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## TELSTRA CORPORATION LIMITED

### Submission to ACCC Consultation on Variation to NBN Co Special Access Undertaking

#### Public Version

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

[CIC begins] = information not to be released even with a confidentiality undertaking



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## EXECUTIVE SUMMARY

Telstra welcomes the opportunity to provide this submission to the Australian Competition and Consumer Commission's (**ACCC's**) consultation on the proposed variation to NBN Co's Special Access Undertaking (**SAU**). The SAU is a key element of the framework governing prices and other terms upon which NBN Co will supply services over the NBN. As such, any proposal to vary the SAU needs to be assessed to ensure that it remains reasonable – in particular, whether the proposed variations are in the long-term interests of end users (**LTIE**).

Telstra's response to the proposed variation to the SAU is focused on ensuring the best outcomes for our customers, who may already be receiving services over the NBN or will be doing so in the future. In this context it is important that the SAU provide a framework that supports investment and enables Telstra to provide our customers with a seamless transition to the NBN and a subsequent high quality service. Amongst other things, this requires NBN Co to provide RSPs with accurate and timely rollout information so customers are well informed about current and future service provision. It also necessitates customers to be treated consistently between network technologies, with appropriate constraints on monopoly pricing and incentives to deliver acceptable service levels. While some of these issues are outside the boundaries of the SAU, the influence of the framework established by the SAU on customer outcomes is critical.

### Telstra supports the proposed variations to incorporate additional network technologies

The primary purpose of the SAU variation is to incorporate the optimised multi-technology mix (**MTM**) model. Specifically, the service description has been expanded to incorporate Fibre-to-the-Building (**FTTB**), Fibre-to-the-Node (**FTTN**) and Hybrid Fibre Coaxial (**HFC**) as well as an approach to facilitate incorporation of future variants.

Telstra supports the inclusion of the MTM into the SAU, including potential future technologies. However, Telstra considers that the ability to include future technologies should be constrained to network types used to provide the NBN Ethernet Broadband Service (**NEBS**) service only. If NBN Co develops new products/services, then it is more appropriate for them to consult with Access Seekers/Retail Service Providers (**RSPs**) through the Product Development Forum (**PDF**) and following that consultation process, make the products/services available via publication of a Standard Form of Access Agreement (**SFAA**) on the NBN Co website.

### It is inappropriate to include clauses on issues which have not yet been agreed between NBN Co and Access Seekers

NBN Co has proposed to include 'co-existence' provisions in the SAU for FTTN and FTTB services.

Telstra does not support the inclusion of clauses that remain the subject of debate with Access Seekers in the context of Wholesale Broadband Agreement (**WBA**) negotiations, which is the case with co-existence. Telstra considers that the scope of the proposed 'Co-existence Period' definition is too broad and that its inclusion may result in inconsistency with future access agreements.

### NBN Co needs to commit to the provision of accurate and timely rollout information

The SAU variation includes a number of proposals in relation to the provision of rollout information by NBN Co. These include (but are not limited to) rollout information for FTTB, FTTN and HFC; removal of



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the 1-year construction plan, changes to publication dates and some changes to the type of information provided.

The rollout information provided by NBN Co is critical to Access Seeker and RSP planning, for both operational and marketing purposes. Telstra considers that the rollout information provided by NBN Co is currently inadequate for these purposes. Further, the changes proposed by NBN Co do not go far enough to provide assurance that rollout information will be provided on a timely and accurate basis, nor that there will be improved consistency between sources of information. This is critical in ensuring a positive customer experience during the transition to the NBN.

### **The updated list of products and services is inconsistent and likely to cause confusion**

NBN Co has updated the NBN Offers and Other Charges and Initial Products in the SAU to incorporate the MTM technologies. Telstra agrees that this is necessary but considers that the approach taken by NBN Co in making these changes is likely to cause confusion and brings into question the value of specifying pricing in the SAU. For example, for NBN Offers and Other Charges NBN Co has not updated all of the charges, even where those charges have been updated or introduced prior to the lodgement of the SAU variation. Telstra also disagrees with a number of the charges included in the SAU variation such as the application of differing charges for different network types for some services. Telstra considers that this is not in the best interests of customers who are likely to have little discretion over choice of network.

### **The SAU should provide for a more transparent consultation process**

A number of the proposed variations to the SAU have been made on the basis of “extensive consultation” with Access Seekers (for example, in the context of WBA negotiations) and the experience that NBN Co has had to date operating under the SAU.

Telstra does not believe that consultation with Access Seekers is always as transparent as it ought to be. NBN Co consults with its customers through a number of forums, most notably via its Product Development Forum and its WBA negotiations. However, it is not always clear to Telstra if and how its feedback has been taken into account by NBN Co. As such, the ACCC may wish to consider whether the SAU should commit to a form of consultation process that provides increased transparency over NBN Co's decision-making process.



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## 01 INTRODUCTION

Telstra's submission is based on the ACCC's assessment of the SAU variation in that this is limited to an assessment of the varied terms, the effect of the varied terms and the interaction of the varied terms with unchanged provisions in the SAU. However, Telstra considers that this should not preclude the ACCC from considering whether the SAU could be further varied to improve the operation of the SAU from an Access Seeker point of view. Specifically, the SAU could be strengthened with respect to NBN Co's commitments to provide rollout information and undertake consultation. Improvement in these areas would be in the LTIE and ultimately improve customer outcomes. This is discussed further in the relevant sections of this submission.

