TELSTRA CORPORATION LIMITED

Submission on Consultation on Proposed Temporary Facilities

20 December 2010
EXECUTIVE SUMMARY

Telstra is pleased the Australian Government has proposed amendments to the Telecommunications (Low-impact Facilities) Determination 2018 (LIFD) and the Telecommunications Code of Practice 2018 (Code) which will allow carriers to deploy temporary facilities as low impact telecommunications facilities.

The telecommunications industry provides essential services for connecting communities and infrastructure, including carrying emergency calls and other critical communications to support the wellbeing of communities. The proposed changes contained in the exposure draft of the LIFD and Code of Practice are necessary to enable the telecommunication industry to comply with these instruments and to effectively maintain service to the community during emergencies, maintenance activity, major events and peak holiday periods.

We are comfortable that most of the proposed changes are workable. However, there are a few aspects that require further consideration.

The exposure draft of the LIFD imposes certain limitations on the characteristics of the temporary facilities to be deployed as low-impact telecommunications facilities. As a result, it does not capture all types of temporary facilities that Telstra uses, such as a Cell on Wheels. It also does not allow temporary facilities to be deployed in areas of environmental significance when responding to emergencies. In this regard, Telstra submits that the following changes should be made to the LIFD:

- allow the incorporation of temporary towers as part of a temporary above ground facility;
- exclusion of temporary antennas from the 5-metre height limitation of a temporary facility;
- inclusion of temporary aerial cables as a new item; and
- the ability to deploy temporary facilities listed in Part 7 of the LIFD in areas of environmental significance when responding to emergencies.
01 INTRODUCTION

Telstra welcomes the proposed changes in the exposure drafts of the LIFD and the Code. The changes are important not only for the operation of the mobiles network but also for delivery of transmission backhaul for single or multiple communities in rural areas.

In this submission, Telstra is focussed on ensuring the LIFD works as practically as possible given the aims of the Telecommunications Legislation Amendment Act 2019 (Cth) (Amendment Act) and the Explanatory Notes released with the exposure draft. In doing so, Telstra has applied the exposure draft to case studies in which maintaining service to the community will necessitate temporary facilities and submits the changes included in this submission are necessary for the practical implementation of the proposed amendments.

The exposure draft of the LIFD flows from the amendments introduced in the Telecommunications Legislation Amendment Act 2019 (Cth) in March 2019.

In preparing this submission we reviewed the revised Explanatory Memorandum and Senate Committee Report and noted the following points.

In the revised Explanatory Memorandum, the key objectives of the Amendment Act include:

- to allow carriers to install temporary telecommunications facilities using carrier powers and immunities. These facilities would be used to assist ESOs in times of emergencies and natural disasters;
- to minimise disruption to services during maintenance or replacement of existing facilities; and
- to provide additional coverage during events (e.g. sporting events and music festivals) and high-demand holiday periods.

The Senate Committee Report further states that:

“Carriers are often required to obtain development approval from local governments to temporarily install these facilities, which increases costs and timeframes for deployment, and affects the business case for their use. The inability to provide temporary facilities can mean there is insufficient capacity for customers to connect to mobile networks during emergencies, maintenance, major events and peak holiday periods.”
02 Clarification of temporary above ground facilities

This section of the submission relates to the items listed in Part 6A of the Schedule to the LIFD exposure draft.

2.1. Temporary Above Ground Facilities

(a) Incorporation of temporary tower as part of temporary facilities

Telstra is concerned that the prohibition of a temporary tower (incorporated with a temporary above ground facility) under 1 (b) of 6A and the height limit under 1(d) of Part 6A has an unintended consequence of prohibiting the use of a Cell on Wheels (CoW).

Having applied the proposed amendments to case studies, it appears that the Telstra CoW (photo attached at Attachment A) would not be permitted under proposed Part 6A item 1 (b) as its built-in pump up mast is incorporated into a temporary above ground facility.

(b) Exclusion of temporary antennas from 5m height limitation

In addition, the COW’s temporary antennas (Temporary Above Ground Facilities) located at the top of the pump-up mast exceed 5 metres above ground, so do not comply with the height limit under 1(d) of Part 6A. In order to achieve the aims of the Amending Act, and for clarity, it is submitted that item 1 (b) of 6A is deleted and that the height limit under 1(d) of Part 6A is amended to exclude antennas. Noting that a temporary tower can only be up to a maximum height of 30m (excluding rural areas when maintaining an existing facility).

