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## TELSTRA CORPORATION LIMITED

### Submission to ACCC Draft Decision on Variation to NBN Co Special Access Undertaking

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[CIC begins] = information not to be released without a confidentiality undertaking

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## EXECUTIVE SUMMARY

Telstra is providing this submission in response to the Australian Competition and Consumer Commission's (**ACCC's**) "Variation to NBN Co Special Access Undertaking, Draft Decision" dated March 2017 (**Draft Decision**).

As noted by the ACCC in the Draft Decision, NBN Co's Special Access Undertaking (**SAU**) is a key part of the regulatory framework that governs the price and other terms upon which NBN Co will supply its services to access seekers until 2040 (Draft Decision p1). It is therefore essential that all the variations proposed promote the long-term interests of end users (**LTIE**) and enable Telstra and other access seekers to provide consumers with a seamless transition to the NBN and high quality services at an appropriate price.

Telstra shares a number of the concerns identified by the ACCC in the Draft Decision regarding various aspects of NBN Co's proposed SAU variation. We have also identified other matters which we consider should be addressed before any variation to NBN Co's SAU is accepted.

### **The ACCC is right not to broaden the service description or remove the definition of network boundary point**

Telstra supports rejecting the broadening of the service description by the addition of subclause (g) "any other telecommunication network..." to the definition of "NBN Co Network". This addition as currently drafted would potentially allow NBN Co to provide products outside the scope of the nbn Ethernet Bitstream Service ("**NEBS**") where there may not be a competitive need to do so and without ACCC oversight or consultation with access seekers, and would create uncertainty for access seekers. Telstra's position is that while it is appropriate that the definition of "NBN Co Network" is amended to include a reference to future network technologies, it must also be limited to those network types used to provide the NEBS service.

Telstra also supports retaining the definition of "network boundary point". This provides certainty to access seekers in relation to this key element of the NBN Access Network; is necessary to ensure clarity about when NBN Co has service delivery obligations under the WBA; and ensures alignment across the SAU, the SFAA and other ancillary documents.

### **Co-existence and remediation**

Telstra does not support the proposed definition of co-existence being included in the SAU variation in circumstances where it is still the subject of debate in the context of the WBA negotiations. To do so would lead to inconsistency between the SAU, WBA and any industry-based solution.

Telstra agrees with the ACCC that, given the transitory nature of co-existence, the co-existence provisions should be included in Module 1 of the SAU only, and not in Module 2.

Telstra accepts that remediation provisions may need to be included in the future in both Modules. However, it would be premature for the proposed remediation provisions to be included in the SAU as part of this variation as these terms are still the subject of WBA commercial negotiations. Varying the SAU at this time to include the proposed remediation provisions would also lead to potential inconsistency between the SAU and the WBA. Telstra refers to the substantive concerns raised in its Consultation Submission about the lack of meaningful or acceptable timeframes which NBN Co has committed to in which remediation issues are to be resolved. Telstra considers that it is important for

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NBN Co to be timely in providing remediation solutions and in committing to address remediation issues in order to provide certainty to end users.

### Rollout information is insufficient

The ACCC has sought feedback on the extent to which the proposed changes to the SAU achieve a balance between accuracy and providing rollout information early. In Telstra's submission, the proposed amendments do not achieve this balance. Quality and timely information is critical for access seekers to perform network planning and other business and marketing functions. NBN Co's proposed amendments to the SAU do not address the ongoing issues Telstra and other access seekers have experienced in accessing sufficiently detailed, accurate and timely rollout information from NBN Co to date.

In order to address these issues, Telstra continues to press for the inclusion of commitments in the SAU that require NBN Co to provide more timely, accurate and up-to-date information.

The current issues with identifying the infrastructure provider of last resort (**IPOLR**) provide a practical example of why the SAU needs to include express commitments from NBN Co in respect of providing rollout information within specified periods of time. The Telecommunications Infrastructure in New Developments Policy (**TIND Policy**) provides that NBN Co will be the IPOLR in new developments where NBN Co has publicly identified the area as a rollout region, on the basis that rollout regions are announced by NBN Co 12 months prior to the ready for service (**RFS**) date.