This submission is structured as follows:

- a. Section 2 sets out Telstra's position on proposed variations to the Service Description.
- b. Section 3 includes Telstra's response to the inclusion of provisions relating to co-existence and remediation.
- c. Section 4 provides Telstra's views on the proposed changes to the provision of rollout information.
- d. Section 5 includes Telstra's position on other matters raised in the SAU variation, including the NBN Co consultation process.
- e. Attachment A sets out Telstra's response to the questions included in the ACCC Consultation Paper.

Where Telstra does not have a substantive comment on proposed SAU variations and the ACCC has included a related question in its Consultation Paper, Telstra's position is contained in Attachment A to this submission.

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## 02 SERVICE DESCRIPTION

### 2.1. Incorporation of new technologies

Telstra supports the variation of the SAU to incorporate new technologies – specifically, FTTB, FTTN and HFC – as well as potential future technologies. However, Telstra considers that the ability to incorporate potential future technologies should be limited to those network types used to provide the NEBS service.

#### 2.1.1. Inclusion of new technologies without consultation may impose costs on Access Seekers

The SAU variation expands the definition of NBN Co Network to include FTTB, FTTN and HFC as well as:

*“(g) any other telecommunications network or other network elements, platforms, systems and functions owned or controlled by, or operated by or on behalf of, NBN Co or any Related Body Corporate of NBN Co over which any Product introduced or varied in accordance with Schedule 1I (Product Development and Withdrawal) or Schedule 2D (Product Development and Withdrawal) is supplied by NBN Co.”*

Telstra considers that proposed subclause (g) goes beyond that required to incorporate future network types used to provide the NEBS which should be the primary focus of the SAU. While this may provide NBN Co with additional flexibility, it has the potential to create Access Seeker and RSP uncertainty as to the future provision of products by NBN Co. For instance, Telstra is aware that NBN Co is bringing to market a ‘Cell Site Access Service’ and it is unclear to Telstra if that service would be captured by the wording of subclause (g).

Telstra is concerned that the proposed wording of subclause (g) may give NBN Co the ability to provide products that are outside its current scope without appropriate consultation and where there may not be a competitive need to do so. The ability for NBN Co to introduce new products or technology types without consultation may impose significant costs on Access Seekers and/or RSPs to accommodate those products or technology types without adequate lead-in and planning time.

#### 2.1.2. NBN Co’s ability to incorporate new technologies should be limited to those used to provide the NEBS

Telstra’s position is that subclause (g) should be limited to those network types used to provide the NEBS. As noted above, the proposed subclause (g) is broader than it needs to be in this context and appears to give NBN Co the ability to introduce products and services that, in Telstra’s view, go beyond its scope. Telstra has stated its concerns elsewhere<sup>1</sup> regarding NBN Co’s interest in expanding its activities into those that may compete directly with private investments in competitive markets. This continues to be the case and proposals to change the SAU to potentially support this are inappropriate.

Telstra also considers that the inclusion of future technologies and networks (not necessarily used to supply the NEBS) should be precipitated by a period of consultation to ensure that Access Seekers and RSPs have sufficient time to consider the implications of including those under the existing SAU framework and plan for the introduction of and, if required, build new products.

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<sup>1</sup> See, for example, Telstra Corporation Limited, Submission on the *Telecommunications Legislation Amendment (Access Regime and NBN Companies) Bill 2015*, 15 January 2016.

## 2.2. Changes to the definition of the UNI

NBN Co has proposed expanding the definition of the UNI from a point “on the NTD” to “the physical interface to which NBN Co supplies the NBN Access Service in respect of a Premises” to reflect that there may not be an NTD associated with the UNI. Telstra has no objections to the changes proposed by NBN Co to the UNI definition. These changes accurately reflect that there may not be an NTD associated with the UNI and are consistent with the way in which the UNI and NNI are described in the NEBS Product Description.<sup>2</sup> It is, however, important that the definitions for each network type are sufficiently clear and do not “break” with any future access technologies.

### 2.2.1. It is critical that NBN Co specifies where the network boundary point is

Where the technical solution to the access problem is that the UNI is ‘on the wire’ (e.g. UNI-DSL) somewhere between an access node and RSP-owned and -operated customer gateway equipment, it is important to be very clear where the network boundary actually is, given that NBN Co has service delivery obligations to that boundary under the WBA. Where NBN provides a UNI on an NTD, Telstra supports the boundary being articulated as the UNI itself. Where NBN does not provide an NTD, Telstra supports that boundary being recognised as the first Telecommunications Outlet (socket) as per current industry standard.

Telstra’s views on proposed changes to the Network Boundary Point are discussed in more detail in Section 2.3 below.

## 2.3. Removal of definition of Network Boundary Point is inappropriate

As noted above, while Telstra supports the proposed changes to the definition of the UNI to accommodate different network types, Telstra considers that the proposal to remove the definition of Network Boundary Point is inappropriate given that the definition is a key part of the network infrastructure and pivotal in determining commercial and operational decisions for Access Seekers and RSPs. Further, the concept of ‘Network Boundary Point’ is well understood in the industry and Telstra does not understand what is to be gained by removing the definition from the SAU.