The proposed amendment would be consistent with clause 5 (b)-(f) of Schedule 3 of the Act.

2.2. Include temporary aerial cables as a new item for clarity

Carriers use aerial cables to connect temporary facilities and can generally do so more quickly than installing underground cables and with less environmental impact.

Including temporary aerial cables as a new item in the LIFD would allow carriers to connect the temporary facilities to backhaul and ensure the operation of the temporary facility. While cables are already able to be installed under the ancillary power (clause 3.1(4) of the LIFD), this proposed amendment would clarify that aerial cables for temporary facilities are expressly permitted.
03 Emergency facilities in Areas of Environmental Significance

We understand the intent of the Senate Committee Report is for temporary emergency facilities be permitted in Areas of Environmental Significance (AoES).

Clause 3.1 provides that a facility is not a low-impact facility where it is to be installed in an AoES which is further defined at clause 2.5.

Telstra considers that it is logical to exempt temporary emergency facilities from the AOES exclusion, as emergencies can happen anywhere, including impacting AoES and it does not make sense to deprive those areas of the same support that would be offered in other areas. An amended clause 3.1 is shown in mark up in an attached copy of the exposure draft of the LIFD.

As temporary emergency facilities are only installed to address emergency short term coverage and capacity issues, it is not appropriate to apply the same rigorous planning assessment as would occur for permanent facilities to a temporary emergency facility. Temporary emergency facilities generally do not require ground breaking or removal of vegetation and have less environmental impacts than a permanent facility.

To have the temporary emergency facilities which are listed in the Consultation Draft of the LIFD subject to the AoES exemption would potentially provide national inconsistencies, as currently carriers must follow the relevant Local Government planning process in order to install temporary facilities in an AoES. This is administratively onerous, where the focus needs to be on urgently deploying emergency infrastructure. This may dilute the ability of carriers to achieve the LIFD’s goals when there is an emergency or natural disaster.

Telstra considers it is particularly important for temporary facilities that are installed pursuant to Part 7 – Emergency facilities for carriers to be able to install such facilities in all areas with short notice in order to provide immediate assistance to emergency services organisations. The Senate Environment and Communications Legislation Committee Report (September 2018) notes that this stance was supported by the Australian Local Government Association.
04 Telstra’s proposed amendments to the LIFD and minor drafting corrections

The attached copy of the exposure draft of the LIFD is marked up to show our suggested changes to implement the feedback in this submission. This includes restructuring of all items relating to temporary facilities to a new Part 9 and minor corrections as detailed below. The marked-up changes appear to be substantial, however in most cases are simply capturing the original changes drafted by DoCA. Where further amendments have been proposed, these have been highlighted in yellow shade for ease of tracking.

4.1. New Part 9 – Temporary facilities

It is Telstra’s view that, from an operational perspective, grouping all the temporary facilities (including Temporary Towers and Temporary Above Ground Facilities) in one new part of the LIFD is the most simple and efficient drafting approach for the operation of temporary facilities which are within the LIFD. In this way whether there is an event, holiday or maintenance program which requires a temporary facility, carriers and other stakeholders need only deal with one part of the LIFD. The temporary nature of the facility is its defining characteristic and a logical starting point in the LIFD.

This approach may also provide benefits to the extent that the reader does not inadvertently refer to other parts of the LIFD to undertake a temporary facilities compliance assessment. For example, a 3-metre satellite dish can be used as a temporary facility based on the current drafting, however, it cannot be used as a permanent facility under Part 1. Therefore, Telstra recommends the explanatory memorandum include commentary regarding the distinct operation of the new temporary facilities provisions in the LIFD.

4.2. Minor drafting corrections

(a) Page 1 of the exposure draft of the LIFD

The word “free standing” has been used to refer to the temporary towers which are later listed in the Schedule at Part 1 Items 13-19.

“Free standing” is not defined in the Act or related documents, nor is it an expression used in relation to towers anywhere in the suite of documents. Its inclusion does not add any clarity and may introduce confusion.

(b) Page 6 of the exposure draft of the LIFD

The definition of “original facility” is amended to correct an error which Telstra agrees with, however the drafting could be improved to be more accurate.

05 Code of Practice

Telstra has no comments regarding the Code of Practice.
Attachment A: Photo of CoW with pump up mast