



Mr E. Willett
Commissioner
ACCC
GPO Box 520
Melbourne VIC 3001

10 May 2013

Dear Mr Willett

The CCC writes to express its disappointment at the approach taken by NBN Co to responding to the Commission's consultation paper on its proposed approach to a variation notice to the NBN Co Special Access Undertaking [SAU].

The sheer volume of the NBN Co response threatens to extend the timeframe for the Commission to reach a final variation notice to an extent that is unacceptable.

The industry has been operating with a set of "temporary" access arrangements and agreements for almost two years now, in the hope that the SAU process would result in a more satisfactory basis for the ongoing relationship between NBN Co, access seekers and the Commission.

It is the CCC's view that NBN Co's decision to respond to the Commission's discussion paper as it has done is - at the very least - a demonstration of a lack of urgency on the part of NBN to settle the access arrangements by way of accepted Undertaking. At worst it is an abuse of process. The Commission has made clear that it is asking for views on its proposed course of action in response to its concerns with the SAU, not seeking to extend the debate about whether these concerns are legitimate.

However, it appears that the NBN Co submissions, while on their face expressing an acceptance of the Commission's position, in a number of important respects in effect seek to reject the Commission's concerns and proposed responses.

This stands in contrast to the rest of the industry, which has broadly supported the Commission's positions, and presented some proposed alternative approaches in the context of improving the effect of various measures in meeting the objectives intended by the Commission.

The CCC submits that this is not the time for NBN Co to take the approach of continuing to treat the process as one that requires it to move by increments, rather than just accepting



that the Commission has certain requirements. NBN Co has argued its case extensively over the past year, and has seen the Commission's response to all its arguments in the draft decision on the SAU. NBN Co will have an opportunity to consider its position once the Commission has presented its variations order. It has options open to it as to how it responds at that point. To date, the options it has employed mirror the experience of past undertakings lodged by Telstra, and for which the presentation of an undertaking capable of acceptance never eventuated. In the current regulatory framework, the Commission has a number of alternative regulatory tools to now employ in order to bring about certainty for all parties, including end users that are now connecting to the new monopoly network.

The CCC believes the Commission should not, at this late stage, be expected to respond to the extensive material NBN Co has presented. The CCC further believes it is unreasonable for the industry to be expected to deal with the onerous task of responding to the new material that NBN Co has now decided to present to the Commission. It is clear that the industry does not have the internal resources available that NBN Co has at its disposal to devote to this matter. Perhaps for this reason, the industry responses throughout this process have sought to keep the momentum moving toward a resolution, taking into account guidance from the Commission.

Further, the CCC is conscious that there has been a history of gaming of the undertaking processes in telecommunications. There have been instances where this has created uncertainty and delay in other processes that would have resolved prices, terms and conditions of access. With this in mind, the CCC would ask the Commission to consider commencing determination processes in relation to NBN Co services, to ensure that access seekers have a pathway to certainty in the event that the present SAU process is not satisfactorily concluded.

In summary, then, the CCC asks that the Commission proceeds to present a variation notice reflecting the approaches described in its discussion paper, taking into account those positive suggestions it has received in submissions. It is for NBN Co to determine how it chooses to respond in its undertaking.

Yours Sincerely

David Forman

On behalf of the CCC