### 2.3.1. Definition of Network Boundary Point should be retained

NBN Co has proposed removing the definition of the Network Boundary Point on the basis that the changes to the definition of the UNI are likely to provide sufficient clarity around the network boundary and that the WBA will specify network boundary points for each technology. In its consultation paper the ACCC considers that the proposed removal of the network boundary definition does not appear to be related to the inclusion of the new technologies. Further, the ACCC acknowledges that an explicit reference to the network boundary could provide clarity to access seekers around the boundary points of the NBN Co network. Telstra agrees with the ACCC’s assessment of NBN Co’s proposed removal of the definition of Network Boundary Point.

Telstra’s position is that the definition of Network Boundary Point should be retained within the SAU to provide ongoing certainty and clarity relating to this key network element of the NBN Access Network.

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<sup>2</sup> See the WBA Product Catalogue - Product Description – NBN Co Ethernet Bitstream Service at <http://www.nbnco.com.au/sell-nbn-services/supply-agreements/wba2.html>



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As noted above, Telstra considers that it is important to be very clear where the network boundary actually is given that NBN Co has service delivery obligations to that boundary point under the WBA.

Telstra also strongly supports retaining the current alignment between the SAU, the SFAA and other ancillary documents – the definition of Network Boundary Point should exist equally across all documents. When definitions are varied or missing from key access agreements and documents, it creates an environment of ambiguity between parties that is often counter-productive and not in the LTIE. Accordingly, Telstra suggests that at this point in time it would be appropriate to include the description of the NEBS boundaries from the existing WBA<sup>3</sup> for the network boundary point in the SAU, that is:

#### 12.2 NEBS boundaries

*The NEBS carries traffic in respect of a Premises over the NBN Co Fibre Network, NBN Co FTTB Network, NBN Co FTTN Network, NBN Co HFC Network, NBN Co Wireless Network or NBN Co Satellite Network between the following boundaries:*

- (a) the UNI used to serve that Premises; and*
- (b) the NNI that serves the Premises*

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<sup>3</sup> See the WBA Product Catalogue - Product Description – NBN Co Ethernet Bitstream Service at <http://www.nbnco.com.au/sell-nbn-services/supply-agreements/wba2.html>



## 03 CO-EXISTENCE AND REMEDIATION

### 3.1. It is inappropriate to include clauses that are still under negotiation and may result in inconsistency

NBN Co has proposed to include 'co-existence' and 'remediation' provisions into the SAU for FTTN and FTTB services. Although Telstra has no objections to the inclusion of relevant provisions, at a general level Telstra does not support the inclusion of clauses that remain the subject of debate with Access Seekers in the context of WBA negotiations, which is the case with co-existence. Telstra considers that it is inappropriate to include clauses that are still under negotiation and that, if included as proposed, may result in inconsistency with future access agreements.

### 3.2. The definition of co-existence is too broad in scope

Telstra understands the purpose of defining and including a 'Co-existence Period' in the SAU and in the relevant NBN access agreements. Providing clarity to access seekers and their end users about the expected performance of the NBN service is entirely appropriate, particularly if NBN Co has reason to believe that performance may be impacted by the simultaneous supply of legacy services. Nevertheless, Telstra has long-standing concerns with the definition of 'Co-existence Period' that NBN Co has included in the proposed variation to the SAU.

The definition included in the SAU variation reflects that in the current WBA<sup>4</sup>, however Telstra considers that it is too broad in scope. As it stands, the inclusion in the definition of "...exchange-fed services, Special Services or other services to the Premises using the public switched telecommunications network" has the effect of capturing an extremely wide range of services, including POTS. Telstra believes that this is inappropriate and that the definition should be restricted.

Telstra and NBN Co have discussed Telstra's concerns [c-i-c begins] [c-i-c ends] we agree 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. [c-i-c begins] [c-i-c ends]

Given the above, Telstra believes that NBN Co needs to address next generation technologies either through a separate definition, or perhaps by including them in the context of 'Interference Event' or 'Interference Mitigation'. Both of these concepts are included in the current WBA and in practice, Telstra expects that NBN Co would deal with next generation technologies via Interference Mitigation. These concepts are defined as follows in the current WBA<sup>5</sup>:

**Interference Event** means, in relation to an Ordered Product supplied by means of the NBN Co FTTB Network or NBN Co FTTN Network, an adverse impact on:

- (a) another Carriage Service caused by the supply of the Ordered Product; or
- (b) an Ordered Product caused by the equipment or network of a third party.

**Interference Mitigation** means, in relation to an Ordered Product supplied by means of the NBN Co FTTB Network or NBN Co FTTN Network, such action (if any) as NBN Co determines is reasonably practicable in the circumstances to reduce or avoid an Interference Event in accordance with any process described in the NBN Co Operations Manual.