Previously NBN Co provided build preparation information which disclosed when an area was intended to be identified as a rollout region to both the public and retail service providers (**RSPs**) 12 months prior to the RFS date for these areas. However, NBN Co has been increasingly providing less build preparation information to the public and has begun publicly announcing an area as a rollout region on very short notice, often with only one or two months' notice before the region is RFS. NBN Co has also been refusing to take on the role as IPOLR prior to it publicly announcing an area as a rollout region. This has resulted in Telstra entering into contracts with developers, despite knowing from the build preparation information which is still provided to RSPs that the area will be RFS within the developer's timeframe and then having to cancel these contracts when NBN Co announces the area as a rollout region. This is clearly a very poor customer outcome and emphasises the need for specific commitments from NBN Co in the SAU in relation to the provision of rollout information.

### Treatment of the Regional Broadband Scheme in the SAU

The variation provides an opportunity to clarify how receipts from the Regional Broadband Scheme ("**RBS**") arrangement will be treated under the SAU, given the details of the Government's proposed arrangement are now known.

Telstra's position is that the new arrangement was never contemplated by the SAU, so there is no reflection of the RBS's policy intent nor any provision for the regulatory accounting of RBS receipts. As the RBS is meant to create transparent and sustainable funding for NBN Co's non-commercial fixed wireless and satellite service ("**FWSS**"), these assets should be separated out from NBN Co's other assets for regulatory oversight and reporting purposes. This would result in RBS receipts (received in the form of grants) being reported against FWSS specific cost items alongside the revenue earned from FWSS customers. Such action would support the RBS's policy intent and help avoid the incidence of any inappropriate cost allocation or the inclusion of non-prudent costs in the FWSS asset base. Telstra

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considers that the SAU will need to be varied to clarify how RBS receipts will be treated once the final form of the proposed RBS is settled and the Government's Telecommunications Reform Package legislation has been passed.

### **Pricing terms**

Telstra does not object to the ACCC's draft decision to extend the existing SAU pricing provisions to MTM services, as set out in our original submission.

However, Telstra has significant concerns about some of NBN Co's proposed amendments to the pricing terms. In particular, Telstra does not agree with the SAU applying different charges for different network types for certain activities. Telstra also reiterates its concerns regarding the confusion that may arise for customers if any current changes to the prices, new NBN offers or other charges that have already occurred under the SAU prior to the variation are not incorporated in the varied SAU.

Additionally, NBN Co's high CVC pricing is becoming a significant issue for all RSPs. Telstra shares the concerns expressed by other RSPs that high CVC pricing has led to a number of small companies starting to provide high speed broadband services over alternative technologies, or needing to merge with other smaller RSPs to be able to provide services on a competitive basis. Such developments may also lead to excluding some customers from the benefits of retail competition and providing an incentive to switch to alternative networks.

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## 01 SERVICE DESCRIPTION

### 1.1. Proposed changes to NBN Access Service definition

Consistent with its Submission to ACCC Consultation on Variation to NBN Co Special Access Undertaking, dated August 2016 (**Consultation Submission**), Telstra agrees with the ACCC's view that the proposed amendments to the SAU should include references to MTM technologies, specifically, FTTB, FTTN and HFC, as these changes will provide a greater degree of certainty to access seekers about the services that the NBN Co Network will provide.

Telstra also supports the ACCC's position to not accept the addition of subclause (g) "any other telecommunication network..." to the definition of "NBN Co Network".

As set out in Telstra's Consultation Submission, Telstra's position is that the SAU should only address the services required by NBN Co to provide the NEBS. NBN Co's ability to incorporate potential future technologies should also be limited to those network types used to provide the NEBS. NBN Co's proposed addition of subclause (g) goes beyond what is required to achieve these aims and would enable NBN Co to provide products outside the current scope of the NEBS without appropriate consultation with the ACCC or access seekers, and where there may be no competitive need to do so.

To deal with this issue, the Draft Decision proposes to omit subclause (g) in its entirety, which would have the effect of limiting the definition of NBN Co Network to those specific networks currently being used to supply services as part of the NBN.

Telstra considers this approach of omitting subclause (g) completely and limiting the definition of "NBN Co Network" to those technologies expressly listed is too restrictive as it does not allow for any future NBN network access technologies, for example, FTTC, over which NBN Co proposes to supply the NEBS. Telstra's position is that NBN Co needs to have the flexibility to introduce new access technology types without needing to vary the SAU and therefore subclause (g) should be amended to include a reference to future network technologies but to limit its inclusion to those technology types used to provide the NEBS.

