKELY IMPACT OF THE PROPOSED VARIATION

27. As Telstra outlined to the Commission in its letter of 8 March 2012, and in the commercial-in-confidence appendix provided to the Commission as part of its letter of 21 March 2012, Telstra considers that only a minimal number of end users (and wholesale customers) are likely to be impacted by Telstra not having available an NBN-based resale voice service prior to the intended launch date for the service in September 2012.
28. Importantly, where Telstra is able to provide services over traditional PSTN infrastructure, WLR, LCS and PSTN OA preselect and override services will continue to be made available (this would be the case even if the Commission were to apply the proposed variation to NBN infrastructure generally, as set out in section 4).
29. Several service providers are currently offering services to end users connected to the NBN by directly seeking access through NBN Co. Therefore the potential market for basic resale voice services over NBN infrastructure is likely to be considerably different (and likely smaller) than has historically been the case over the PSTN. Quite clearly, Telstra is no longer the bottleneck provider of basic access services. Consistent with this, recent announcements by both NBN Co and industry participants suggest that the market for wholesale services over the NBN (including voice resale services) is likely to involve several service providers and be highly competitive. As such, prior to the release of Telstra Wholesale's NBN resale voice services, NBN retail service providers will likely be able to either directly contract with NBN Co or acquire resale services from an alternative wholesale supplier.

05 APPLICATION OF PROPOSED VARIATION TO SPECIAL SERVICES

30. The Commission queries whether or not its proposed variation to the FADs should only apply to PSTN OA (preselect and override) or PSTN OA special services supplied over the NBN.
31. Telstra considers it unnecessary for the relief to apply to PSTN OA special services. This is because, the carriage of PSTN OA services – other than preselect and override – will continue and will be unaffected by Telstra not being in a position to offer a NBN voice resale service. PSTN OA override and PSTN OA preselect are, in effect, long distance access services, whereas other PSTN OA call cases –

such as 13/1300 and 1800 calls – are pure interconnect services. These special services call cases will continue to be supported by Telstra over the NBN and are unrelated to the underlying network functionality required to implement pre-selection services. Accordingly, Telstra is not seeking a carve out from the requirement to supply other traffic classes under PSTN OA (as well as PSTN TA) for basic access services provided over NBN Co infrastructure.²

06 EXPIRY DATE FOR PROPOSED VARIATION

32. The Commission has proposed for the variation to expire on 31 March 2013. Telstra considers that this is an appropriate period, which is likely to provide Telstra (and other potential wholesale market participants) with sufficient time to develop and deploy an NBN-based resale voice service.
33. It would increase regulatory risk if the Commission were to set the proposed variation to expire at an earlier time.

07 REMOVAL OF REGULATION FOR SERVICES PROVIDED OVER NBN

34. The Commission notes in the Discussion Paper that it is yet to make a decision regarding Telstra's request for the long-term removal of regulation for resale services over the NBN. Although Telstra agrees that it is not necessary for the purposes of finalising the present inquiry for the Commission to determine to hold a more wide-ranging inquiry to remove resale-based regulation over NBN infrastructure, the need for such an inquiry is clear. Delaying consideration of the removal of the legacy resale regulations (where these apply to NBN infrastructure) until 2014 could unnecessarily hinder new investment and innovation of new services.

² This is consistent with approach taken in the PSTN OA exemption applications made by Telstra in 2007.

08 ANNEXURE A – RESPONSES TO QUESTIONS

This Annexure contains Telstra's responses to the questions posed in the Commission's Discussion Paper.

No	Question	Telstra's Response
1	Should the proposed variation expire at a time by which Telstra should reasonably be expected to have its wholesale voice solutions available for supply over the NBN, being 31 March 2013? If not, what is an appropriate time period to exclude the application of the category A SAOs for the provision of WLR, LCS and PSTN OA services over the NBN?	Yes, setting the proposed variation to expire at 31 March 2013 is an appropriate time period during which the variation should apply. Providing interim relief from the SAOs for this period is likely to provide Telstra (and other potential wholesale market participants) with sufficient time to develop and deploy NBN-based voice resale services. See section 6 above.
2	Should the proposed variation allow that the category A SAOs still apply to PSTN OA special services supplied over the NBN?	Yes, it is unnecessary for the relief to apply to PSTN OA special services. Telstra considers that the Commission's proposed variation will ensure the regulation of PSTN OA special services where these services terminate or originate on an NBN access service. See section 5 above.
3	Should the proposed variation apply to NBN greenfield estates or should it apply to all NBN estates that are, or will be ready for service before 31 March 2013?	The proposed variation should apply beyond NBN greenfield estates. See section 3.1 above.
4	Do you agree with the Commission's proposed definition of an NBN greenfield estate? Please provide reasons.	Telstra considers that the definition should be amended as set out in section 3.2 above.
5	Comment on the appropriateness of the market dimensions described above for assessing the impact of the proposed variation.	Telstra has no comments on the market dimensions at this time.

6	Do you agree with the Commission's application of the s152BCA(1) criteria for making the proposed variation? Please provide reasons.	Telstra has no comments on the Commission's application of the criteria at this time.
7	Are other NBN access seekers likely to provide wholesale and/or retail voice services in NBN greenfield estates ready for service before September 2012?	<p>At the retail level, several retail service providers currently provide a bundle of voice and broadband services over NBN infrastructure. These service providers include iiNet (and subsidiary Internode), Primus and Optus. The number of voice services providers is expected to increase once NBN Co fully develops and releases automated provisioning systems for voice services. NBN Co and Primus have announced the commencement of a trial of these automated systems (see, http://www.iprimus.com.au/PrimusWeb/AboutUs/News/PrimusSelectedbyNBNCotoParticipateinVoiceProductDevelopmentProgram.htm).</p> <p>NBN Co's website (http://nbnco.com.au/getting-connected/certified-service-providers.html) lists more than 25 retail service providers currently providing services over its network. It also lists seven providers of wholesale (resale and aggregation services).</p>
8	What impact will the proposed variation have on NBN access seekers who are unable to obtain an NBN wholesale voice service from Telstra? How many NBN access seekers would be likely to request a wholesale voice service from Telstra to service NBN end-users prior to September 2012?	The impact of the proposed variation on access seekers is likely to be minimal, given that most access seekers will be engaging services directly from NBN.
9	What other matters should be considered when varying the FADs?	Although it is not necessary for the purposes of finalising the present variation inquiry for the Commission to determine to hold a more wide-ranging inquiry to remove resale-based regulation over NBN infrastructure, the need for such an inquiry is clear. Delaying consideration of the removal of the legacy resale regulations (where these apply to NBN infrastructure) until 2014 could unnecessarily hinder new investment and innovation in respect of new services.