



19 December 2019

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Dear Mr McGlynn,

Telstra welcomes the opportunity to comment on the ACCC's draft report on the Facilities Access Code (Code) review.

It is appropriate for pre-build consultation processes to be left for industry participants to determine

Telstra supports the ACCC draft decision to remove proposed pre-build consultation obligations from the mandatory section of the Code. The proposal to include non-mandatory obligations relating to provision of pre-build information recognises the importance of commercial flexibility and cooperation. This is a sensible approach that avoids the need for access providers to establish new, ongoing compliance processes that are largely unnecessary.

The existing availability of planned build information and the current industry processes facilitate pre-build consultation. We retain the view that the best approach for accessing pre-build information is the Radio Frequency National Site Archive (**RFNSA**) database. We will continue to encourage relevant industry participants to utilise the new 'subscribe for notification' functionality for areas in which they are interested in co-building opportunities.

We note the pre-build consultation wording proposed by the ACCC captures all Eligible Facilities. Given the ACCC has proposed not to make any changes to the Code in relation to eligible underground facilities¹, we suggest the following changes to the proposed clause 3.2 of the Code to limit the requirement to Towers and Tower Sites:

The First Carrier must, when requested by a Second Carrier, provide within fifteen Business Days, general information in relation to the type and location of Towers or Tower Sites Eligible Facilities and any plans to establish new Eligible Facilities Towers or Tower Sites planned for the coming quarter in a particular Postcode Area and, on request, use its reasonable endeavours to provide further information, as required, that may be relevant to a Second Carrier's decision to seek access.

Eligible Facilities includes underground facilities such as ducts. Our view is that the consultation requirement should not be extended to underground facilities. The planning cycle for new duct builds is different to new tower builds. The duct network is also extensive. The reporting of new duct facilities in the quarter would create onerous information collation

¹ ACCC, Draft Report on the Facilities Access Code, November 2019, p23



requirements. If the ACCC proposes to extend the consultation requirement to Eligible Facilities, we consider this requires further industry consultation.

Access providers have the economic incentive to encourage tower sharing

The existing queueing requirements are sufficient and operate efficiently – it is unnecessary to introduce a 24-month time period for reservations to be removed. There are significant economic incentives for access providers to maximise tower sharing on both existing and planned towers. These include:

- the ability to generate revenue from existing assets; and
- the cost and time efficiencies of building a new tower incorporating capacity requirements rather than building the tower and upgrading it later.

The current regime is working effectively. The table below outlines the number of Level 3 (Design and Construction) applications being approved by Telstra from 1 January 2016 to 31 October 2019 (for both greenfield and brownfield applications). This clearly demonstrates Telstra's ongoing facilitation of tower sharing.

Calendar Year	Level 3 (Design & Construction) Application Submitted	Level 3 (Design & Construction) Application Approved
2019 (to 31 Oct 2019)	277	262
2018	410	376
2017	423	415
2016	452	443

There are only a small number of instances where an application was not approved, and in most cases this has been due to the application being withdrawn or issues with the proposed design.

We are concerned that mandating a time period for reservations to be removed may negatively influence carriers' decisions when it comes to building new sites. If there is a risk that a carrier's reserved capacity for future needs can be lost, it is likely that the carrier will simply build for their existing needs only. This outcome would clearly undermine the genuine desire of industry to encourage the efficient roll out of network infrastructure, including through sharing facilities.

Our view is that there should be no timeframe for reservations to be removed where there is a valid reason for them remaining as outlined in our previous submission². However, if the ACCC does introduce this requirement, then there needs to be more flexibility for carriers. While Telstra's agreements for access seekers specify a 24-month period within which to commence building, these timeframes can be extended on a case-by-case basis. This can be due to difficulties obtaining planning approvals, delays with build, unforeseen structural challenges and other issues that arise during the build period.

The proposed changes to clause 2.3 have exceptions where ordering of equipment has commenced. However, there are many other cases where genuine steps have been taken at a site that do not relate to ordering of equipment. For example, there may be a planning application that has been delayed or a delay with power infrastructure to a site. If the ACCC is to include a mandatory time period for reservations to be removed, the list of exceptions

² Telstra, Response to ACCC's further consultation document, August 2019, page 5



should be extended to cover typical steps that carriers take to construct or upgrade a tower or site.

Telstra suggests that:

- the ACCC moves the proposed changes into the non-mandatory part of the Code so that industry can determine appropriate and flexible arrangements; or
- clause 2.3 is amended to build in a degree of flexibility as outlined below:

(3) The queuing policy must be consistent with the following principles:
(i) the queuing policy of the First Carrier must be non-discriminatory; and
(ii) subject to paragraph (i) above, the First Carrier must seek to maximise the efficiency of its queuing policy. This includes a requirement that a Carrier's applications and orders must be removed from the queue for a Telecommunications Transmission Tower and/or Site-of Tower Site after 24 months if the Carrier has not commenced any design, planning, construction activity or ordering and/or installing Equipment on or in for that Telecommunication Transmission Tower and/or Site-of Tower Site. The Carrier may then lodge a new Facilities Access Application for that Facility.

For clarity, we also note there is a discrepancy in the proposed changes to clause 2.3 in the ACCC's draft report. The proposal on page 20 refers to "Eligible Facilities", whereas the proposal on page 23 refers to "Telecommunications Transmission Tower and/or Site of Tower". We have assumed the proposal on page 23 to be the ACCC's intended change. We also propose that the term "Tower Site" is used instead of "Site of Tower" for consistency with the other provisions of the Code.

A timeframe in the Code for access seekers to notify completion of installation works is sensible

Telstra welcomes the ACCC's decision to set a 20 Business Day timeframe (unless agreed otherwise) in which access seekers must notify access providers of the completion of their installation activities. The timely provision of as-builts enables carriers to provide more accurate information of space available for other carriers to access.

Should you have any queries about this matter please contact me or Justine Bond on (02) 9866 0269.

Yours sincerely

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