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## **TELSTRA CORPORATION LIMITED**

### **Submission to the Department of Infrastructure, Transport, Regional Development and Communications regarding draft SIP Exemption Instrument**

**Public version**

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## 01 Introduction

Telstra welcomes the opportunity to respond to the Department's consultation on the draft Statutory Infrastructure Provider (**SIP**) Exemption Instrument.

Telstra supports the introduction of the SIP regime because it will provide industry and consumers with certainty that all premises in Australia can access telecommunications infrastructure that supports the delivery of superfast broadband.

It is important, however, that there are appropriate exemptions from the SIP regime, so that this new legislation can operate consistently with existing regulatory obligations including the Universal Service Obligation (**USO**), and also to prevent the SIP regime from inadvertently applying to installations of mobile network infrastructure which are not intended to be covered.

Against that background, Telstra supports each of the exemptions included in the draft SIP Exemption Instrument. In Part 2 of this submission, we provide more detailed comments regarding our support for the exemption instrument.

## 02 Comments on the draft SIP Exemption Instrument

### 2.1. The SIP nomination "trigger" and SIP obligations

Under the SIP legislation, a carrier is required to nominate as the SIP where it installs network infrastructure which would enable the supply of "eligible services" to premises in the whole of a real estate development project or building redevelopment project, and the installation was carried out under contract. "Eligible services" include a "listed carriage service" which includes "a carriage service between a point in Australia and one or more other points in Australia". Accordingly, the installation of almost any telecommunications network infrastructure could trigger the requirement to nominate as the SIP.

Once a carrier becomes a SIP, it is required to connect premises to its networks and to supply wholesale services to carriage service providers (**CSPs**) on reasonable request, so the CSPs can supply superfast broadband services to end users. In particular, a SIP is required to connect premises to a "qualifying fixed-line telecommunications network" and, if that is not reasonable, to a "qualifying telecommunications network" so the CSP can provide "qualifying fixed wireless carriage services" or "qualifying satellite carriage services" to the end user.

There is a degree of misalignment between the (broader) kinds of telecommunications network infrastructure that can trigger the requirement to nominate as the SIP, and the (narrower) kinds of telecommunications network infrastructure to which a SIP is required to connect premises. Because of this, without an appropriate exemption from the SIP legislation, Telstra may be required to nominate as the SIP where it installs telecommunications network infrastructure in order to provide USO voice services (effectively upgrading the voice USO to a broadband USO), and carriers including Telstra may be required to nominate as the SIP where they install mobile network infrastructure to improve mobile coverage in a new development (even though this is not a network type to which the SIP is required to connect premises). As noted in the draft Explanatory Notes (page 1), the application of the SIP legislation in these circumstances "may otherwise discourage or prevent the provision of voice networks where there is a need for them (for example, in small communities outside the fixed line network of NBN Co), to the disadvantage of affected consumers".



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Accordingly, Telstra welcomes the draft SIP Exemption Instrument, which we believe provides appropriate and necessary exemptions to address these issues. Importantly, we note that, where developments are covered by a SIP exemption, NBN Co will remain the default SIP for the development, ensuring that end users in the development will be able to access superfast broadband infrastructure and services should they wish to do so.

## **2.2. Sections 5 and 9: the copper exemptions**

Telstra supports the copper exemptions in sections 5 and 9 of the draft SIP Exemption Instrument. They clarify the interaction between the SIP and the USO by allowing Telstra to continue to install infrastructure to provide USO voice services without needing to nominate as the SIP. This is discussed in more detail in 2.2.1 and 2.2.2 below.

### **2.2.1 The interaction between the SIP and the USO**

It is critical that Telstra does not trigger the SIP obligations simply by installing telecommunications infrastructure to meet our USO. While other carriers have the choice of whether to deploy infrastructure, and therefore whether to assume the role of SIP, the USO provider must, where necessary, deploy infrastructure which is at least capable of providing the USO voice service. The entry into a contract with a developer to deploy telecommunications infrastructure should not trigger the application of the SIP regime – which would require the provision of superfast broadband infrastructure and wholesale services throughout the development – if the contract with the developer is only to provide a voice capable network or otherwise to meet the USO.

