

8 November 2013

statementdifferences@accc.gov.au

anna.barker@accc.gov.au

Anna Barker

Acting Director, NBN Co Access Co-ordination – Communications Group

Australian Competition and Consumer Commission

Level 35, 360 Elizabeth Street

Melbourne, VIC 3000

Dear Ms Barker,

Statement of differences—Testing Terms and Conditions—Multicast Greenfields Estate Trial Service

NBN Co Limited (**NBN Co**) has entered into Testing Terms and Conditions (**Testing Terms**), comprising Standard Testing Terms and a Testing Description: Multicast Greenfields Estate Trial Service (**Testing Description**), with:

- iiNet Limited ABN 48 068 628 937 (**iiNet**) on 14 March 2013; and
- AARNet Pty Ltd ABN 54 084 540 518 (**AARNet**) on 26 March 2013.

iiNet and AARNet are the only access seekers that have entered into the Testing Description.

At the time the Standard Testing Terms and Testing Description were entered into by iiNet and AARNet, they were available on NBN Co's website as a standard form of access agreement (**SFAA**). On 5 August 2103, NBN Co replaced the Testing Terms with the Test Agreement, which now serves as the SFAA for testing activities. The Test Agreement did not include the Testing Description for the Multicast Greenfields Estate Trial, as there was no scope for new participants in the Multicast Greenfields Estate Trial.

The Test Agreement is a simplified and streamlined version of the Testing Terms and Conditions signed by iiNet and AARNet. While the Test Agreement adopts the same structure as the Testing Terms (*ie*, Standard Test Terms plus Test Descriptions pertaining to specific activities), the Test Agreement also incorporated a number of substantive changes which were requested by access seekers in the context of other test activities conducted under the Testing Terms and Conditions. Examples of simplification include clauses 9 (Confidentiality), 13 (Insurance), 16.10 (Notices), 16.12 (Other general clauses) and 17.2 (Interpretation) of the Standard Test Terms, which now incorporate equivalent provisions from the Wholesale Broadband Agreement rather than repeating their contents; sometimes with variations which NBN Co agrees are appropriate for the testing context. Examples of substantive changes requested by access seekers for the testing context include limitations on NBN Co's ability to change operational procedures (clause 3.2(c) of the Standard Test Terms), a commitment to provide as much notice as reasonably practicable before NBN Co cancels a test (clause 4.2) and allowing access seekers to involve downstream service providers or third party suppliers in test activities subject to certain conditions (clause 5.4).

PHONE (02) 9926 1900 FAX (02) 9926 1901
EMAIL info@nbnco.com.au WEB www.nbnco.com.au

LEVEL 11, 100 ARTHUR STREET, NORTH SYDNEY NSW 2060

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NBN Co notified iiNet and AARNet on 5 September 2013 of an extension to the term of this test to 30 November 2013 (the **Variations**), accommodating the participants' requests for an extension. As requiring iiNet and AARNet to enter into new access agreements based on the new SFAA (the Test Agreement) was commercially onerous and unnecessary, given the aim to extend an ongoing activity for a limited period of time, the existing access agreements based on the original Testing Terms and Testing Description were simply varied to incorporate the extension.

We are providing this statement of differences in compliance with the requirements conveyed by Melissa Siah via email on 30 October 2012.

NBN Co acknowledges that the ACCC's approach to the Variations is based on the specific circumstances of this case and is not to be taken as an indication of the ACCC's general approach to assessing and enforcing NBN Co's compliance with its statutory obligations around access agreement lodgement and/or obligations to provide statements of differences. NBN Co provides this statement of differences on that same basis.

NBN Co provides this statement of differences having regard to section 152BEBA of the CCA.

Yours sincerely



Caroline Lovell
Head of Regulatory Affairs & Industry Analysis