### 1.2. Removal of the network boundary point definition

Telstra agrees that the current definition of the Network Boundary Point should remain in place for the full term of the SAU.

The concept of "Network Boundary Point" is used in the SFAA and other ancillary documents. Alignment of the definition between these key documents needs to be maintained to provide certainty to access seekers. This is because the concept of "Network Boundary Point" is central to an understanding of who is responsible for maintaining key elements of the NBN Access Network, noting that NBN Co has service delivery obligations to that boundary point under the WBA.

Telstra also agrees with the ACCC that removal of this definition would likely make it more difficult for access seekers to estimate their costs of maintenance and the costs of doing business in general which would adversely impact customers. Cost uncertainty could also lead to access seekers not investing in new services or potentially increasing prices to end users.

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## 02 CO-EXISTENCE AND REMEDIATION

### 2.1. Definition of 'co-existence' should be consistent between SAU and WBA

In its Draft Decision, the ACCC considers that some co-existence provisions should be included in the SAU and the SAU should "acknowledge that there is a technical requirement for NBN Co to supply services at a lower speed to limit interference with copper services and that it is appropriate for NBN Co to make modifications to its services in some instances. The ACCC considers that it is reasonable for NBN Co to be exempt from the standard PIR requirements during the co-existence period".<sup>1</sup>

While Telstra does not object to the inclusion of some co-existence and remediation provisions in the SAU, Telstra does consider that where service performance is degraded due to factors outside an RSP or end user's control, such as a result of co-existence and remediation, NBN Co should provide relief to RSPs from recurring charges.

Additionally, NBN Co's processes and timelines to address co-existence and remediation need further rigour and transparency to allow RSPs to manage end user expectations. Otherwise RSPs are left to bear the adverse reputational and commercial implications of poor service experiences due to factors outside of their control.

However, Telstra does not consider that it would be appropriate to incorporate NBN Co's proposed definition of 'co-existence' into the SAU at this time, given that the definition of 'co-existence' in the WBA is still the subject of ongoing negotiations. To do so would result in potential inconsistency in relation to that concept as between the SAU, the WBA and the definition agreed in the Communications Alliance solution referred to in Telstra's Consultation Submission.

As Telstra noted in its Consultation Submission, the definition of co-existence in the WBA is still the subject of negotiation between Telstra and NBN Co. If the SAU variation was to include NBN Co's proposed definition of co-existence and a different definition was agreed in the context of the WBA, this would create unnecessary uncertainty for access seekers and the industry more broadly, which would not be in the interests of access seekers. In light of this, Telstra considers that it would be premature to incorporate NBN Co's proposed definition of co-existence into the SAU.

### 2.2. Definition of 'co-existence' is too broad

Notwithstanding the position that the definition of co-existence should not be incorporated into the SAU at this stage, Telstra considers that the proposed definition of co-existence is too broad in terms of the range of services covered (which are, in Telstra's view, extremely wide), as well as in terms of timing (which, insofar as it refers to next generation technologies, could result in co-existence being in place permanently).

Telstra repeats and relies on its detailed submissions regarding amendments required to the proposed definition as set out in subclause 3.2 of its Consultation Submission.

### 2.3. Co-existence provisions should not be included in Module 2 of the SAU

Although Telstra considers it is premature to include coexistence provisions at this time for the reasons set out above, any co-existence provisions that are ultimately included should only be included in Module 1 of the SAU and not in Module 2. In this respect, we agree with the ACCC as to the timing of

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<sup>1</sup> ACCC, Draft Decision, p 30.

those provisions. Telstra agrees with the ACCC's view that co-existence should be transitory in nature and should have a natural end date once legacy services have been migrated to the NBN. To include co-existence provisions in Module 2 would undermine the very reason for including such provisions, which is to accommodate the simultaneous supply of NBN and legacy copper services during the migration window. Once migration has been effected, co-existence does not exist, and provisions dealing with it are unnecessary.

Telstra therefore agrees with the ACCC that the co-existence provisions should be included only in Module 1 of the SAU and not in Module 2. Telstra also notes that in the latest NBN Co Integrated Product roadmap, released on 3 April 2017, NBN Co disclosed that the end of FTTB/ FTTN co-existence is forecast to be 30 June 2022 which is inside the timeframe for Module 1.

