



TELSTRA CORPORATION LIMITED

Telecommunications Act 1997 – section 141A and section 144

Application for variation of the Telecommunications (Network Exemption – Telstra South Brisbane Network) Instrument 2012 (Consolidation as at 31 May 2018)

and

Application for variation of the Telecommunications (Network Exemption – Telstra Specified Velocity Networks) Instrument 2012

To: The Minister for Communications, Cyber Safety and the Arts

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Exemption variation sought: Telstra seeks a variation of Clause 2 of the *Telecommunications (Network exemption – Telstra South Brisbane Network) Instrument 2012* (Consolidation as at May 2019) and *Telecommunications (Network Exemption – Telstra Specified Velocity Networks) Instrument 2012* and minor consequential amendments flowing from that variation. The requested amendments are set out in the Attachments to this Application.



01 CONFIDENTIALITY

This application has been prepared for consultation by the Minister. It excludes information that Telstra considers to be highly commercially sensitive.

02 SUMMARY

Telstra is seeking an extension to the instruments that exempt it from the obligations of Parts 7 and 8 of the *Telecommunications Act 1997* (**the Act**) in relation to its fibre to the premise (**FTTP**) networks. Specifically, Telstra is seeking an extension to the following:

- *Telecommunications (Network exemption – Telstra South Brisbane Network) Instrument 2012* (Consolidation as at May 2019); and
- *Telecommunications (Network Exemption – Telstra Specified Velocity Networks) Instrument 2012*.

The exemption instruments were originally granted on 9 January 2012.

Telstra's FTTP networks are in 128 areas across Australia under its Velocity brand, as well as the exchange area in South Brisbane (**FTTP Network Assets or FTTP Networks**). The networks were substantially built or commenced prior to 1 January 2011, the date at which any new fibre networks are subject to Parts 7 and 8 of the Act.

The exemption instruments were granted on the basis that:

- the FTTP Networks were largely in place prior to the original commencement date of Parts 7 and 8 of the Act (1 January 2011);
- without costly modifications, the networks could not support the layer 2 bitstream services requirement; and
- the wholesale-only requirement would be achieved with the intended transfer of the assets to NBN Co Limited (**NBN Co**) prior to the Designated Day.

Telstra is committed to exiting the operation of residential and small business fixed access networks within NBN Co's fixed line network. This is in line with the Government's national broadband policy and why in June 2011, Telstra and NBN Co agreed to the Definitive Agreements.

The Definitive Agreements provided NBN Co access to Telstra's infrastructure for the national broadband network (**NBN**) rollout, as well as the progressive disconnection of Telstra's fixed line infrastructure (including copper and HFC) so that NBN Co would become Telstra's preferred fixed-line network. Telstra also engaged with NBN Co and participated in good faith discussions regarding the sale of certain of the FTTP Network Assets. Extensions to the exemption instruments have been extended in the past to provide Telstra the time needed to finalise a plan with respect to the operation of the FTTP Networks with these considerations in mind.

As part of the ongoing program of work, Telstra is continuing to explore a number of options (including structural alternatives) for the operation of the FTTP Networks. Core to this work is ensuring that our customers have, and continue to have, access to the best service possible and experience minimal service disruption. Telstra will not be in a position to finalise any plans before the Designated Day. Accordingly, Telstra is not able to meet the obligations of Parts 7 and 8 of the Act prior to the Designated Day and is seeking a further extension.

We are requesting an extension to provide certainty to the end-users that the existing arrangements can continue until the future operation of the networks can be determined. During the exemption period Telstra will continue to provide the regulated fibre access broadband (**FAB**) service on an equivalent basis.

03 BACKGROUND

This section describes the nature and history of the networks, as well as the services currently provided.

3.1. The FTTP Network in South Brisbane

3.1.1. The installation of an FTTP network in South Brisbane

On 30 July 2010, Telstra entered into an agreement with the Queensland Government to sell and vacate the Telstra South Brisbane Exchange building and site to make way for the Government to develop the new Queensland Children's Hospital (**Queensland Government Transaction Agreement**).

The Queensland Government Transaction Agreement required Telstra to vacate the site by 20 June 2013. Shutting the exchange and vacating the site required Telstra to:

- Re-connect the copper lines to a nearby exchange; or
- Rebuild the exchange on a nearby site; or
- Build an alternative network.

Re-connecting the copper to a nearby exchange would lengthen the distance from each premises to the exchange thereby denigrating the quality of service. Rebuilding the exchange on a nearby site was not possible within the timeframe required by the Queensland Government. Consequently, in consultation with the Queensland Government, Telstra determined that it could replace the existing copper network with an FTTP network for an incremental cost.