Without a SIP exemption for infrastructure installed to provide USO voice services, Telstra would effectively need to install superfast broadband infrastructure whenever it contracted with a developer. In this way, Telstra's voice USO would effectively be upgraded to a broadband USO in new service areas. This would impact Telstra's ability to efficiently meet its USO, and inappropriately shift responsibility for deploying superfast broadband infrastructure in these circumstances from NBN Co to Telstra.

Sections 5 and 9 of the draft SIP Exemption Instrument address this concern insofar as Telstra installs copper network infrastructure to provide USO voice services (discussed further in 2.2.2 below).

### **2.2.2 Copper network infrastructure for USO voice services**

Outside NBN Co's fixed-line footprint, Telstra may install copper network infrastructure under contract in order to provide USO voice services.

The copper exemptions in sections 5 and 9 of the draft SIP Exemption Instrument are important because they will allow Telstra to continue to install copper network infrastructure to meet our obligations as the primary USO provider, without having to nominate as the SIP. As the draft Explanatory Notes state (page 2): *"If Telstra were subject to SIP requirements for these copper networks it would most likely have to cancel existing contracts, as the copper networks it installs do not support high-speed broadband (unless further enhanced with additional technology)"*.

Overall, Telstra supports the exemptions in sections 5 and 9 of the draft SIP Exemption Instrument, because they will allow Telstra to continue to install copper network infrastructure where that is an



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efficient means of providing USO voice services outside NBN Co's fixed-line footprint, and NBN Co as the default SIP will be responsible for providing superfast broadband infrastructure in those areas.

### **2.3. Sections 6 and 10: the HFC exemptions**

Telstra supports the HFC exemptions in sections 6 and 10 of the draft SIP Exemption Instrument.

Telstra's HFC networks are transitioning to NBN Co, and the majority of our HFC access networks have already done so. At this stage in the NBN rollout and migration process, sections 6 and 10 will allow Telstra to install a very limited number of HFC connections to premises, which will transition to NBN Co in the near term.

In our view, it is appropriate that Telstra will not be required to nominate as the SIP in circumstances where we install HFC infrastructure to service premises for a short period, and where that infrastructure is subject to an agreement requiring the transfer of the infrastructure to NBN Co, particularly given NBN Co will be the default SIP under the SIP legislation.

We note that the HFC exemptions are also consistent with other parts of the Telecommunications Reform Package, including the Regional Broadband Scheme, which excludes Telstra lines transitioning to NBN Co from the scheme.

### **2.4. Sections 7 and 11: the mobile exemptions**

Telstra supports the mobile exemptions in clauses 7 and 11 of the draft SIP Exemption Instrument.

As discussed above, the requirement to nominate as the SIP may be triggered by the installation of almost any telecommunications network infrastructure. Because of this, without an appropriate exemption from the SIP legislation, carriers may be required to nominate as the SIP where they install mobile network infrastructure under contract with a developer to improve mobile coverage in a new development, even though the obligations on SIPs do not apply to purely mobile networks (they apply to fixed-line, fixed wireless and satellite networks).

If carriers were required to nominate as the SIP in these circumstances, they would also need to install a qualifying telecommunications network (i.e. superfast fixed-line, fixed wireless or satellite infrastructure) in order to fulfil their SIP obligations, even though this was not the intention of the contract with the developer. This may make carriers less likely to contract with developers to improve mobile coverage in new developments, thereby affecting the amenity of these new developments. At the same time, requiring mobile network providers to nominate as the SIP would also inappropriately shift SIP responsibility from NBN Co (as the default SIP) to those mobile network providers.

