
TELSTRA CORPORATION LIMITED

Response to the *Quality Telecommunications Outcomes in New Developments – Regulation Impact Statement* and draft Reporting and Build and Operate Carrier Licence Conditions

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EXECUTIVE SUMMARY

Telstra's response to the Regulation Impact Statement (RIS) and the two draft Carrier Licence Conditions (CLCs) is informed by the following objectives:

- **Clear delineation of infrastructure responsibility** – in relation to new development infrastructure, there needs to be greater clarity and transparency as to who has responsibility for providing infrastructure within defined geographic boundaries, and the timing of when carriers have been engaged by developers.
- **Maximum customer reach through efficient and simple service delivery** – we acknowledge that the Government seeks to introduce market competition through its new developments policy. If third party networks are present, consumer interests are best served if wholesale access is efficient and simple and can be integrated into carriers' existing NBN ordering and support systems and product suite.
- **Consistent application with existing regulation** – where there is overlap with existing regulation, the new regulation must be consistent with existing regulation to remove uncertainty and ambiguity.
- **Appropriate reporting burden** – if reporting is required, it must be light touch, directly relevant to the policy outcome of providing greater transparency in the delivery of infrastructure to new developments and be operationally feasible.

Alignment with the NBN

It is vital that third party infrastructure providers (3PIPs) offer a Retail Service Provider (RSP) order, activation, interface and network elements that are functionally identical to NBN's to ensure a good selection of RSPs are willing to service the development and that they can do so cost effectively. Telstra agrees with the problem description set out in the RIS, namely the risk that 3PIPs might supply sub-optimal infrastructure in new developments unless there are rules in place to ensure a minimum standard and incentives to comply with the rules.

We agree that Option 2 in the RIS is best for addressing the stated problem. However, there is not yet a common understanding or public specification of the NBN ecosystem that third party providers could be bound to replicate. Telstra supports the establishment of NBN as a "wholesaler of wholesalers" (WoW), in addition to keeping 3PIPs to a comprehensive and strict regime of NBN equivalence. We recommend the Minister take into account the status of industry discussions on this issue in the way the CLC is finalised and implemented.

Incentives for compliance

Telstra recommends the Telecommunications in New Developments (TIND) Policy be updated to make it clear that infrastructure that does not meet the NBN-equivalent test is presumed to fall within the NBN Fixed Line Footprint (FLF). Conversely, where the NBN-equivalent test is met, infrastructure should be presumed to fall outside the FLF.

If this policy change is implemented, substandard infrastructure that cannot attract a good selection of RSPs would be subject to NBN overbuild. This would act as a guarantee of a minimum standard of services for consumers in the longer term and a strong incentive for 3PIP compliance. As compliant

infrastructure would fall outside the FLF, it would be protected from the threat of overbuild by the NBN and available for all RSPs including Telstra to use in providing services.

Cost impacts

With regard to the Reporting CLC only, we estimate a once-only compliance cost of \$25,000 and an annual compliance cost of \$20,400 assuming no need to source additional data from developers that they are not required to provide. If there is such a need, additional annual compliance costs of \$50,000 are likely. These costs are based on our estimate of 200 hours of Full Time Equivalent staff time.

Specific feedback on the Reporting CLC

To ensure the Reporting CLC is light touch, directly relevant to the objective and operationally feasible, we recommend changes to the following three elements:

- The definition of *specified new development network* should exclude mobile infrastructure except where mobile infrastructure is provided under contract with the developer and will be used to support fixed services to premises.
- The definition of *specified new development network* should exclude temporary networks provided by Telstra ahead of permanent infrastructure being installed.
- Section 5(3) should clarify that Telstra is 'no longer servicing' a development only upon termination of the contract between Telstra and the developer.

Specific feedback on the Build and Operate CLC

To ensure that delineation of responsibility for providing infrastructure within a new development is clear, we recommend the following changes to the Build and Operate CLC:

- The definition of *development boundary* should be amended to ensure it covers the scenario where the network is built by one carrier and subsequently transferred to another carrier.
- Sections 5(7) and (8) should be amended to ensure that the existence of Telstra's USO does not exempt 3PIPs from being IPOLR in an estate they service.

To ensure that customer reach is maximised through efficient and simple service delivery, we make the following recommendations in respect of the Build and Operate CLC and/or stated Government policy:

- As stated above, policy should presume that infrastructure that meets the NBN-equivalent test is outside the FLF, and infrastructure that fails the test is within the FLF.
- The definition of *voice service* in section 3(1) should be replaced with the existing definition of a Standard Telephone Service (STS) to ensure consistent application of regulation.
- The exception from the obligation not to discriminate against a wholesale customer in order to protect 'reasonable commercial interests' should be aligned with the NBN Category B SAOs.