These deployments were made to replace the Public Switched Telephone Network (**PSTN**). That is, they were not designed to provide high-speed broadband services. Telstra's network and product design were targeted to PSTN emulation to mirror existing network capabilities rather than to provide new layer 2 bitstream services that enable a suite of IP-based next generation network services, such as those provided by NBN Co. The last migrations from copper to fibre within the South Brisbane exchange boundaries were completed in December 2012. The initial deployment predated the enactment of Parts 7 and 8 of the Act.

The FTTP Network in South Brisbane serves a diverse range of customers typically found in a mixed usage suburban and commercial area on the fringe of a major central business district. There are a number of active retail service providers (**RSPs**) offering services in the South Brisbane exchange area other than Telstra.

3.1.2. The history of the exemption instrument

In September 2011, Telstra applied to the Minister for exemption from the requirements of Parts 7 and 8 of the Act, the layer 2 bitstream and wholesale-only requirements.

On 9 January 2012, the Minister issued the *Telecommunications (Network Exemption – Telstra South Brisbane Network) Instrument 2012 (the SBX Exemption Instrument)*. The SBX Exemption Instrument ceased to have effect on 31 December 2013. The cessation date was set because when Telstra made its initial application, it was expected that by 31 December 2013 NBN Co would have replaced Telstra as the operator of the South Brisbane FTTP network.

However, there were several developments that affected the progression of the negotiations between Telstra and NBN Co, including a requirement to renegotiate the Definitive Agreements following the introduction of the multi-technology mix to the NBN. Consequently, on 18 December 2013 the Minister for Communications extended the cessation date of the instrument until 31 December 2015, and on 23 December 2015 it was extended again until 1 July 2018.

On 31 May 2018, the instrument was amended to expire on the Designated Day, which is 1 July 2020.

3.2. The Velocity FTTP Networks

The Velocity FTTP Networks are in real estate developments that were built, substantially underway or had reached the planning stage by 1 January 2011.

Before the NBN, Telstra generally deployed copper cable in real estate developments to meet its universal service obligation. However, a real estate developer could contract with Telstra to build fibre, for an incremental cost. The existing Velocity FTTP Networks reflect these contracts that were in place prior to the commencement of Parts 7 and 8 of the Act, as well as any in-fill that has occurred within an estate related to those arrangements.

On 9 January 2012, the Minister for Communications issued the *Telecommunications (Network Exemption – Specified Velocity Networks Instrument) 2012 (Velocity Exemption Instrument)* which is also set to expire on the Designated Day (1 July 2020).

The Velocity FTTP Networks service predominantly residential customers. There are a number of active RSPs offering services in the Velocity estates other than Telstra.

3.3. Superfast broadband access services declaration

The FTTP Networks are subject to access regulation under Part XIC of the *Competition and Consumer Act 2010*.

On 26 May 2017, the Australian Competition and Consumer Commission (**ACCC**) released the final decision report in the Superfast Broadband Access Service (**SBAS**) and Local Bitstream Access Service (**LBAS**) Final Access Determination (**FAD**) joint inquiry.

The FAD sets prices and other terms and conditions for wholesale high speed internet services which are supplied by providers other than NBN Co. The ACCC decision makes separate provision for the Fibre Access Broadband (**FAB**) services offered over the Telstra FTTP Networks, in recognition of the limited technical characteristics of those networks compared to others.

The current SBAS declaration and associated FAD expire on 28 July 2021. It is expected that the ACCC will commence a declaration inquiry into the SBAS within the next six months, followed by a FAD inquiry which will extend the regulation of these services beyond 28 July 2021. This will ensure ongoing price and non-price protection for RSPs and end-users.

3.4. De-linking expiry from the Designated Day

The current exemptions are due to expire on the Designated Day as defined in Telstra's Structural Separation Undertaking (SSU). The expiry of the Exemption Instruments was set as the Designated Day because it was expected that the networks would be transferred to NBN Co by that date. The FTTP Network Assets are not subject to the SSU because they are covered by an exemption issued under subsections 577A(20) and (21)¹ and so there is no reason to maintain any link between exemption expiry and the Designated Day.

The Designated Day represents the point in time in which NBN Co will have materially completed the rollout of the NBN. Whereas for the reasons we explain in this submission it is necessary for the exemption to be extended beyond 1 July 2020, this is not the case for the Designated Day. The roll-out of the NBN is on track to complete within the timelines envisaged when the Designated Day was set as 1 July 2020 and it remains appropriate for the burden of the interim measures under Part D of the SSU to cease from this date.