<sup>4</sup> See the Dictionary at <http://www.nbnco.com.au/sell-nbn-services/supply-agreements/wba2.html>

<sup>5</sup> See the Dictionary at <http://www.nbnco.com.au/sell-nbn-services/supply-agreements/wba2.html>



It should be noted that Telstra continues to have discussions with NBN Co regarding our concerns with the definition and scope of 'Co-existence Period' and until that definition is finalised it may be difficult to achieve alignment between the SAU and the WBA. It is also the case that an industry solution for interference is being pursued through Communications Alliance and it would be helpful to ensure alignment between the SAU, access agreements and an industry agreed solution in the long term. Notwithstanding these ongoing discussions, we believe that a useful first step would be to restrict the application of Co-existence both in terms of scope and timeframe.

### **3.3. Timeframes for remediation could be improved**

NBN Co has proposed a new clause (included in module 1 and 2) that provides for remediation to the copper line if the line is not able to meet the peak information rate (PIR) objective for various reasons. The ACCC has raised a number of concerns with the inclusion of the remediation provisions, including no commitment to inform RSPs that a service will be placed into remediation and the lack of timeframes, alongside corresponding potential for poor service performance.

Telstra agrees with the ACCC that, in those instances where an end-user's service requires Remediation because it is unable to achieve the PIR Objective, the service may not be able to achieve the expected quality and standard. However, the WBA contains more detail with respect to Remediation than is proposed to be included within the SAU. Specifically, section 5.2.6 of the WBA Operations Manual sets out the steps that NBN Co will take with respect to remediating a service.<sup>6</sup> Once a Remediation Case has been opened, NBN Co has committed to following certain steps to investigate and resolve the issue. These steps are accompanied by target timeframes – section 19.8 of the WBA Service Levels Schedule contains an Operational Target of 40 Business Days for NBN Co to either close a Remediation Case or notify its Customer (an Access Seeker) that the Remediation Case requires either a Standard Remediation Solution or a Custom Remediation Solution.<sup>7</sup> In the case of a Standard Remediation Solution, NBN Co will set a target date that is not more than 140 Business Days from the date that the Remediation Case was first opened. No timeframe is included for a Custom Remediation Solution.

Notwithstanding these additional commitments within the WBA, it is clear that a service that requires Remediation may perform relatively poorly for an extended period of time and Telstra would welcome any proposals by NBN Co to reduce the timeframes. Specifically, Telstra would recommend a shorter maximum timeframe for a Standard Remediation Solution (say, 90 Business Days) and a maximum timeframe to be set for a Custom Remediation Solution (say, 120 Business Days).

Telstra also notes that the ACCC is concerned that end users may not be able to obtain adequate redress if their service is subject to remediation. However, Telstra believes that RSPs should be able to obtain redress from NBN Co in such circumstances – the fact that a service requires remediation is not something that is in the control of RSPs.

Telstra does not, however, agree with the ACCC's view that Remediation is likely to be a transitory matter and believes it is appropriate for the provisions to be included for the duration of module 2. This would provide greater certainty for NBN Co and RSPs than the alternative of including remediation provisions in replacement modules.

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<sup>6</sup> See the NBN Co Operations Manual at <http://www.nbnco.com.au/sell-nbn-services/supply-agreements/wba2.html>

<sup>7</sup> See the WBA Product Catalogue – Service Levels Schedule at <http://www.nbnco.com.au/sell-nbn-services/supply-agreements/wba2.html>

## 04 ROLLOUT INFORMATION

### 4.1. The changes to the provision of rollout information do not address current inadequacies

#### 4.1.1. The SAU variation includes a number of changes to the provision of rollout information.

The provision of rollout information is critical for Access Seeker and RSP planning reasons and ultimately for providing customers a high quality NBN experience. At present, the information provided by NBN Co is inadequate for these purposes and the changes proposed by NBN Co do not provide an appropriate remedy. The rollout information commitments do not go far enough

Telstra considers that the rollout information currently provided by NBN Co does not meet the requirements of Access Seekers or RSPs due to a lack of granularity and accuracy, as well as inconsistency (and absence of clarity about the relationship) between sources of information. This has a direct impact on Telstra's ability to provide its customers with accurate information about future service provision on the NBN.

Telstra estimates that the information currently provided by NBN Co can have a rate of error of up to 30 per cent for any given month. That is, in some circumstances, the information provided by NBN Co is only 70 per cent accurate although this varies between technology types. Further, it is difficult to determine how the actual results in one month affect the expected results in the following month (and/or later). For example, if expected RFS dates are not met in one reporting period there is no obvious change to adjust for this in later periods. This makes it difficult for an RSP to plan with any level of certainty.

The changes proposed by NBN Co are based on its perception about "... *what information is needed to allow nbn's customers to effectively provide nbn services.*" The 'expanded' rollout information commitments primarily relate to application to the additional network technologies rather than an attempt to address current deficiencies in the information provided. Further NBN Co maintains that the SAU should only be "... *seen as a baseline set of commitments, augmented by commercially rational provision of rollout information.*..." However, Telstra's position is that there should be more accountability placed on NBN Co to provide the information needed by RSPs and this should include a commitment in the SAU to provide sufficiently detailed information rather than a 'baseline set of commitments'.