Activation and fault repair timeframes

Activation and repair timeframes for wholesale operators should be consistent with RSPs' retail obligations in order to ensure good customer service and incentivise compliance, including:

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- Wholesale activation and repair timeframes that allow sufficient time for RSPs to complete actions within retail timeframes, unless appropriate Test and Diagnostic tools are in place.
 - Wholesale performance targets for meeting the timeframes consistent with NBN's Performance Targets for FTTP of 95%, with financial penalties and/or corrective action for non-compliance.
 - Automatic payments to RSPs on a per-event basis when a wholesaler fails to meet its performance targets.
 - Fault rectification timeframes that mirror those in the NBN Wholesale Broadband Agreement (WBA) for Fibre to the Premises (FTTP) and Fixed Wireless.

01 INTRODUCTION

Thank you for providing us with the opportunity to provide a response to the Quality Telecommunications Outcomes in New Developments – Regulation Impact Statement (**RIS**) and the respective Declarations, *Carrier Licence Conditions (Networks in New Developments Reporting Requirements) Declaration 2016 (Reporting CLC)* and *Carrier Licence Conditions (Networks in New Developments) Declaration 2016 (Build and Operate CLC)*.

Our response to the questions raised by the RIS and Declarations are informed by the following objectives.

- **Clear delineation of infrastructure responsibility** – in relation to new development infrastructure, there needs to be greater clarity and transparency as to who has responsibility for providing infrastructure within defined geographic boundaries, and the timing of when carriers have been engaged by developers.
- **Maximum customer reach through efficient and simple service delivery** – we acknowledge that the Government's objective is to introduce market competition through its new developments policy. If third party networks are present, consumer interests are best served if wholesale access is efficient and simple and can be integrated into carriers' existing NBN ordering and support systems and product suite.
- **Consistent application with existing regulation** – where there is overlap with existing regulation, the new regulation must be consistent with existing regulation to remove uncertainty and ambiguity.
- **Appropriate reporting burden** – if reporting is required, it must be light touch, directly relevant to the policy outcome of providing greater transparency in the delivery of infrastructure to new developments and be operationally feasible.

02 Questions raised by the Regulatory Impact Statement

2.1. Do you agree with the problem description?

Our understanding of the problem statement is that as a consequence of policy settings designed to deliver competitive tension in the delivery of infrastructure to new developments, there is a risk that in the absence of clear rules on 3PIPs, sub-optimal infrastructure may be supplied into new estates leading to consumers receiving poor service quality, high prices and lack of competitive supply. We agree that this is a risk.

Industry has invested significant capital integrating with the NBN. As a result, a Retail Service Provider's (RSP's) decision to utilise third party infrastructure to supply end users in new developments will be determined by the degree to which order, activation, interface and network service and supply mirrors ordering and integration with NBN. To ensure the government maximises the benefit of competitive retail supply we have recommended changes to the proposed Build and Operate CLC to deliver this outcome.

The Telecommunications Infrastructure in New Developments (TIND) policy says at page 20 that "*If existing networks in new developments do not provide broadly NBN-consistent outcomes, NBN Co may overbuild them. This provides alternative network providers with a strong incentive to deliver solutions that match or exceed those available on the NBN.*" Accordingly we recommend that areas within the development boundary are presumed by the TIND Policy to fall within the NBN fixed line footprint, and therefore are subject to NBN build, unless the requirements set out in the licence condition are met.

Another major concern in the supply of infrastructure to new estates has been the lack of clarity around the responsibility for infrastructure provision to new estates. We consider that the Reporting and New Development CLCs will go some way to addressing (although not eliminate) this problem by requiring documentation of responsibility on the register, and ensuring infrastructure provider of last resort (IPOLR) responsibility within the boundaries of a development.

Finally, where third party infrastructure is built, there should be a level playing field in the application of regulation. This will ensure consumers being served within this new development will enjoy, from a regulatory perspective, parity to consumers taking services on the NBN or Telstra copper fixed networks.

2.2. Do you agree with the assessment criteria?

Yes.