#### **2.4. Remediation provisions should be included in Modules 1 and 2 of the SAU**

The ACCC is concerned that the proposed remediation provisions in the SAU give NBN Co broad discretion over the circumstances in which a line is placed into remediation and the time period for which remediation would apply. It considers that, along with co-existence provisions, remediation provisions should also be included in Module 1 of the SAU only, and not in Module 2. Telstra disagrees with this position.

Telstra considers that the potential need for remediation is not limited to the initial deployment of the FTTB/FTTN network. Telstra understands that, unlike co-existence which should be lifted as soon as the conflicted interfering services have been migrated to the NBN, remediation is not necessarily transitory in nature. Nor is remediation subject to a natural end date upon migration of legacy services to the NBN – rather, remediation beyond the migration window may be necessary.

Accordingly, Telstra supports, in principle, the inclusion of remediation provisions in Module 2 of the SAU. This approach would also provide greater certainty for NBN Co and RSPs than the alternative of including remediation provisions in replacement schedules.

However, Telstra's view is that it is not appropriate for the proposed remediation provisions to be included as part of this current variation. Remediation is currently being negotiated as part of the WBA commercial negotiations and the inclusion of remediation provisions in the SAU at this point in time will result in inconsistencies between the SAU and WBA.

Additionally, Telstra does not agree with NBN Co's submission that remediation provisions should be expressed at a "relatively high level", particularly those provisions which relate to informing RSPs about when a service will be placed into remediation, as well as timeframes for investigation and completing remediation.

As set out in our Consultation Submission, it is imperative that timeframes to resolve remediation cases are substantially reduced to improve the LTIE. In addition, Telstra considers it would be appropriate for a higher level of transparency be applied to remediation provisions and processes due to the negative experience for end users impacted by remediation. Telstra also considers that NBN Co should implement an accelerated timeframe to resolve remediation cases for Priority Assistance end users, as services which are vital to these vulnerable customers are often not compatible with alternate telecommunications solutions. The ACCC should note that NBN Co does not offer any discount on its fees during remediation, even though the service may be operating significantly outside the RSP's and end user's expectations. The SAU should contain a similar level of detail regarding these commitments and timeframes to that which is included in the WBA.

## 03 ROLLOUT INFORMATION

It is Telstra's position that the proposed amendments to the SAU fail to achieve an appropriate balance between accuracy and providing rollout information early to stakeholders. The timely provision of accurate rollout information is critical for access seekers and RSPs as it is essential for network planning and, ultimately, for RSPs to provide their customers with high quality NBN services.

The rollout information currently provided by NBN Co is inadequate for these purposes as it has lacked sufficient detail, accuracy and timeliness. Telstra is very concerned that the variations proposed by NBN Co to the SAU do not address these issues as they primarily relate to providing information about additional network technologies.

Greater accountability needs to be placed on NBN Co to provide sufficiently detailed and accurate information needed by access seekers and RSPs through a SAU variation.

Telstra accepts there is a balance to be achieved between accuracy and providing information as early as possible. However, NBN Co's proposed variations to the SAU do not achieve this balance. Up to date and accurate information must be provided to access seekers by specific deadlines to ensure they receive early visibility to allow them to undertake network planning with some certainty.

### 3.1. Removing the obligation to 'publish' information

In its Draft Decision, it appears the ACCC would be willing to accept the proposed variation to the SAU to replace NBN Co's commitment to "publish" rollout information with a commitment to "make the information available to access seekers" on the basis NBN Co currently provides, and has incentives to continue to provide, relevant information publicly.

As stated in its Consultation Submission, Telstra has no objection to the change provided that information continues to be made available in its existing form.

### 3.2. Information currently provided is insufficient and more detail on technology mix is required

As set out in Telstra's Consultation Submission, the rollout information currently provided by NBN Co to access seekers is not sufficiently detailed or accurate to meet the business requirements of access seekers and RSPs. The ACCC's Draft Decision finds that, in most respects, NBN Co's proposed variations to its rollout information commitments are an improvement on the current position.

However, Telstra maintains that the proposed variations do not go far enough as they fail to strike the right balance between access seekers and RSPs having timely access to information and with NBN Co ensuring the accuracy of this information. It considers that specific commitments should be required of NBN Co to provide up-to-date and accurate information within timeframes required to provide high quality NBN services to consumers.

