

7 January 2015

Ms Jo Grainger
Assistant Secretary
Infrastructure Deployment
Department of Communications
GPO Box 2154
CANBERRA ACT 2601

Dear Ms Grainger

RE: VARIATION OF TELSTRA'S MIGRATION PLAN — PUBLIC VERSION

Thank you for the opportunity to comment on the draft regulatory instruments varying Telstra's migration plan that are proposed to be made under the Telecommunications Act.

The Structural Separation Undertaking (SSU) and Migration Plan are required to achieve these outcomes, during and post deployment of the NBN. Both documents should work together to promote competition and the interests of end-users. Optus believes that both documents should promote the principles of the NBN reforms, including the structural reform of the industry to ensure wholesale-only supply of fixed line services on an open and non-discriminatory basis.

The SSU has an overarching equivalence obligation. That is, Telstra must ensure equivalence in relation to the supply by Telstra of Regulated Services to wholesale customers and Telstra's retail business units. It is important that the regulatory instruments do not have the effect of limiting the application of this obligation. The Migration Plan is a key instrument in ensuring that Telstra and non-Telstra customers are treated in an equivalent manner during the migration to the NBN. Optus has previously raised concerns that the migration process will occur over many years and has the potential to undermine many of the competition benefits underpinning the NBN policy. These concerns are particularly relevant given the announcement that Telstra will be involved in the design and deployment of the NBN FTTN network. Optus submits that the overarching equivalence obligation should be given effect to in the Migration Plan.

It is important to also recognise that Telstra and NBN Co are receiving significant benefits under the Definitive Agreements when assessing the benefits and costs of the obligations placed upon Telstra, NBN Co, and other RSPs, during the migration period. Telstra is receiving sizeable consideration for its role; and NBN Co is receiving significant cost savings. It is therefore reasonable that both Telstra and NBN Co assume responsibility for ensuring the migration of end-users occurs in a manner that minimises disruptions to end-users. The primary effect of the regulatory instruments should not be to minimise costs to Telstra and NBN Co alone, or to shift costs onto end-users and RSPs. The purpose of the Migration Plan should be to minimise costs to *all* of industry and to minimise disruptions to end-users. All parties involved need to work together to coordinate the transition from legacy technology to the NBN.

To this end, Optus wishes to make the following broad comments on the draft regulatory instruments:

- The regulatory instruments should include an overarching requirement for the terms of the Migration Plan to minimise costs to *all* of industry and to minimise disruptions to end-users. The current drafting appears to concentrate on minimising costs to Telstra. In most cases there may be no conflict between the two; however, there may be examples of where it is most efficient and cost-effective for Telstra to develop solutions to problems faced by all RSPs. In such a case, priority should be given to the efficiency and cost-savings to all RSPs.
- The regulatory instruments should ensure that the Migration Plan addresses issues that are likely to arise from Telstra's role as network planner and builder for the NBN. This was not anticipated in the previous Migration Plan. In this role, Telstra is likely to receive sensitive information in advance of other RSPs. Processes must be put in place that effectively ring fence the Telstra divisions that deal with the planning and deployment of NBN, and retail or shared divisions. Rigorous information security processes need to be established so that Telstra does not receive a competition advantage due to its role as key vendor to NBN Co. The process must cover both FTTN and HFC networks. While this will no doubt be a complex process, it is too important for it to be carved out of the Migration Plan.
- Whilst it is reasonable for the Migration Plan to be clear on the demarcation lines of responsibility between NBN Co and Telstra, this should not be used to enable Telstra to drive costs and responsibility onto other RSPs. Telstra and NBN Co benefit from this agreement so there should be a clear obligation on both parties to minimise costs and disruption to RSPs. Moreover, Telstra under its agreements with the Government also receives substantial funding to develop solutions to problems relating to certain services. The regulatory instrument should ensure that the Migration Plan places responsibility onto Telstra to develop these solutions.
- The inclusion of Schedule 3 must not be used as a vehicle to allow issues not to have a responsible party. For example, there are several clauses in the Draft Migration Principles that do not require Telstra to remedy issues listed in Schedule 3.¹ It is conceivable that there will be issues in relation to migrating end-users from Telstra's network to NBN Co's network, that neither NBN Co nor Telstra claim to be responsible. Such a situation does not promote the interest of end-users. Optus believes that the Migration Plan should outline a process for issues that neither Telstra nor NBN Co claim are their responsibilities.

Please find attached to this letter, Optus' comments on specific clauses. Please do not hesitate to contact me if you have any questions or comments.