2.3. Do you agree with the assessment of options?

We broadly agree with the assessment of the options. However, we consider that the application of the Choice criteria has not fully taken into account the importance of placing obligations on 3PIPs to have in place activation, interface, network service and wholesale products that exactly mirror NBN's. As noted above, most RSPs are unlikely to compete to offer retail services in new developments which do not have NBN-equivalent wholesale services due to the prohibitive cost and complexity of developing a new ecosystem for each additional infrastructure provider.

The requirement that an infrastructure provider have agreements in place with three RSPs before installing infrastructure will ensure that retail customers have services available to them even if the infrastructure is not NBN-equivalent, but it will not ensure strong retail competition because most RSPs will be unable to service those customers. The likely result is a balkanisation of services, with the vast majority of consumers serviced by NBN infrastructure and a wide range of RSPs, and a small percentage served by third party infrastructure that supports only a small number of specialist RSPs.

For these reasons Telstra's view is that the CLC must mandate a wholesale ecosystem that is effectively identical to NBN's. As explained in more detail at section 5.2 below, the most effective means of achieving this aim is for NBN to become a "wholesaler of wholesalers" (WoW) with responsibility for translating third party infrastructure ecosystems into NBN-equivalent networks, interfaces, products and services that RSPs can access without developing new systems. Alternatively third party infrastructure must be kept to a comprehensive and strict regime of NBN equivalence with appropriate governance.

Telstra notes that even with strict NBN-equivalence in place there will be many factors on which differentiation will remain possible, not least cost discipline and efficiency in the way standardised infrastructure and supporting systems are contracted for, installed and operated. These disciplines at the infrastructure/wholesale level, and the vigorous retail competition resulting from all RSPs being able to compete for all customers serviced from the same basic set of wholesale services, will maximise the positive effects of competition at wholesale and retail levels and therefore outcomes for consumers.

2.4. Do you agree with the preferred option?

We agree that Option 2 is the best of the four options on its comparative merits, but observe that it has not yet been agreed exactly what constitutes a wholesale ecosystem consistent with NBN's, or how such equivalence should be managed. If these details have not been settled by industry before the CLC comes into effect, it will create confusion for all parties. We recommend the Minister take into account

the status of industry discussions towards agreement on the best model for NBN-equivalent standards in the way the CLC is finalised and implemented.

03 Cost impact from the proposed new regulation

3.1. Cost of uploading data to the mapping tool

Telstra's costs for uploading data to the mapping tool monthly are estimated as follows.

	Annual cost	Once only cost
Processes to identify, upload and quality manage relevant data (FTE costs)		\$20,000
Software costs	\$400	\$5000
Actual upload and management of datasets, influenced by timing and frequency (FTE cost)	\$20,000	
Increased burden to extract additional data from developers if not part of existing processes (FTE cost)	\$50,000	

The FTE (Full Time Equivalent staff) costs are driven partly by our estimation that training and documentation redesign would take approximately 200 hours. Telstra rolls out infrastructure to approximately 18,000 new developments per annum.

We have not commented on the costs of complying with the Build and Operate CLC because Telstra will not be subject to it.

04 Feedback on the Reporting CLC

4.1. Appropriate reporting burden

If the Department concludes that the new reporting burden should be imposed on industry, the obligation must be light touch, directly relevant to the policy outcome of providing greater transparency in the delivery of infrastructure to new developments, and be operationally feasible. We have proposed three changes to the Reporting CLC that would deliver on this.

Definition of specified network S.(3) – Inclusion of mobile networks

Our main concern with the Reporting CLC is the extension of specified network to Mobile infrastructure. We understand that the objective here is to capture two scenarios where:

- Telstra rolls out mobile infrastructure in order to supply on a permanent basis a fixed mobile solution to deliver the Universal Service Obligation; or
- Another carrier uses mobile infrastructure to provide services in meeting its IPOLR obligation under the Build and Operate CLC

Telstra does not currently supply infrastructure to new developments in this manner. However, as drafted, this obligation would lead to Telstra and other mobile carriers being obliged to provide information on mobile infrastructure that is being installed within the new development area where the services are used to deliver mobile services, and potentially even where mobile signal is available at locations within the new development from mobile infrastructure located elsewhere. This is not the objective of the regulation.

We recommend that the specified network definition is amended to only include mobile infrastructure where it is being supplied under contract with the developer in either fulfilment of the USO or in the carrier's role as IPOLR for fixed services in the Build and Operate CLC. This would ensure that the scenario articulated above would be captured but not where infrastructure is installed for the provision of mobile services more generally, or where mobile is used to fulfil individual customer requests for a USO service in that development. It would also align the Reporting CLC more closely with the Build and Operate CLC with regard to the inclusion or otherwise of mobile services in the definition of a specified network.