Telstra does not consider that the arrangements proposed by NBN Co outside the SAU provide assurance to RSPs that NBN Co will continue to provide the same quality of rollout information on a voluntary basis. The quality of information provided by NBN Co has been steadily deteriorating, particularly with respect to the accuracy of information. The information provided by NBN Co is used for a variety of purposes. In addition to marketing and planning, Telstra uses rollout information to plan for rationalisation of the Telstra network as the transition to the NBN takes place. As this includes potential redeployment of staff and changes in capacity, the provision of timely, accurate and granular information is critical and will ultimately improve customer outcomes.

##### 4.1.1.1. 3-year construction plan

The SAU variation proposes the following changes to the provision of the 3-year construction plan:

- Publication date of the 3-year construction plan changed from 31 March to 30 September each year; and
- Reporting may be done with reference to quarter or half-year rather than specific dates.



In contrast to the monthly RFS rollout plan and proposed footprint list, the SAU does not include a commitment to provide the expected technology mix in the 3-year construction plan although this is currently provided by NBN Co.

Telstra's position is that the 3-year construction plan should have as granular detail as practicable. This would include the SAU committing to:

- 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; and
- 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.

Further there should be a clear correlation between the monthly RFS plan and the 3-year construction plan (as well as the NBN Co Corporate Plan which is used for market disclosure). To date Telstra has not been able to rely on the information contained within the 3-year construction plan due to the ongoing inconsistency with other sources of information, which is exacerbated by NBN Co's failure to update the plan to adjust for changes. In the proposed absence of the 1-year construction plan, Telstra considers that NBN Co should commit to publishing an amended 3-year construction plan at least 30 days prior to each quarter to provide the forward-looking information required by RSPs to plan for the provision of NBN services.

Telstra also finds that the existing format of the 3-year plan is difficult for RSPs to use effectively. The 3-year plan should display data at SAM level rather than the current FSA level. This will facilitate RSPs in determining 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).

#### 4.1.1.2. 1-year construction plan

The SAU variation proposes to remove the provision of the 1-year construction plan on the basis that other proposed changes to the provision of rollout information make it redundant. Telstra does not object to the removal of the 1-year plan provided that appropriate information is included in the 3-year construction plan and monthly RFS rollout plan as outlined in Sections 4.1.1.1 and 4.1.1.3 of this submission.

#### 4.1.1.3. Monthly ready for service rollout plan and proposed footprint list

The SAU variation proposes a number of changes to the monthly RFS rollout plan and proposed footprint list. These include:

- Expansion of the monthly RFS rollout plan to include the geographic areas that are expected to be RFS in the period between the date on which the RFS rollout plan is made available and the end of the following Financial Year.
- The provision of boundary information for planned RFS areas that have entered the construction phase only – not the design and construction phase as previously provided.
- Monthly RFS rollout plan to include the estimated number of premises within each planned RFS area as well as an estimate of the number of premises that will be served by each network type.



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- For each planned RFS area that has entered the construction phase, the expected RFS date for premises will be expressed no less specific than monthly (for the first 12 months of the RFS rollout plan) and quarterly (for the remaining period) rather than as a specific date.
  - The proposed footprint list expanded to include the network type used to service each premise.

As noted above, detailed information is key for RSPs to facilitate effective planning for the provision of NBN services. NBN Co's proposal to change the expected RFS date from the actual expected date to monthly (for the first 12 months) and quarterly (for the remaining period) does not provide the level of detail required. Telstra considers that it would be more appropriate to provide an actual expected date for the first 12 months and the expected month for the remainder of the period.

Telstra also considers that NBN Co should continue to provide information for planned RFS areas that have entered the design phase rather than just the construction phase. Although an RFS date may not be available for design phase areas, a date could be assigned that correlates to that contained in the 3-year construction plan. Although the rollout information provided by NBN Co to date has been subject to a high degree of error, Telstra takes a level of confidence with respect to areas that have been designated as entering the design phase and uses this to plan resources on a forward-looking basis.

#### 4.1.1.4. Historical footprint list and historical rollout region list

The SAU variation includes the following changes to the historical footprint list and historical rollout region list:

- The historical footprint list has been expanded to include which network type is used to serve each premise, the service class of each premise and the expected date (if any) a premise is required to be disconnected from an existing legacy network; and
- The historical rollout region list has also been expanded to include an estimate of the number of premises in each geographic area service by each of the network types.

Telstra is supportive of both these proposed changes provided that they provide an enhanced level of detail to what is currently provided.

## 4.2. Telstra has no information advantage

The ACCC has queried whether the combination of SAU and voluntary rollout information commitments proposed by NBN Co ensure equal footing between Telstra and other RSPs. This is based on a concern that Telstra's role as a delivery partner and construction manager on the FTTN and HFC technologies may provide Telstra with a competitive advantage due to access to better rollout information and/or access to that information materially ahead of other RSPs.

Telstra has separately provided the ACCC with a significant amount of detail relating to the flow of information between NBN Co and Telstra. For the purpose of this submission, it is only relevant to confirm that Telstra Retail will not have access to rollout information that Telstra separately receives as a consequence of its role as an NBN Co delivery partner and construction manager. Specifically there are operational and systems processes in place to prevent Telstra Retail from having access to such information. Accordingly Telstra Retail has no information advantage compared to other RSPs. Rather, Telstra considers that it faces the same challenges as other RSPs in using the rollout information provided by NBN Co to adequately support its NBN products and services.



