



Optus submission

Draft Carrier Licence Condition (Networks in New Developments)
Declaration 2016

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Reporting Requirements) Declaration 2016

January 2016

INTRODUCTION

1. Optus welcomes the opportunity to provide comments on the draft Carrier Licence Conditions (CLC) in respect of networks in new developments.
2. Optus understands that the intent of both of the draft CLC's is to ensure that end-users in new developments that are serviced by non-NBN infrastructure providers have access to services that are of comparable quality and timeliness to the services provided over the NBN and that such infrastructure can be readily accessed by competing RSPs. These objectives are consistent with the broader principles that there should be a level playing field in the provision of high speed broadband infrastructure.
3. However, whilst Optus agrees with the broad objectives of the CLCs we have considerable reservations with how these are to be implemented. Our specific concern relates to the broad scope of the networks that are likely to be captured by the obligations. This is likely to add considerable red-tape burdens and costs to the industry; it may also impede investment in competitive infrastructure that has no direct link to new developments. Optus' specific concerns are set out below. Until these concerns are addressed Optus does not believe that the CLCs should be issued.

SCOPE OF THE CLCs IS TOO BROAD

Carrier Licence Condition (Networks in New Developments) Declaration 2016

4. Optus understands that the obligations under the Carrier Licence Condition (Networks in New Developments) Declaration 2016 will apply to all networks in new developments other than those deployed using mobile and satellite technology. By definition it is likely, therefore, that networks built for corporate customers will be captured by the obligations. There is also a risk that networks built for other purposes, such as backhaul transmission, may also be captured.
5. The issue relates to the broad nature of the definition of "specified new development network or network". On Optus' reading of the definition any piece of fixed infrastructure that is capable of supplying carriage service could be designated as a "specified new development network or network" if that infrastructure passes a proposed new development site, even if it is not in close proximity to the relevant new development. The obligations under 4 (1)(b) would appear to capture any form of infrastructure being capable of supplying a carriage service and clause 5 (2) then applies the obligations under clause 5 (3) to that infrastructure.
6. Optus does not believe that the CLC should have such a broad application. To ensure that it does not have such unintended application Optus recommends that the drafting of the definition of "specified new development network or network" should be tightened to more closely align it to infrastructure that is deployed for the primary purpose of servicing customers in new developments.
7. There should also be a geographic limit placed on the type of premises falling into "type 3 premises" as the current definition appears to be open-ended.

8. The CLC relating to the reporting requirements is broader still, since it explicitly applies to all networks; unlike its companion CLC it does not exclude mobile and satellite networks. Again, the problem relates to the broad definition “specified new development network or network” which appears to cover any new network regardless of whether it is to be deployed to service a new development. It appears that any infrastructure deployed that is capable of being used to supply carriage services will be subject to the reporting obligations. Implementation of this CLC in its current form would represent a very significant reporting burden on industry that will add to the cost and red-tape obligations on industry at a time when the Government is supposed to be reducing such red-tape.
9. To minimise unnecessary reporting requirements and costs to industry, Optus recommends that the definition of “specified new development network or network” is tightened. The reporting obligations should only apply to infrastructure that is capable of providing fixed high speed broadband services to residential and small business end-users consistent with Optus’ comments below.

APPLICATION TO CORPORATE NETWORKS

10. A related, but separate concern, is that CLC is intended to capture networks used to service corporate end-users and not just those used to service residential or small business end-users. Optus notes that this policy is inconsistent with existing regulatory obligations that apply to alternate high speed broadband network infrastructure. As an example, the superfast network rules under the Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014 specifically excludes:
 - a. satellite, mobile or wireless networks;
 - b. transit networks (for example, the backhaul lines connecting towns and cities); and
 - c. local access networks supplying services to large businesses or government agencies;
11. Optus does not understand the policy rationale for bringing corporate and other networks into the scope of the obligations to apply to new developments.
12. Further, we are concerned that a number of the detailed obligations within the draft CLC are consumer orientated and would not fit well with a corporate environment. For example, 5 (3)(c) which requires the network to support “dependent services” and “broadcasting services” are likely to be particularly burdensome for networks deployed to service new corporate developments. Further, paragraph 5 (3)(f) requires a carrier to have a contract with at least three CSPs. This might not be feasible in scenarios where a site is occupied by a single or small number of corporate customers. Each of these obligations would make it more challenging for networks providers other than Telstra or NBN Co to service a new corporate development.
13. The problems noted above are compounded by the fact that the obligations in the CLC will only apply to corporate networks rolled-out by non-Telstra carriers. This will potentially give Telstra a significant advantage to service new corporate developments as it will not face the same sort of obligations as other carriers.

14. Optus recommends that the scope of the CLC is tightened such that it specifically excludes networks designed to provide services to corporate end-users. This will provide consistency with the Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration and reduce the scope for unintended consequences that may impede the roll-out of competing corporate networks. It will also remove any adverse anti-competitive impacts from the CLC.