Definition of specified network S.(3) – Inclusion of temporary networks

We also recommend removal of temporary network data from the Reporting CLC, or a specific exemption for Telstra temporary network data. The clause may be intended to capture 3PIPs that will continue serving a new development with permanent infrastructure in due course, but as drafted would also capture a circumstance in which Telstra provides mobile services to customers within a new development pending NBN or Telstra rolling out fixed infrastructure. In that instance, reporting by Telstra would be in place for a short term leading to a requirement to update that reporting once the fixed network build had been finalised. It is unclear what benefit this data would have in clarifying responsibility for infrastructure delivery. Consequently we do not consider the burden of additional reporting outweighs the benefit.

Section 5 (3) – Carrier no longer servicing

This clause has an asymmetric impact on Telstra, which will need to assess whether it is no longer servicing a development following NBN asset transfer. This is not a trivial exercise, particularly for FTTP and HFC where there may be some copper services remaining in the development, and would constitute a significant additional administrative burden on Telstra alone. Consequently we suggest that 'no longer servicing' specifically result from the termination of the contract between the carrier and the developer.

05 Feedback on the Build and Operate CLC

5.1. Clear delineation of infrastructure responsibility

A major outcome of the Build and Operate CLC should be clearer delineation of infrastructure responsibility within an estate. There are two matters we think need to be addressed.

Section 3 (1) Definition - Development Boundary

As drafted the definition of a Development Boundary is fixed based on the initial commercial agreement between the developer or a subsequent CLC declaration. We do not consider that this will cover a

scenario where, subsequent to the original agreement between a developer and the carrier, the network is transferred to a second carrier.

Consequently we recommend the definition of a Development Boundary is amended to allow it to be extended if control of the network is transferred to another carrier after the original agreement with the developer. This could be achieved by the boundary being defined as the boundary specified in the agreement between the Developer and the carrier originally responsible for the Development or, if the Developer installed the infrastructure itself, the boundary as set out in the Development plans. *Section 5 (7), (8) – IPOLR rules*

Section 5(7) provides that a specified carrier is the IPOLR for a new development. Section 5(8) provides that this obligation does not apply if another carrier is otherwise required by law to be the IPOLR. As currently drafted, this could include Telstra's Universal Service Obligation (USO) because, while the USO is framed in terms of supplying services, the practical and legal effect of this obligation is to require Telstra to build network to do so in areas where there is no suitable network. This would mean the exemption will always be available. We recommend this drafting be amended to exclude Telstra's USO.

This proposed amendment would not affect Telstra's ongoing USO responsibility to customers.

5.2. Maximising customer reach through efficient and simple service delivery

We acknowledge the government's desire to introduce market discipline into the new development infrastructure market and the benefits this provides for price and service competition. However, unless third party services can be integrated into Telstra's (and we would suspect other RSPs') existing NBN ordering and support systems and product suites, there will a reduction in service competition available to consumers in new estates.

Link to overbuild protections

Given the critical nature of this issue and the impact a lack of service competition will have on consumers in these markets we consider that additional obligations are required in the Build and Operate CLC to make a clear link between the delivery of NBN-consistent outcomes and a carrier's consequent protection from NBN overbuild.

We recommend that areas within a development boundary are presumed to fall within the NBN fixed line footprint, and therefore are subject to NBN build, unless the requirements set out in the licence condition are met. If the requirements are met, then the development should be considered to fall outside the NBN fixed line footprint, in which case Telstra would face no restrictions in providing retail services over third party infrastructure in that development.

Section 5: Build and operation requirements

In order to facilitate efficient and simple service delivery and in turn effective retail service competition, we also recommend the CLC be updated to include the following obligations.

- Points of interconnection (POIs) should use equivalent technical specifications and the same POIs as NBN's POIs. As NBN changes their POI specifications, third party infrastructure providers would need to make the same changes at the same time.
- Network specifications should be equivalent to the NBN's. Network specifications cover the product and pricing construct and settings including the AVC/CVC model, traffic classes and other product elements such as multicast functionality. Any changes to these specifications

would need to be made by all parties in the supply chain simultaneously, including changes to firmware.