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#### **4.3. NBN Co should retain existing formats and improve online provision of information**

The SAU variation includes some general changes in relation to the provision of rollout information. Specifically, NBN Co proposes to move from 'publishing' the information to 'making the information available'. Telstra has no objections to this change provided that information continues to be made available in its existing form. This is because Telstra has significant operational and IT processes that are automated and dependent on the reports being in their current form. Any change to the format of the rollout information provided by NBN Co will require significant investment to incorporate into operational processes, as well as lead time for consultation and systems testing.

The SAU variation also includes the ability for NBN Co to impose certain conditions on access seekers gaining access to its online portal and obtaining rollout information. These conditions will be detailed in agreements that sit outside the SAU. Again, Telstra has no objections to this change provided that this does not require access seekers to sign a separate agreement. That is, the conditions should be incorporated into an existing agreement, such as the WBA.



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## 05 OTHER PROPOSED CHANGES AND ISSUES

### 5.1. NBN Co's consultation process is not always transparent

Although NBN Co submits that a number of the proposed variations are based on the outcomes of consultation with Access Seekers, Telstra considers that this is overstated. Although NBN Co has made improvements in the way it consults with Access Seekers, Telstra does not believe that consultation with Access Seekers is always as transparent as it ought to be. NBN Co consults with its customers through a number of forums, most notably via its Product Development Forum and its WBA negotiations. However, it is not always clear to Telstra if and how its feedback has been taken into account by NBN Co.

Given that NBN Co has used consultation with Access Seekers as justification for the inclusion of a number of variations to the SAU, Telstra considers that it would be appropriate for the SAU to set out commitments to a transparent consultation process. This could include, for example, sharing of other Access Seekers submissions on an issue, the ability for Access Seekers to respond to other submissions and the publication of a document setting out NBN Co's decision (incorporating consideration of issues raised by Access Seekers). Clearly such processes would need to incorporate confidentiality safeguards to ensure that Access Seekers were able to share their views with NBN Co, but have the reassurance that confidentiality requests would be respected. Such transparency would provide reassurance to Access Seekers that NBN Co is listening to their feedback and improve the outcomes of consultation processes.

### 5.2. Reasons for changes to dispute resolution processes are unclear

The proposed SAU variation includes the ability for NBN Co to appoint an additional Resolution Advisor and provides that a Resolution Advisor may be a body corporate (with a nominated person). Telstra has no objection to NBN Co appointing an additional Resolution Advisor, including for transitional purposes or where additional support is required, nor with a Resolution Advisor being a body corporate. It is not, however, clear what circumstances NBN Co is seeking to address through this variations given that the existing Dispute Resolution process is untested.

### 5.3. The list of products and services in the SAU variation may cause confusion

NBN Co has made a number of changes to Attachment D (Initial Products) and Schedule 1C (NBN Offers and Other Charges) to incorporate the MTM technologies. Telstra agrees that these changes are necessary but considers that the approach taken by NBN Co in making these changes is likely to cause confusion (as detailed below). Given that it is not common practice for an access undertaking to specify prices, particularly as they may quickly become obsolete, Telstra questions whether there is value in the SAU continuing to include prices. It may instead be preferable for the SAU to specify timeframes and process for NBN Co to publish and update pricing over time (noting that it will still be important to ensure that the ACCC has oversight over MRPs). Notwithstanding this view, Telstra has a number of observations on the changes that NBN Co has made to Attachment D and Schedule 1C.

#### 5.3.1. NBN Offers and Other Charges

First, NBN Co has not updated all of the charges set out in Schedule 1C, even where those charges have been updated or introduced prior to the lodgement of the proposed SAU variation. While Telstra understands that NBN Co may want to confine changes to merely those that reflect the introduction of the MTM (and in order to minimise the extent of changes required), this does mean that there is a

disconnect between the charges set out in the SAU and those contained within NBN Co's supply agreements. The disconnect is particularly incongruous in relation to the introduction of charges that have previously been notified to access seekers under the terms of the existing SAU. For example, in May 2015, NBN Co notified access seekers under 1C.5.4 of the SAU that it intended to introduce new prices for a range of currently zero-priced ancillary charges for the NBN Co Long Term Satellite service. As per the terms of the notice, the relevant ancillary charges ceased to be zero-priced. In instances such as these, Telstra believes that it would make sense for NBN Co to update the SAU to reflect those charges varied or introduced prior to the variation of the SAU.

Second, as the ACCC observed, Schedule 1C applies different charges for different network types for Equipment Modification, Equipment Removal and Equipment Repair. Telstra does not agree that NBN Co should apply different charges in this way and it is not clear to Telstra that the differences in charges are as a result of differing costs between the access technologies. Applying differing charges in this way adds complexity for access seekers and end users and could have the effect of penalising end users who happen to live in an area where a higher charge is levied, simply by virtue of NBN Co's charging structure. For instance, why should a customer who lives in a HFC area pay a minimum 3 hours labour plus the cost of materials for Equipment Repair when another customer in a FTTP area would pay the hourly rate plus the cost of materials? For a job that took one hour to complete, the difference in charging would equate to an additional \$150 for the customer in the HFC area.