Specifically, NBN Co should be required to provide information to access seekers about the expected technology mix in each area as part of its SAU rollout information commitments. More accurate information about the technology proposed to be made available is essential for access seekers to undertake planning and marketing.

### 3.3. Timely information is needed

Telstra also maintains that NBN Co should be required to provide the necessary information within a timeframe that is useful for access seekers as part of its SAU commitments.

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A commitment from NBN Co to provide more timely and accurate information on a quarterly basis would have a positive impact on customer outcomes because it will allow RSPs to more accurately plan for migration and activities in the lead up to migration to the NBN which, in turn, will promote a smoother migration experience for end users.

### 3.4. 3-year construction plan

As set out in Telstra's Consultation Submission, Telstra is concerned that the changes to NBN Co's commitments in its SAU in relation to the 3-year construction plan do not adequately address the issues Telstra and other access seekers have experienced about the need for more detailed and accurate 3-year construction plan information.

Further, the proposed release of the 3-year construction plan in September is problematic as it does not align to planning periods for RSPs. It is unclear to Telstra why this date was selected.

To ensure access seekers have the level of information they need, the 3-year construction plan must contain more detail and be consistent with NBN Co's other plans. Telstra's position is that, at a minimum, it must:

- (a) specify actual RFS dates (or, at a minimum, RFS month) for the first rolling 12 months, followed by quarterly RFS dates for the following 12 months and predicted half-year RFS for the remaining 12 months;
- (b) specify the expected technology mix for premises, which is currently provided by NBN Co but not specified in the SAU. Given that the primary objective of the SAU variation is to incorporate the multi-technology mix, this should be extended to the provision of rollout information;
- (c) provide all data at the SAM rather than FSA level. This will assist RSPs to determine actual volumes in a specific SAM and the planned technology type (assuming NBN Co commits to the ongoing provision of technology type in the 3-year plan); and
- (d) be consistent with NBN Co's monthly ready for service plan ("**RFS plan**") and the NBN Co Corporate Plan. Currently, Telstra cannot rely on the information in the 3-year construction plan because there are ongoing inconsistencies between this plan and other sources of information released by NBN Co, which is exacerbated by NBN Co's failure to update the plan as changes occur.

### 3.5. 1-year construction plan

Telstra supports NBN Co's proposal to remove the requirement for a 1-year construction plan, provided that NBN Co commits to publishing an amended 3-year construction plan at least 30 days prior to each quarter. This will enable access seekers to have access to forward-looking information and allow them to plan for the provision of NBN services.

### 3.6. Monthly ready for service rollout plan

NBN Co should be required to commit to improving consistency between the monthly RFS plan and 3-year construction plan. This would deal with past issues of lack of accuracy and consistency between the sources of rollout information prepared by NBN Co.

Specifically, Telstra considers that:

- (a) when any change is made to either of the monthly RFS plan or 3-year construction plan, NBN Co should be committed to reflecting these changes in the other document; and

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- (b) NBN Co should be required to make available information to access seekers about potential construction delays and information should be updated monthly from six months prior to RFS and then weekly from one month prior to RFS.

### **3.7. IPOLR issues caused by lack of information fixed by requirement to publicly announce rollout regions 12 months prior to RFS date**

The TIND Policy provides that NBN Co will be the IPOLR in new developments in its fixed line footprint where NBN Co has publicly identified an area as a fixed line rollout region.

There is currently no legal requirement for NBN Co to provide a minimum period of public notice prior to RFS. The proposed amendments to the requirements for the monthly RFS plan only contemplate that NBN Co will release information in respect of planned RFS areas to access seekers where construction has commenced, rather than those areas where design has begun.

In practice, NBN Co has changed its process and timing regarding the communication of rollout dates. Previously NBN Co was publicly releasing “Build Preparation” information in respect of rollout regions in addition to providing these dates separately to RSPs. Effectively, this meant that both the public and RSPs were provided with 12 months’ notice of the RFS date in a rollout region and Telstra was able to make considered and appropriate IPOLR decisions and respond to developers relying on this information.

However, NBN Co has more recently taken the approach of releasing less information publicly and is only providing “Forecast Build Commenced” information to RSPs. NBN Co is not releasing public information until the “Build Commenced” date which is sometimes only a month or so before the RFS date.

