

1 November 2016

Philip Mason
Assistant Secretary, Market Structure
Infrastructure Division
Department of Communications and the Arts

By email: InfrastructureAndAccess@communications.gov.au

Dear Mr Mason,

Submission to industry consultation on superfast carriage services Carrier Licence Condition

nbn welcomes the opportunity to provide our feedback on the current draft of the *CLC (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014 (amendment No.1 of 2016) (CLC)*.

Extending the CLC

nbn supports the proposed extension to the CLC. As outlined in the Department's Regulatory Impact Statement, the CLC is an integral part of level playing field provisions applicable to superfast broadband networks. Specifically, the CLC addresses competition concerns arising from vertically integrated networks and the potential for the operators of these networks to '*deny access to would-be competitors and potentially favour their own downstream operations over those of their competitors.*'¹

The reason for the limited duration of the CLC was that the instrument would not be required once the Government's proposed changes to Part 7 and 8 of the Telecommunications Act were in effect.² As passage of these legislative changes (originally planned to be in place by 1 January 2017) has been delayed, it is appropriate that the CLC continues in force.

Increased transparency

nbn also supports the introduction of reporting requirements to improve transparency of compliance with the CLC. Proposed new section 6(5A) will provide the ACCC and industry with greater clarity regarding the operating model of carriers that own or operate a designated network and the scope of those networks and, accordingly,

¹ Page 2 of the Regulatory Impact Statement.

² Refer to preferred Option 5 in the Explanatory Memorandum to *Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014* and [Government Response](#) to Vertigan Recommendations 3 and 4.



whether the objectives of the CLC are being achieved. In particular, under subsection 6(5A)(a) carriers will be required to report on the:

1. technology type and locality (by suburb and postcode) of each designated telecommunications network;
2. total number of carriage services in operation on each designated telecommunications network; and
3. names and ACN of each person supplied with one or more eligible services using each designated telecommunications network.

While **nbn** agrees with these requirements, we recommend that carriers also be required to report additional details that will achieve greater consistency in the reporting requirements for all operators of superfast broadband networks. In this regard, the proposed reporting requirements should be consistent with the *NBN Services in Operation Record Keeping Rules (SIO RKR)*s).

For example, with respect to FTTTP the SIO RKR require that **nbn** report (in **nbn**'s case, for each point of interconnection (**POI**)):

- the name of the POI;
- the state or territory in which the POI is located;
- the name of each access seeker being provided with FTTTP access services at the POI;
- the total number of FTTTP access service AVCs supplied in TC-1, TC-2 and TC-4 (grouped by data transfer rate 'tier' as specified in **nbn**'s applicable SFAA) for each access seeker at the POI;
- the name of each access seeker being provided with CVC services in connection with existing network access services at the POI;
- the contracted CVC TC-1, TC-2 and TC-4 capacity in Mbps for existing network access services for each access seeker at the POI;
- the average utilisation in Mbps for contracted CVC TC-1, TC-2 and TC-4 capacity for existing network access services between designated daily times for each access seeker at the POI; and
- the average utilisation in Mbps for contracted CVC TC-1, TC-2 and TC-4 capacity for existing network access services for each access seeker at the POI.

While some of these reporting aspects may not be relevant to a particular network, it is appropriate that carriers report on these categories of information in a manner applicable to the relevant designated telecommunications network. The rationale for **nbn**'s SIO RKR is to *'provide information on the rate and level of take-up of access services on the relevant network, as well as individual components and features of these services, and the resulting market shares.'*³ Knowledge of this information is equally applicable to those networks captured by the CLC and consistent with the objectives of the CLC.

Subsection 6(5A)(b) also requires that wholesale-only carriers declare that each designated telecommunications network has not been used by the carrier to supply eligible services to any of its associates. **nbn** supports this requirement, on the understanding that the effect of this provision is also that an associate of a carrier would not

³ Refer to the ACCC's [Explanatory Statement to NBN Services in Operation Record Keeping Rules](#), p.2.



be able to supply eligible services on a designated telecommunications network (where the carrier has notified the ACCC that it is operating the network on a wholesale-only basis).

The combined effect of new subsection 6(5A)(b) and existing subsection 6(6) should be that network owners and operators cannot enable the use of designated telecommunications networks by their associates in a manner that undermines the structural/functional separation objective of the CLC. **nbn** suggests that consideration also be given to including an 'anti-avoidance' provision in the extended CLC.

Long term changes to Part 7 and 8 of the *Telecommunications Act 1997*

While the extension of the CLC may be a necessary 'stopgap', we consider that the Government's foreshadowed longer term changes to the Telecommunications Act should be prioritised. Industry requires greater certainty regarding the long term regulatory framework applicable to telecommunications networks. By moving to longer term level playing field provisions, network operators and service providers will be in a better position to assess the costs and benefits of future investment in telecommunications infrastructure.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Caroline Lovell', is positioned above the printed name.

Caroline Lovell

Chief Regulatory Officer