



25 June 2009

Mr Richard Home
General Manager, Strategic Analysis and Development
Communications Group
Australian Competition & Consumer Commission
GPO Box 520
Melbourne VIC 3001

By email: richard.home@acc.gov.au

Public Policy and Communications

Acting Executive Director
Regulatory Affairs
Level 11
400 George Street
SYDNEY NSW 2000 Australia
Postal Address:
Locked Bag 6704
SYDNEY NSW 2001

Telephone (02) 8576 2730
Email: jane.vanbeelen@team.telstra.com

Copy to:

Ms Jordana Hunter
Strategic Analysis and Development
Communications Group
Australian Competition & Consumer Commission
GPO Box 520
Melbourne VIC 3001

By email: jordana.hunter@acc.gov.au

Mr Simon Haslock
Strategic Analysis and Development
Communications Group
Australian Competition & Consumer Commission
GPO Box 520
Melbourne VIC 3001

By email: simon.haslock@acc.gov.au

Dear Mr Home,

Fixed Services Review Declaration Inquiry for the ULLS, LSS, PSTN OA, PSTN TA, LCS and WLR – Draft Decision

Telstra welcomes the opportunity to comment on the Commission's Draft Decision in the Fixed Services Review Declaration Inquiry.

As noted by the Commission, in the time since consultation closed on the Discussion Paper the context for the Fixed Services Review has changed, with the Commonwealth Government announcing that it had terminated its (FTTN based) NBN tender and would instead establish a new company to build and operate a NBN of a very different nature. This new national, wholesale-only network will be based on FTTP for 90% of homes, workplaces and schools, and wireless and satellite for the remaining 10%.

The advent of the NBN will deliver radical changes to the industry and make many of the current debates around access to Telstra's legacy infrastructure redundant. Before, during and after the transition to the NBN, it will be important for the Commission to strike a balance between ensuring that regulatory solutions cater for the emerging market and technology trends, while at the same time acknowledging that such solutions must be sufficiently flexible and/or adaptable to cope with unexpected changes in the environment.

Telstra sees the Government's NBN announcement as adding a further and highly potent substitute to the competitive mix, but notes that the Commission has not factored the NBN into its market analysis as it has yet to be implemented even though the NBN is due to commence in Tasmania in July 2009 (as noted by the Commission), and appears likely to be substantially deployed nationwide over the next 5 years (although full deployment will be over 8 years).

In justifying its draft decision to extend all of the fixed service declarations for the maximum statutory period of 5 years, the Commission states that it

considers one of the most important issues for this declaration is to ensure that telecommunications providers are able to operate in an environment of maximum regulatory certainty while significant structural and competitive changes occur in the industry." (p.109, emphasis added)

The Commission goes on to state that it:

"considers there are sufficient statutory mechanisms available to review a declared service earlier if market conditions or other developments indicated that such a review would be appropriate." (p.109)

Telstra shares the Commission's concern for regulatory certainty. However, regulatory certainty is not delivered by five-year declarations alone – such declarations need to be accompanied with as much guidance as it is possible for the Commission to provide regarding the process for regulatory wind-back over the declaration period. Telstra therefore suggests that the Commission clearly set out its intentions as regards how it will monitor and review market conditions and developments, and what mechanisms it may then seek to use to give effect to its conclusions.

In particular, Telstra believes that there will be less need for regulation of its network under the NBN industry structure. In our submission in response to the Government's Discussion Paper on *National Broadband Network: Regulatory Reform for 21st Century Broadband*, Telstra suggests that a streamlined process for wind-back of access regulation of legacy services should be included under Part XIC corresponding to the progressive rollout of the NBN, potentially in the form of refinements to the exemption process (p.10). Such a streamlined process may significantly reduce the burden on the Commission and the industry as compared to using existing statutory mechanisms.

Telstra does not support many of the Commission's conclusions as regards the appropriate scope of existing fixed services regulation. For example, Telstra considers that the Commission should be seeking to use its class exemption power in concert with its declaration power to progressively wind-back the regulation of WLR,

LCS and PSTN OA where ESAs meet the Commission's 3+ or 14,000 line criteria. The case for such wind-back is likely to broaden in geographic terms irrespective of the progressive NBN rollout. The Commission could also continue to revisit other declarations, such as the transmission declaration, in a similar manner, using the rules previously established by the Commission in previous exemption and declaration inquiries.

Telstra agrees with the Commission regarding the unprecedented period of change that the telecommunications industry is entering into as a result of the development of the NBN. In this context, the needs of the industry will best be served by clear processes and clear and ongoing communications regarding how regulatory arrangements can and should evolve in response to both the NBN and other developments.

If you would like to discuss any aspect of this letter, please don't hesitate to contact either myself (on 02 8576 2730) or Matthew Cole (on 03 9634 3517).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Jane - 3', with a long horizontal flourish extending to the right.

Jane van Beelen
Acting Executive Director – Regulatory Affairs
Public Policy and Communications