- Ordering and fault reporting should be through interfaces (OSS/BSS) equivalent to NBN's. Third parties should use the same systems, and at a minimum interfaces must match all NBN specifications set out in the WBA, including B2B and service portal specifications as regularly amended (sometimes on a monthly basis).
- Network Termination Devices must be built to NBN specifications. As NBN's specifications change over time, so third party NTD specifications must be updated simultaneously.
- The product suite offered by the 3PIP must include the products offered by NBN, so that business customers with sites that straddle the NBN and third party infrastructure can be provided with a single set of services. 3PIPs could offer additional products if they wished.
- There should also be a non-discrimination obligation on the suite of wholesale products offered by the specified carrier (i.e. where a wholesale product is offered to an RSP over the network, it should be made available to all RSPs).

Consistency in application with existing regulation

Where new regulation overlaps with existing regulation, there should be consistent application to ensure regulatory certainty.

Section 3 (1) Definition - Voice service definition

The Build and Operate CLC's definition of voice services overlaps with the well established regulatory definition for a voice service, the Standard Telephone Service (STS). The introduction of this new definition creates ambiguity and lack of clarity. The application of the STS definition would ensure that other relevant regulatory obligations are picked up in the provision of the underlying voice service definition. It has the potential to create dispute if an access seeker is offering an STS and is consequently subject to STS obligations but rejects any additional requirements because the Specified Carrier is only required to offer a "voice service". Conversely, the requirement that a "voice service" should enable dual-tone multi-frequency signalling or comparable functionality is not reflected in the STS definition.

Telstra notes that the extension of both the IPOLR obligation and replacement of the voice service definition with STS do not of themselves diminish Telstra's USO: by default, Telstra will still be required to offer a STS to a customer in the new development on request. However, that requirement should be relaxed in accordance with Section 4.9 of the TIND Policy where a suitable voice service is supplied by another provider.

Section 3(3) – Grounds for discrimination

As drafted the Build and Operate CLC allows the specified carrier to discriminate against a wholesale customer which fails to comply with an obligation reasonably necessary to protect the specific carrier's 'legitimate commercial interests.' This is very broad, as 'legitimate commercial interests' may include numerous factors.

Exceptions from the general principle of non-discrimination are considered in the Competition and Consumer Act. We consequently recommend that the section reflected the equivalent exceptions section

in the Category B SAOs, which specifically sets out what constitutes 'reasonable grounds' (including the creditworthy exemption).

5.3. Activation and fault repair timeframes

Sections 5(12) and 5(14) define the timeframes for service activation and fault rectification. To a large extent, these timeframes and the associated definitions reflect the NBN Wholesale Broadband Agreement (WBA). For example, the timeframe for connecting a user in type 1 premises (existing physical connection) is one business day, equivalent to the WBA timeframe for connecting an NBN premises where the infrastructure including the Network Termination Device is in place.

The timeframes provided by wholesalers are problematic for RSPs where they do not provide sufficient lead-time for an RSP to meet regulated Consumer Service Guarantee (CSG) timeframes. This appears to be acknowledged in the CLC, where it is stated that interaction between the performance levels and the retail CSG are being considered further. Even leaving the CSG to one side, the timeframes are inadequate for ensuring good retail service to end users without a number of additional elements being put firmly in place. The necessary elements are as follows:

- The wholesale activation and fault rectification timeframes set out in the CLC should allow RSPs sufficient time to meet their CSG commitments. Unless appropriate Test and Diagnostic tools and system interfaces are in place, matching wholesale and retail timeframes allows no time for an RSP to ensure an action has been completed in a timely manner.
- Wholesalers should be made subject to targets for meeting the specified timeframes consistent with NBN's Performance Objective for FTTP connections, which is 95%. This leaves a small amount of headroom for RSPs to meet the retail CSG target of 90%. If wholesalers do not meet the specified performance objectives then they should be subject to penalties, for example through payment of a financial penalty to the ACMA and/or the requirement to put in place an enforceable plan of corrective actions.
- To incentivise compliance with wholesale performance targets and ensure RSPs are compensated for any CSG payments made due to poor wholesale performance, wholesalers should be required to pay RSPs a rebate for missing their targets on a per-event basis.

The service activation timeframes in the CLC do not appear to allow enough time for RSPs to meet their CSG commitments in all cases, but there is uncertainty about how these timeframes apply that should be clarified before specific timeframes can be recommended.

The fault rectification timeframes in the CLC should be changed to mirror those in the NBN Wholesale Broadband Agreement for FTTP and Fixed Wireless, which are as follows:

- Urban area: 3pm next Business Day
- Rural area: 1pm next Business Day
- Remote area: 11am third Business Day