Regards

Andrew Sheridan
Head of Interconnect and Economic Regulation

¹ See, for example, clauses 15(3)(b), 27(5)(b).

ATTACHMENT — SPECIFIC COMMENTS

REFERENCE MIGRATION PLAN PRINCIPLES	REFERENCE MIGRATION PLAN SPECIFIED MATTERS	DETAILS
Specific Principle 11,		There are several references in the Principles document regarding MAP (Migration Assurance Policy). However the MAP has not been published, therefore making it difficult to comment on the clauses.
General Principle 10 (9)	27, 30	Delete the word “maximum” and add after “reasonable and practicable for Telstra”, the words “and retail service providers”. While Optus acknowledges that the use of existing processes, operating systems and interfaces may avoid costs for Telstra, the aim should be to minimise overall industry cost and maximise end user benefit in terms of synchronised connection to NBN Co and disconnection of legacy services. The best outcome for the overall industry will occur through effective consultation with RSPs. Consideration needs to be given to the impact on RSPs if using existing processes and systems for managing and implementing disconnection of fixed-line services for premises that are passed in roll out regions.
General Principles 10(1)(c) (ii)		The RSP autonomy over decisions should apply even if the wholesale customer who supplies the copper service is not the RSP that is supplying the NBN based services.
Specific Principle 16	18	While Optus recognises that Telstra is not responsible for co-ordinating or managing the process of connection to the NBN Co fixed-line network, this should not release Telstra to use reasonable endeavours to co-operate with NBN Co and RSPs to ensure minimum disruption to end customers. The reason for this is that in practical terms Telstra has visibility of both gaining and losing RSPs. This general principle should apply to all activities associated with the connection of the NBN Co fixed line network and the disconnection of the legacy network.
Specific Principle 22	54	The schedule that Telstra is to publish to the industry should also include: <ul style="list-style-type: none"> • Date when the soft dial tone will be applied; and • Date managed disconnection will take place.
Specific Principle 24(1)		Telstra’s notification to wholesale customers regarding disconnection date and impending disconnections of carriage services should be equivalent to the information provided to Telstra retail.

Specific Principle 26	26	Win back should not be allowed to take place especially in relation to 26(2)(b). The Telstra agent or employee should <i>not</i> be allowed to engage in any marketing activity while disconnecting a retail fixed line carriage service supplied by Telstra.
Specific Principle 28(3)(f)		Where Telstra amends and resubmits the new or replacement schedule to the ACCC as a result of ACCC objection, industry consultation of the amended schedule should also take place.
Specific Principle 28(3)(g)		The minimum consultation period for any change should be 20 business days regardless whether Telstra considers the change may have a material and adverse commercial effect on wholesale customers. Telstra is not in the position to decide on what may impact wholesale customers as they do not have the knowledge of the wholesale customers' internal processes, systems and other potential constraints.
General Principle 31	31	Add that it is reasonable for Telstra to amend, vary or modify operating system, interface or process, having regards to; (v) The overall benefits to the wholesale customers.
Procedural Principle 39 (7)		Monetary limit of \$1m per event and \$10m in a calendar year needs to be revised. Optus is particularly concerned on the \$1m per event limit, as in practice this is likely to result in Telstra voiding all obligation to change its systems. The per event limit should be removed. In Optus' experience, even simple changes to Telstra's systems are likely to cost more than \$1m per event. [CiC]
Procedural Principle 42	37	Consultation with RSPs should also be mandated.
Schedule 2		Telstra should be responsible to a certain extent during the migration process. This is particularly relevant given that Telstra is responsible for the design and roll-out of the NBN FTTN network. Telstra, as key vendor to NBN Co, would have internal knowledge of the FTTN roll-out. It should therefore, be responsible, together with NBN Co, to ensure all relevant parties have access to the same level of information. It should also be made clear that nothing in Schedule 2 over-rides the general equivalence and information security provisions in the Migration Plan.
Schedule 2(b)	41, 51	It is unclear who is responsible if there is interference to the network. Under FTTN, interference may be one of the most common issues that will cause degradation of the legacy and the NBN Co services. In Schedule 3(e)(iii), Telstra's compliance is dependent on NBN Co resolving interference. Therefore at a minimum, under Schedule 2 clause (b), Telstra should have the obligation to assist with the identification of the issue and coordinating with any actions that need to be taken to fix the problem. Telstra, as designer and constructor of the NBN Co FTTN, should bear some responsibility in managing interference.