Telstra also notes that NBN Co has included new charges in connection with the introduction of provisions relating to the MTM. The fact that these charges have been included in the variations to the WBA should not be taken to mean that access seekers agree with the principles underlying those charges and that they should now be included in the SAU variation. For example, Telstra strongly objected to the \$75 'Incorrect Callout' charge that NBN Co introduced as part of its FTTN WBA (and retrospectively applied to FTTB) and following discussions between NBN Co and Telstra the application of this charge was modified. Telstra also strongly objects to 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. Indeed, NBN Co does not intend to levy the 'Professional HFC-NTD Installation' charge before 1 April 2017.

Telstra has a similar concern with respect to NBN Co's approach to updating new NBN Offers that have already been introduced under the SAU. Telstra's preference would be for NBN Co to update the SAU to reflect new NBN Offers introduced prior to the variation of the SAU (e.g. the introduction of additional CVC TC-4 tiers on the NBN Co Fibre Network).

### 5.3.2. Initial products

There is also a further potential area of confusion in the way in which NBN Co has proposed to update the SAU with respect to Initial Products. As with NBN Offers and Other Charges, NBN Co has updated Attachment D to include a set of Initial Products in respect of the NBN Co FTTB, FTTN and HFC Networks, but in doing so have not updated it to include product components introduced prior to the SAU variation, and in some cases has included products that are not actually available as part of the initial product launch. An example is TC-2 on HFC – NBN Co has consulted on the introduction of TC-2 and does intend to introduce TC-2, but it was not available at 30 June 2016, which was the date of commercial launch of NBN Co's HFC services. This would not be clear to anyone reading the SAU and who was not familiar with the WBA and NBN Co's product development processes.





## ATTACHMENT A: ACCC consultation questions

	QUESTION	TELSTRA RESPONSE
1	Do the proposed changes to the SAU service description accurately define the FTTN, FTTB and HFC network types with sufficient clarity and with regards to commonly accepted industry standards and practice?	Telstra considers that the proposed changes to the SAU service description accurately define the FTTN, FTTB and HFC network types.
2	Does the amended service description make sufficiently clear NBN Co's commitments under the SAU with regards to FTTN, FTTB and HFC?	As above.
3	Does NBN Co's proposed approach to extend the definition of the NBN Co network to include any other telecommunications network adequately facilitate the inclusion of future technologies such as FTTdp?	In principle Telstra supports this change. However, Telstra considers that the proposed approach to extend the definition of the NBN Co network to include future technologies is too broad and should be constrained to those used to provide the NEBS (Section 2.1).
4	Is the proposed definition of the UNI in clause 1A.3.1 consistent with commonly accepted technical standards? Is it appropriate for the SAU to refer to the UNI as a point not located on an NTD?	Telstra has no objections to the proposed definition of the UNI – this is consistent with the way the UNI is described in section 12.2 of the NEBS product description (Section 2.2).
5	Is supplying the NBN access service to a UNI not located on an NTD for FTTN and FTTB services consistent with accepted definitions of Layer 2? If not, does NBN Co's proposed footnote on page 12 sufficiently resolve any inconsistency?	Refer to section 2.2 for Telstra's position on the need for definitions to be clear for each network type.
6	To what extent does the definition of the network boundary point in the SAU provide certainty around matters such as maintenance responsibilities?	Telstra does not agree with the removal of the definition of the network boundary point from the SAU. Definition of the network boundary point is a key element of the NBN Access Network and should be retained within the



	QUESTION	TELSTRA RESPONSE
		SAU to provide clarity and alignment with other agreements and ancillary documents (Section 2.3).
7	Does the proposed definition of the UNI and WBA definition of network boundary point provide sufficient certainty regarding the network boundary point if the reference is removed from the SAU?	As above, Telstra considers that the definition of network boundary point should be retained in the SAU.
8	Have the WBA provisions regarding co-existence, on which the proposed SAU provisions are based, been effective?	The WBA provisions regarding co-existence continue to be a matter of negotiation between NBN Co and Telstra, specifically with respect to the definition and scope of the 'co-existence period' (Section 3.1).
9	Have you encountered any issues regarding co-existence matters with either NBN Co or end users? How was the matter resolved? Please provide details.	See above.
10	Are access seekers sufficiently informed about NBN Co's arrangements regarding co-existence?	See above.
11	To what extent does the proposed co-existence timeframe for special services create uncertainties for access seekers?	See above.
12	Is it appropriate for co-existence clauses to be included in module 2?	<b>[c-i-c begins]</b> <b>[c-i-c ends]</b> Telstra does not consider that it is appropriate for co-existence clauses (refer to Section 3.2) to be included in Module 2.