Accordingly, we support the exemptions in sections 7 and 11 of the draft SIP Exemption Instrument. These exemptions will allow carriers to install mobile network infrastructure to improve mobile coverage in a new development, without being required to nominate as the SIP and to install a qualifying telecommunications network in the development. NBN Co as the default SIP will be responsible for providing superfast fixed-line, fixed wireless or satellite broadband infrastructure in those areas.



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## 2.4.1 Suggested amendments to draft Explanatory Notes

On page 3 of the draft Explanatory Notes, it states that: *“The proposed exemptions are limited to contracts to supply mobile services that do not also require the carrier to supply wholesale broadband within the development”*. On page 7, when describing the mobile exemptions in more detail, it states that:

*“As noted at the discussion under section 4, **mobile network** is defined to mean a telecommunications network that is used principally to supply public mobile telecommunications services. As a result, the main reason for the installation of the network would be to provide mobile coverage for the real estate development project. As noted at the discussion under section 5, a ‘qualifying carriage service’ is essentially a retail service that provides peak download speeds of at least 25 Mbps and peak upload speeds of at least 5 Mbps.*

*In summary, section 7 exempts real estate development projects where mobile networks have been installed by carriers within, or in proximity to, project areas of the real estate development project, where those networks have been installed under a contract with a developer and the contract does not require the carrier to supply qualifying carriage services in any or all parts of the project area.”*

In each case, we think it is probably worth clarifying that the mobile exemptions apply where the contract with the developer does not require the carrier to supply “qualifying carriage services”, and that “qualifying carriage services” are defined as qualifying fixed-line, fixed wireless and satellite carriage services. Contracts for the installation of purely mobile infrastructure are (and should be) able to cover mobile voice and data services.

## 2.5. Sections 8 and 12: the radiocommunications fixed voice services exemptions

Telstra supports the exemptions in sections 8 and 12 of the draft SIP Exemption Instrument. These exemptions are most relevant to Telstra in our role as the primary USO provider, which we are able to fulfil using a range of different technologies including copper (discussed above) and wireless solutions.

As discussed above, without a SIP exemption for infrastructure installed to provide USO voice services, Telstra would effectively need to install superfast broadband infrastructure and supply relevant services whenever it contracted with a developer. In this way, Telstra’s voice USO would effectively be upgraded to a broadband USO in new service areas, which would impact Telstra’s ability to efficiently meet its USO, and inappropriately shift responsibility for superfast broadband infrastructure and services in these circumstances from NBN Co to Telstra.

To date, the lack of regulatory certainty about the interaction between the SIP regime and the USO has made Telstra reluctant to offer quotes to developers for wireless technology in new developments outside NBN Co’s fixed-line footprint, in circumstances where wireless technology may be more cost effective for developers than extending the legacy copper network to service the new development.

The exemptions in sections 8 and 12 of the draft SIP Exemption Instrument provide the regulatory certainty needed to enable Telstra, as the primary USO provider, to contract to provide voice services in a cost-effective way using radiocommunications platforms where appropriate, without having to take on the role of SIP. NBN Co as the default SIP will have responsibility for providing superfast broadband infrastructure and services in areas to which these SIP exemptions apply.



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## 2.6. Definition of the project area of a real estate development project

In the draft SIP Exemption Instrument, the project area of a real estate development project is defined in section 4(1) to have “the same meaning as in subsection 372Q(6) of the Act”. We think this definition should refer to subsection 372Q(2), as well as subsection 372Q(6), of the *Telecommunications Act 1997*. Both of these subsections define the project area of a real estate development project for the purposes of the Act.

Accordingly, we would amend section 4(1) of the draft SIP Exemption Instrument to say the following (suggested amendment is underlined):

***project area:***

- (a) for a building redevelopment project—has the same meaning as in section 360A of the Act; and
- (b) for a real estate development project—has the same meaning as in subsections 372Q(2) and 372Q(6) of the Act.