This change in practice by NBN Co has led to a number of poor outcomes, especially for developers. There are numerous examples where NBN Co has refused to accept IPOLR where it has not publicly announced a rollout region, but it has been clear to RSPs from the information provided under the WBA that an area will be RFS in less than 12 months and the information provided on NBN Co’s own “Check your address” website also indicates that an area will be RFS within the timeframe required by the developer.

This has led to outcomes where NBN Co has rejected IPOLR responsibility for the development, leaving developers in a state of uncertainty and Telstra entering into contracts with developers and then having to cancel them when NBN Co has published its RFS forecast showing that the area will be RFS within the required timeframe. Both scenarios lead to poor outcomes.

In order to avoid these outcomes, the ACCC should require NBN Co to commit to publicly announcing rollout regions 12 months prior to the RFS date. This would be consistent with, and commit NBN Co to the position under, the TIND Policy. It would also provide Telstra with certainty over its IPOLR obligations and result in improved customer outcomes for developers and end users in new developments.

### **3.8. Additional information that NBN Co proposes to provide is unhelpful**

As part of its proposed variations to the SAU, NBN Co has proposed to provide information on the ‘*expected date (if any) from which each Premises will be required to be disconnected from an existing legacy network*’.

Telstra considers that this commitment is unhelpful as it is unlikely to improve the level of information about disconnection obligations currently available to the industry as this information is already being provided by Telstra to its Wholesale and Retail customers as part of Telstra’s existing obligations as the

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disconnecting network owner to provide customers with information about the disconnection of their services under the Migration Plan.

There is no incremental benefit from NBN Co providing this information and doing so could lead to confusion on the part of RSPs in the event there is any inconsistency between the information provided by Telstra and NBN Co – for example if NBN Co moves certain premises into Service Continuity Regions.

To minimise the risk of confusion for RSPs, Telstra considers that NBN Co should only be required to provide information limited to the applicable rollout technology and service class for the premises.

Telstra supports the ongoing use of the online portal by NBN Co to “make information available to access seekers”. However, it is important that roll out information and associated reporting also continues in its current format. Telstra has made significant investments in its IT and operational processes that support the current reporting system. Any changes will require significant expenditure, as well as lead time for consultation and systems testing.

## 04 OTHER ISSUES

### *4.1. Need to improve quality of consultation*

As noted by the ACCC in its Draft Decision, NBN Co has consistently referred to consultation with Access Seekers as justification for the inclusion of variations to the SAU. Telstra remains of the view that the level of consultation has been overstated by NBN Co as the consultation process conducted by NBN Co to date has been neither adequate nor meaningful.

Although there have been some improvements to the level of consultation undertaken by NBN Co (mostly in the context of proposed changes to the WBA), there is often little visibility of the outcomes of any consultation nor the decision-making process undertaken by NBN Co once the consultation has taken place. Indeed, Telstra is concerned that in some cases NBN Co is ‘going through the motions’ with its consultation process because NBN Co often makes IT changes to support its proposed changes before a consultation has been completed (and sometimes before it has even commenced). In such cases, it is reasonable to query if NBN Co is undertaking a genuine consultation process.

Telstra’s detailed submissions on this issue are set out in its Consultation Submission.

### *4.2. The current variation process provides an opportunity to clarify the treatment of RBS receipts*

In the period between consultations on the proposed SAU variation closing and the ACCC’s Draft Decision being released, the Commonwealth Government announced establishment of the RBS. The RBS arrangement is designed to sustainably fund the provision of NBN Co’s non-commercial FWSS, encompassing an explicit industry charge (or levy) on both NBN and non-NBN provided fixed lines capable of providing a high-speed broadband service from 1 July 2017 (with some limited exemptions). This new arrangement, which follows a consultation by the Bureau of Communications Research (“BCR”) into funding options for the FWSS services, will replace NBN Co’s original internal cross-subsidy arrangements.

