

## **TELSTRA CORPORATION LIMITED**

### **Submission to the Department of Communications on the exposure draft of the Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014**

17 November 2014

## Executive Summary

Thank you for seeking our comment on the proposed Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014 (**the CLC**).

We support the goal of the CLC, which is to ensure that there is a level playing field for all carriers in the provision of services to retail customers. As such, if a carrier falls within the scope of the CLC and the separation obligations apply, those obligations should be, at a minimum, analogous to the obligations Telstra faces under its Structural Separation Undertaking (SSU). However, we are concerned with the CLC's scope as drafted, as it would retrospectively capture networks that have been built in compliance with the existing Superfast Network Obligations and have detrimental consequences for Telstra's residential customers. This outcome would appear to be at odds with the Government's policy intent.

Therefore, Telstra believes that it is important that the CLC be focussed on the limited set of networks that impact on the principle of the level playing field and not disadvantage residential customers. Taking into account these two goals we would like to provide feedback and proposed amendments on the:

- scope of the CLC; and
- separation obligations.

We are concerned that, as drafted, the scope of the CLC would capture existing Telstra networks. This would have a detrimental impact on our customers, and expose Telstra to a significant compliance burden (in order to retrospectively and regularly audit existing networks to confirm whether the 0.05% residential customer threshold has been inadvertently exceeded).

We consider that there is a solution that will allow the Government to meet its NBN policy objectives while addressing our concerns. Our preferred solution is to have the CLC:

- apply to superfast carriage services that operate above a certain frequency;
- provide flexibility for Minister to determine other relevant superfast technologies that should be captured by the CLC; and
- include in the Explanatory Memorandum clarification to distinguish between network elements.

In relation to the separation obligations, as a minimum, the CLC should impose rules analogous to those imposed under Telstra's SSU.

At **Attachment A** is a detailed mark up of the proposed changes in line with our recommendations.

## 1 Scope of CLC

As drafted, Telstra is concerned about the customer impacts of the CLC's current definition of designated networks. The current drafting of CLC would capture:

- Known caught networks - around 17 fibre based Telstra networks that were completed prior to 1 January 2011 that did not require an exemption under sections 141A or 144 of the Telecommunications Act, for example Telstra's fibre network in Point Cook, Victoria; and
- Unknown caught networks – existing networks and future network extensions over and under 1km that serve more than 0.05% residential customers.

### 1.1. Known caught networks

Telstra has 17 fibre networks where the build was complete prior to 1 January 2011 for which Telstra did not require Ministerial exemptions (e.g. Point Cook). As the CLC only exempts fibre based networks that are the subject of a ministerial exemption, these networks would be subject to the CLC.

As Telstra is already subject to SSU obligations, the implementation of the CLC separation obligations on these known caught networks is unfeasible. Telstra's options would be to immediately stop selling voice and broadband services to customers and use alternative network infrastructure or slow down network speeds to these customers.

This would have the following potential detrimental impacts on customers, as it would:

- cause delay to service availability if existing network was not available and alternative infrastructure was required;
- cause confusion as customers are unlikely to understand the reason why they are required to change the infrastructure or speed over which they take their service;
- if a network change was required, make redundant in-home equipment configured for a fixed line network, some of which would have been purchased at the customer's own cost; and
- require new contracts with customers as the advertised speeds would differ from that they contracted for.

In addition to the detrimental impacts on customers, the CLC would impose new capital costs as a result of transitioning customers onto new networks or reconfiguring existing networks.

### 1.2. Unknown caught networks

Although Telstra has processes in place to ensure that network extensions over which superfast services are provided are compliant with Parts 7 and 8 of the Telecommunications Act, the CLC would impose a new 0.05% residential customer test. In Telstra's view this new threshold is stricter than the test of 'wholly or principally' which is currently utilised by Part 7 of the Telecommunications Act.

As the CLC will retrospectively apply to all of Telstra's existing networks, to ensure compliance with this new test, Telstra would need to undertake a retrospective audit of our entire fixed network infrastructure and customer base. Once this costly compliance activity was complete, if there were any impacted customers, they would face the same impacts as outlined above. This audit exercise would also need to occur on a regular basis to ensure continued compliance with the CLC as even a small subscriber drop could result in a network being captured. For new network extensions, we would have to apply additional rigour to our existing upfront checks and also continue to monitor customers on an ongoing basis.

