

5 June 2020

Director

Telecommunications Competition

Department of Infrastructure, Transport, Regional Development and Communications

Via email: [InfrastructureAndAccess@communications.gov.au](mailto:InfrastructureAndAccess@communications.gov.au)

## Consultation on Telstra request for extensions to Ministerial exemptions for its South Brisbane and Velocity networks

NBN Co Limited (**nbn**) welcomes the opportunity to provide its views on Telstra's request for an extension of the Ministerial exemptions for its South Brisbane and Velocity fibre networks (the Networks). On 9 January 2012, Telstra was granted exemptions from Parts 7 and 8 of the *Telecommunications Act 1997* in relation to the Networks (the Exemptions). These Exemptions meant Telstra did not have to provide a Layer 2 bitstream service on a wholesale only basis over the Networks until the expiry of the Exemptions which is currently 1 July 2020.

Telstra is now proposing that the expiry date of the Exemption is extended until the earlier of:

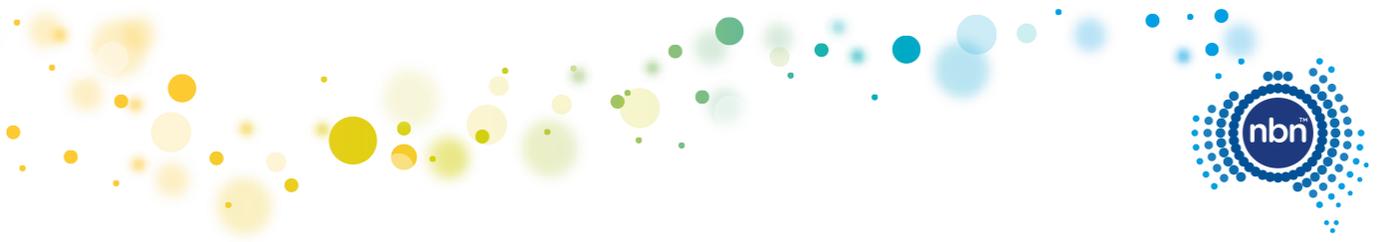
- 1 July 2023, if Telstra still owns the network, and
- 90 days after the last customer transition is complete, if Telstra sells the network to a third party.

While there were valid reasons for the Exemptions to be granted in 2012, it is important that the Exemptions expire within a reasonable timeframe now that the Government's Telecommunications Reform Package has passed the Parliament and the Designated Day, leading to the finalisation of Telstra's Structural Separation, is approaching.

It is **nbn's** clear preference that any extension granted to the Exemptions is targeted and justified so that Government policy can be fully implemented. Finding the right settings to remove the Exemptions will allow the fulfilment of the long-standing Government policy that all high speed broadband networks should be wholesale only and enable the provision of services equivalent to those provided by **nbn**. Any lengthy extension of the Exemptions hinders the Government's ability to fully achieve this policy.

The Exemption has already been extended three times (in 2013, 2015 and 2018), a further extension is to the detriment of end users connected to those networks who are not currently receiving the benefit of greater retail competition afforded by the revised Government policy.

Given this, **nbn** is of the view that the Exemptions should only be extended for a maximum of 12 months (or until 1 July 2021). It has been clear Government policy since 2011, and from when the Exemptions were first granted in 2012, that Telstra would have to sell the Networks or otherwise comply with the regulatory framework detailed above. An additional extension of three years should not be required given the 10 years that has already been had to prepare for this event.



Further, in the event of a sale of the Network, it will be important that the customer transition process occurs quickly and smoothly. This will again allow Government policy to be fulfilled expeditiously. In order to achieve this, any amended instruments should be more prescriptive as to when the last customer transition should be completed. Currently this limb of the proposed extension is quite open-ended and if combined with the suggested later expiry date of 1 July 2023, it would be possible to structure any sale and customer transition process to state that it was not required to be completed until the end of those 3 years (or until 1 July 2023). It is not clear from Telstra's Consultation paper why such a lengthy period would be required to transition customers as a result of the sale.

As such it is our view that the Exemptions should be extended until the earlier of:

- 1 July 2021, if Telstra still owns the network, and
- 90 days after the last customer transition is complete, if Telstra sells the network to a third party.

Finally, we note that as the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* has now received Royal Assent any reliance on, or references to, Part 7 of the *Telecommunications Act* should be removed from the Exemptions as they have now been repealed.

If you have any questions in relation to the above, or if you require additional information please contact Sarah Alderson at [sarahalderson@nbnc.com.au](mailto:sarahalderson@nbnc.com.au).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J. Crichton', is positioned above the typed name.

Jennifer Crichton  
EGM, Head of Regulatory  
NBN Co