The establishment of the RBS has a number of implications for the NBN regulatory framework, including the SAU. The potential for such implications to exist was recognised by the BCR, the ACCC and NBN Co during the FWSS funding options consultation process, but these implications were not fully explored at the time due to uncertainty about the specific details of the new funding arrangement. The ACCC summarised this situation in its initial submission:

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*“... the ACCC agrees with the BCR’s conclusions that some elements of the SAU will likely need to be modified to accommodate the introduction of an alternative funding arrangement for non-commercial services. The ACCC anticipates that NBN Co would need to consider the details of an alternative funding model before it would be able to advise on the extent to which the SAU would need to be varied, if at all.”<sup>2</sup>*

Now that the details of the proposed new arrangement have been released (by way of the release of an exposure draft of the *Telecommunications (Regional Broadband Scheme) Charge Bill 2017*), Telstra takes the position that any SAU variation needs to clarify the proposed treatment of RBS receipts under the SAU.

Specifically, Telstra submits that parts of the SAU relating to the LTRCM Framework (Schedule 1E) and Regulatory Information (Schedule 1F) may require some variation to appropriately accommodate receipts from the RBS arrangement.

The key issue is that the RBS arrangement was never contemplated by the SAU, so there is no reflection of the RBS’s policy intent nor any provision for the regulatory accounting of RBS receipts.

The policy intent is relevant as the Regulatory Impact Statement for the RBS notes that:<sup>3</sup>

*“The arrangements in place at the moment are not transparent, not effective and unsustainable.” (p.29)*

It then states, in relation to the new arrangement:

*“The charge will introduce sustainable and transparent funding of nbn’s fixed wireless and satellite services...” (p.35)*

The LTRCM framework, however, does not support the transparency which the new charge is meant to introduce because neither the cost of the FWSS assets or the revenue associated with them is separately reported. This is important because the “sustainable” dimension of the charge means that the net costs of the FWSS will be paid off by 2039-40, as outlined in the RIS. Furthermore, with the RBS arrangement to be enshrined in legislation the cost recovery pressures for the FWSS asset base, which are meant to provide an incentive for efficient spending and operations by NBN Co, would seem to be somewhat diminished by the introduction of the RBS.

To avoid the incidence of inappropriate cost allocation or the inclusion of non-prudent costs in the LTRCM — noting there are no provisions in the SAU which require nbn to allocate its costs in a particular way — Telstra takes the view that the FWSS assets should be separated out from NBN Co’s other assets for regulatory oversight and reporting purposes.<sup>4</sup> This would entail separate Initial Cost Recovery Accounts (ICRA’s) and Annual Building Block Revenue Requirements (ABBRR’s), alongside separated financial information from NBN Co, and the establishment of appropriate cost allocation arrangements in respect of common costs.

The RBS arrangement may also require changes to the SAU in respect of how NBN Co reports its actual financial information to the ACCC on an annual basis, this topic is currently addressed in clause 1F.1.3 of the SAU. One element of this reporting is revenue, which is defined in (and referred to throughout) the SAU as meaning revenue “earned by” NBN Co.<sup>5</sup> As RBS receipts will — under the provisions of Schedule 4 of the *Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017* — flow to NBN Co in the form of grants from the “Regional Broadband Scheme Special Account” it is not clear that whether RBS receipts will meet this definition. Telstra also takes the view that the nature of the

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<sup>2</sup> <https://www.communications.gov.au/sites/g/files/net301/f/submissions/ACCC.pdf> (page 2)

<sup>3</sup> <https://www.communications.gov.au/have-your-say/consultation-telecommunications-reform-package>

<sup>4</sup> Questions about the appropriateness of NBN Co’s cost allocation practices also arise in the context of recently introduced competitive services such as the cell site access service (CSAS). This is a concern as inappropriate (i.e. below cost) allocations could lead to distortions in the associated transmission markets, with adverse impacts on investment incentives resulting.

<sup>5</sup> Relevant references include Attachment C – Dictionary, and clauses 1.E.2.2, 1.E.5.1 and 1.E.6.2.

RBS arrangement also precludes any possibility for the designation of RBS receipts as “Regulated Revenue”.

There is uncertainty about how RBS receipts will be recorded within the SAU’s LTRCM framework. To support both the policy intent of the RBS and regulatory intent of the SAU, Telstra submits that RBS receipts received in the form of grants should be reported against FWSS specific cost items alongside the revenue actually earned from FWSS customers and that the SAU needs to be varied to make it clear how RBS receipts will be treated. In the event that NBN Co does not address how future RBS receipts/grants will be accommodated under the SAU, we propose that the ACCC consider issuing an enhanced information request under clause 1F.1.7 seeking such information.