### 1.3. Proposed solution

Having reviewed the Government's Regulatory Impact Statement, Telstra considers that it is not the Government's intention for the CLC to capture all the networks set out above or impact these customers. It understands that a key purpose of the CLC is to ensure a level playing field where proposed network

extensions of less than 1km cause interference to existing services by mid-point injection of VDSL or ADSL at full power at the Network Boundary Point. Telstra would suggest the following solution to meet the Government's policy objectives while avoiding the above described impact on residential customers.

In addition to the existing exemptions in the CLC, Telstra proposes an amendment to the draft CLC so it focuses on the technology problem both for existing and future based technology deployments. This can be achieved by limiting the scope of the CLC to services that are offered above a stated frequency range that are not compliant with the ULLS Network Deployment Standard. We also consider that the Government may wish to include the ability for the Minister to add services that fall within the scope via a notice on the Department's website in response to technology developments.

The above proposal, which is a more targeted approach, addresses the issues posed by the deployment of superfast services and such changes would ensure that the CLC would apply to network extensions of less than 1km that utilise non-exempted superfast technologies within the next two years, without impacting existing customers.

To address the ongoing compliance burden Telstra recommends removal of the CLC's 0.05% threshold for residential service. We consider that this would still achieve the policy objective by capturing networks designed for mass market residential customers without placing new compliance burdens on Telstra. It would also avoid inadvertent capture of very minor ancillary edge case scenarios where a handful of residential customers may sit on a corporate network.

Telstra has also proposed an additional carve out to the scope of the CLC to enable it to continue to provide USO services over fibre to a new real estate developments (as opposed to additional stages of an existing real estate development) within the 1km limit, as a fibre solution is often cheaper than copper and may provide a better customer outcome.

#### **1.4. Definition of telecommunications network**

Telstra is also concerned that some networks may be inappropriately captured by the CLC depending on how the definition of telecommunications network is applied. For example, if a fibre principally services a business network, but is located within a cable sheath which also contains fibres that serve residential customers and the two networks are not interconnected, the business network should not be captured by the CLC purely due to the fact that the fibre supplying it is physically located in the same cable sheath as a fibre supplying a residential network.

The CLC uses the term "telecommunications network", which is defined in the Telecommunications Act as "a system, or a series of systems, that carries, or is capable of carrying, communications by means of guided and/or electromagnetic energy". Telstra's view is that separate physical strands which are not logically connected at the basic service layer are not part of the same network. However, we are concerned that there could be some doubt around how the definition of telecommunications network is applied. The consequences could be to draw in logically separate customer bases into the test about the characterisation of the network use and therefore distort the characterisation for the purposes of the CLC, particularly given a small level of residential usage may trip the CLC requirements.

To avoid this scenario, we suggest that the Explanatory Memorandum for the CLC include a clarifying statement that notes that where a network which qualifies as a designated telecommunications network is provided over physical infrastructure that is also used to supply a logically separate network, then each logically separate network should be separately tested under the CLC. This will ensure that separate networks are not inadvertently captured due to physical location and are each considered separately under the CLC.

## **2 Separation Obligations**

The second point for consideration is the proposed separation obligations that will apply to the carriers whose networks fall within the scope of the CLC.

In an NBN environment, there should be a level playing field on the rules that apply to industry participants in the supply of services to residential and small business customers. Consequently, Telstra

supports the application of separation obligations applying to carriers offering superfast services where they are not subject to the rules in Parts 7 and 8 of the Telecommunications Act.

Where these rules apply, they should be analogous to Telstra's SSU obligations. To deliver this, Telstra recommends that the:

- wholesale company should establish and publish performance monitoring statistics for its delivery of services to the retail company and the wholesale company; and
- specified carrier's CEO must provide written certification to a relevant Government Authority (for example, ACCC, ACMA or the Minister) on an annual basis that they have complied with the CLC and provide reporting that supports this certification.