¹ *Telecommunications (Structural Separation— Networks and Services Exemption) Instrument (No. 1) 2011*

A significant amount of work has been undertaken by Telstra to ensure that the post-Designated Day regime is in place, demonstrating commitment to ongoing compliance with our regulatory and legislative obligations. Given the declining number of services remaining on Telstra's legacy network, the significant interim reporting and other requirements in Part D of the SSU are increasingly less meaningful. Thus, retaining the SSU after 1 July 2020 would impose disproportionate cost on both Telstra and the ACCC in its monitoring role.

04 REQUIREMENT TO EXTEND THE EXEMPTION INSTRUMENTS

Telstra is committed to exiting the operation of residential and small business fixed access networks within NBN Co's fixed line network. This is in line with the Government's national broadband policy. To that end, Telstra engaged with NBN Co and participated in good faith discussions regarding the sale of certain of the FTTP Network Assets over a significant period of time.

As part of the ongoing program of work, Telstra is continuing to explore a number of options (including structural alternatives) for the operation of the FTTP Networks. Core to this work is ensuring that our customers have, and continue to have, access to the best service possible and experience minimal service disruption. Telstra will not be in a position to finalise any plans before the Designated Day. Accordingly, Telstra is not able to meet the obligations of Parts 7 and 8 of the Act prior to the Designated Day and is seeking a further extension. We are requesting an extension to provide certainty to the end-users that the existing arrangements can continue until the future operation of the networks can be determined.

Without a continuation of the Exemption Instruments, Telstra would face substantial costs to comply with Parts 7 and 8 of the Act. When Parts 7 and 8 of the Act were introduced, Telstra's FTTP Network Assets were largely in place or, in the case of South Brisbane, network design well-progressed. Significantly, the systems and processes associated with the networks were designed prior to the introduction of the obligations such that changing them would incur substantial costs.

Telstra's FAB service is not a layer 2 bitstream service as required by Part 7 of the Act. The FAB service emulates some characteristics of layer 2 bitstream services, although is not equivalent to NBN Co's layer 2 bitstream service offerings over FTTP. In addition, the main FAB service offering has a maximum speed of 30/1 Mbps which, while a proximity to, does not satisfy the superfast carriage service characteristic of 25/5 Mbps.

In its SBAS declaration decision, the ACCC declared FAB separately from a general layer 2 bitstream service which is a superfast carriage service. The ACCC took this approach because:²

"This will prevent the possibility that the declaration could require an inefficient investment by Telstra to supply the SBAS, which may not be recovered prior to the transfer of Telstra's South Brisbane and Velocity estate networks to NBN, and which would not promote the LTIE."

It was thus previously not considered practical to require Telstra to comply with the obligations as the expectation was for the assets to be transferred to NBN Co. Further, NBN Co would have had to deploy its own network equipment and systems. Thus, Telstra does not currently have the systems to comply and it would involve substantial costs to do so.

Consequently, any option that Telstra is now considering for the operation of the FTTP Networks invariably involves financial and operational resources. Telstra is not in a position to comply prior to the Designated Day. Accordingly, Telstra is seeking an extension of the Exemption Instruments so that existing arrangements for end-users can continue until the future operation of the networks can be determined.

² Superfast Broadband Access Service declaration inquiry, Final Decision, July 2016, at p.vii.



05 ARRANGEMENTS TO MAINTAIN WHOLESALE COMPETITION OBJECTIVES

The superfast network obligations were introduced to promote wholesale competition. With the introduction of the NBN, the Government sought to ensure that any new network would operate on the same basis as NBN Co. That is, to provide superfast broadband on a wholesale-only basis.

Telstra currently supplies the FAB service as a regulated wholesale broadband service on its FTTP Networks on an equivalent basis.

The FAB service enables alternative retail service providers to purchase it from Telstra to supply end consumers broadband. The declaration means that regulated price and non-price terms and conditions as determined by the ACCC are available to retail service providers. Regulated terms and conditions provide a backstop for retail service providers in commercial negotiations to protect it from any potential exercise of market power. Further, the regulation of FAB pricing provides assurance that customers in South Brisbane and the Velocity Estates have access to competitive pricing and service quality.

The current SBAS declaration and associated FAD expire on 28 July 2021. It is expected that the ACCC will commence a declaration inquiry into the SBAS within the next six months, followed by a FAD inquiry which will extend the regulation of these services beyond 28 July 2021. This will ensure ongoing price and non-price protection for RSPs and end-users.

Under the Standard Access Obligations (**SAOs**) set out in section 152AR of the *Competition and Consumer Act 2010*, Telstra, as an access provider, must provide a declared service on request on an equivalent basis to how it would provide itself the service. This includes the ongoing quality of service provided by the access provider.



ATTACHMENT A: PROPOSED AMENDMENTS TO SBX EXEMPTION INSTRUMENT



ATTACHMENT B: PROPOSED AMENDMENTS TO VELOCITY EXEMPTION INSTRUMENT