Looking ahead, separated reporting of FWSS costs items, RBS grants and earned FWSS revenues would also support any USO policy changes which resulted in utilisation of the FWSS assets. As NBN Co itself noted in its recent submission to the Productivity Commission’s TUSO Inquiry “it is important that all relevant costs that arise from any proposed policy changes are appropriately accounted for and funded”.<sup>6</sup>

## 05 APPLICATION OF SAU PRICE TERMS TO MTM SERVICES

The SAU variation also includes changes to Attachment D (Initial Products) and Schedule 1C (NBN Offers and Other Charges) to include MTM technologies, with updated pricing schedules for FTTN, FTTB and HFC services.

The ACCC has asked for comments in relation to whether there are grounds upon which it can be satisfied that the proposed variation to extend the SAU pricing provisions to the MTM services is consistent with the Category B SAOs and reasonable.

While Telstra does have some reservations about the current NBN pricing approach, especially the high level of access prices which inevitably flow through to consumer level pricing, it is not clear to us that options such as a formal price review offer any scope to improve upon this situation given associated revenue neutral (and cost recovery) tests. Indeed, the SAU as a whole is reasonably constraining when it comes to price considerations, which means that it provides little opportunity to address the detriment experienced by both RSPs and end users in terms of the prices they face at the retail level. As such, we do not object to the ACCC’s draft decision to extend the existing SAU pricing provisions to MTM services, noting that a range of pre-existing concerns about some of NBN Co’s proposed amendments to the pricing terms set out in Attachment D and Schedule 1C of the SAU persist. . In particular and as explained in our Consultation Submission, Schedule 1C applies different charges for different network types for certain activities. This means that a charge, or higher charge, will be imposed on end users simply because they happen to live in an area where a higher charge is levied, by virtue of NBN Co’s charging structure. We gave several examples of the way this will affect end users in our Consultation Submission. One example that we think is particularly problematic is NBN Co’s introduction of a minimum 2 hour labour charge (\$150 at current labour rates) for ‘Professional HFC-NTD Installation’. This charge is specific to HFC and has been introduced by NBN Co before it has finalised the alternative HFC-NTD installation options that it intends to make available. In circumstances where customers do not really have an option as to whether they migrate to the NBN, a significant installation charge for a particular technology type which the end user has no control over is a significant imposition on those customers.

Telstra also continues to have concerns, as set out in the Consultation Submission, that the proposed changes do not incorporate any changes to the prices, any new NBN offers or other charges that had already occurred under the SAU and could cause confusion among customers as to which price is

<sup>6</sup> See [http://www.pc.gov.au/data/assets/pdf\\_file/0005/215591/subdr176-telecommunications.pdf](http://www.pc.gov.au/data/assets/pdf_file/0005/215591/subdr176-telecommunications.pdf)

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applicable. Telstra is concerned that the proposed amendments will result in the SAU not aligning with the WBA and other supply agreements in a number of respects. Telstra considers that the SAU should be updated (where possible) to provide a complete list of products / prices as at the First SAU Variation Date.

NBN Co's CVC pricing is becoming a significant issue for all RSPs and this needs to be addressed. As Telstra has previously advised the ACCC (*Telstra submission to ACCC competition in evolving communications markets issues paper*, November 2016), high CVC pricing has led to a number of small companies starting to provide high speed broadband services over alternative technologies such as wireless (e.g. DGTech, Lightning). There is a risk that the high costs of providing services over the NBN will lead to further industry consolidation as RSPs (especially smaller RSPs or potential new entrants) are not able to viably supply consumers. However, larger players are also impacted by the effects of the pricing structure.

If CVC prices continue to remain high - at a time when customer demand for data is greater than ever and only growing, against expectations that prices should continue to decrease - RSPs will have no ability to purchase more from the NBN, and consequently may be unable to deliver to customer demand. Pricing constructs that seek to differentiate between RSPs such that customers are disadvantaged due to their voice only or low-usage patterns also risk undermining the intent of the NBN in a number of ways, including potentially excluding some customers from the benefits of retail competition and providing an incentive to switch to alternative networks.

Telstra supports the ACCC playing an active role in monitoring CVC and other SAU pricing to ensure the LTIE is being achieved.