	QUESTION	TELSTRA RESPONSE
13	Have the WBA provisions regarding remediation, on which the proposed SAU provisions are based, been effective? In particular, do they provide an appropriate level of certainty about data rates during remediation and the duration of remediation?	While the WBA contains additional detail about remediation arrangements, including data rates and duration, Telstra considers that there is scope for an improvement in remediation timeframes (Section 3.3).
14	Have you encountered any issues regarding remediation matters with either or both NBN Co and end users? How was the matter resolved? Please provide details.	Telstra has not encountered any issues regarding remediation matters to date.
15	Are access seekers or RSPs sufficiently informed about NBN Co's arrangements regarding remediation?	The WBA contains more detail with respect to remediation, including the steps that NBN Co will take with respect to remediating a service. Although Telstra considers that timeframes for remediation could be improved, the arrangements are sufficiently clear (Section 3.3).
16	Is it appropriate for remediation clauses to be included in module 2?	Remediation is not likely to be a transitory matter and it is appropriate for the provisions to be included in module 2 (Section 3.3).
17	Do the rollout information commitments contained in the SAU represent appropriate commitments (in terms of the nature and scope of information to be provided, the level of detail at which it will be provided, and its timing and frequency of information)?	The rollout information commitments contained in the SAU do not go far enough to provide the detail and accuracy of that required by Access Seekers and RSPs. Telstra considers that the SAU should hold NBN Co accountable for providing the information required, at the level of detail and accuracy required (Section 4.1).
18	Does the combination of SAU and voluntary rollout information commitments proposed by NBN Co ensure equal footing between Telstra and other RSPs?	Telstra Retail has no information advantage compared to other RSPs (Section 4.2).



	QUESTION	TELSTRA RESPONSE
19	Do the arrangements (SAU and voluntary) achieve the appropriate balance between flexibility to adapt to RSP information requirements and certainty around the commitment to provide timely and relevant rollout information?	Telstra considers that the SAU should commit NBN Co to provide more timely and accurate rollout information rather than establish a baseline (Section 4.1)
20	Do you consider that the arrangements proposed by NBN Co outside the SAU provide assurance to RSPs that NBN Co will continue to provide the same quality of rollout information on a voluntary basis?	As above, Telstra does not consider that arrangements proposed by NBN Co outside the SAU provide RSPs with sufficient assurance regarding the provision of rollout information. The SAU should provide a higher level of assurance than it currently does (Section 4.1).
21	Do you consider the requirements set out in agreements that access seekers must agree to in order to gain access to rollout information reasonable?	Telstra has no concerns with the requirements that access seekers must agree to in order to gain access to rollout information, however considers that the terms and conditions of access should be contained within existing agreements (Section 4.3).
22	Do you consider NBN Co's commitment of making the information available on the online platform to be a useful and appropriate way of receiving rollout information?	The online platform is a useful and appropriate way of receiving rollout information providing NBN Co ensures that it is fully operational. Telstra's experience to date suggests that the online platform cannot be relied upon as the only source of rollout information (Section 4.3).
23	Do you consider NBN Co's proposed commitment to make information available 'where NBN Co is not restricted from doing so' in clauses 1H.2.2, and 1H2.3 will provide sufficient certainty that NBN Co will provide necessary and timely rollout information?	Telstra understands that NBN Co may face some restrictions in providing information and agrees that imposing conditions on Access Seekers on the access to and use of information may be required. However, Telstra considers that NBN Co should incorporate the terms and conditions of access into existing agreements to avoid the requirement for additional agreements between NBN Co and Access Seekers (Section 4.3).



	QUESTION	TELSTRA RESPONSE
24	Do you consider the broad timeframes expressed as quarter or half-year in the 3-year construction plan and month and quarter in the monthly RFS plan to be precise enough for RSPs marketing and planning purposes?	Telstra does not consider that the broad timeframes expressed as quarter or half-year in the 3-year construction plan and quarter in the monthly RFS plan are precise enough for RSPs marketing and planning purposes. This information is also used by Telstra for operational purposes which require more precise timeframes (Section 4.1).
25	Would receiving information on rollout progress assist RSPs in competing in the supply of NBN services? What form would this information best take?	In addition to the suggestions contained in this submission, it would be useful for NBN Co to provide information on the status of any envisaged delays to the rollout. This should be provided on a regular basis and updated every month six months prior to RFS.
26	What are stakeholder's views on the appointment of an additional resolution advisor?	Telstra has no objection to the appointment of an additional resolution advisor although it is not clear what situation NBN Co is attempting to address here given that the dispute resolution process remains untested (Section 5.2).
27	What are stakeholder's views that a resolution advisor may also be a body corporate with at least one 'nominated person'?	As above - Telstra has no objection to the proposal that a resolution advisor may also be a body corporate although it is not clear what situation NBN Co is attempting to address here given that the dispute resolution process remains untested (Section 5.2)
28	Is the approach adopted by NBN Co in its proposed changes to Schedule 1C reasonable? Are the proposed changes on specific matters, such as specification of prices and other charges for FTTN, FTTB and HFC services and standard installation provisions, appropriate?	Telstra agrees with the changes made to Schedule 1C to reflect the inclusion of other network technologies. However, the approach taken by NBN Co means that there is a disconnect between the SAU and NBN Co's supply agreements, as well as potential for confusion where product components and features are included in the SAU but not actually available. Telstra also disagrees with different charges for the same service being applied to different technology types (section 5.3)



	QUESTION	TELSTRA RESPONSE
29	Are there any other issues you would like to raise regarding the SAU variation?	NBN Co has included a number of variations in the SAU on the basis of “extensive consultation” with Access Seekers. Telstra does not consider that the consultation processes undertaken by NBN Co to date have been as transparent as they could be. It would therefore be appropriate for the SAU to set out commitments to a transparent consultation process (Section 5.1).