Introduction

Telstra welcomes the opportunity to respond to the ACCC's fixed line services FAD 2018 consultation and position paper. We support the ACCC's proposal to rollover fixed line services prices on a nominal basis, and consistent with this, to maintain the current targeted set of non-price terms and conditions.

This expedited FAD process is a pragmatic approach which reflects the unique circumstances applying to the industry. Historically the setting of access prices for services on Telstra's legacy copper network has been an important feature of the regulatory framework for telecommunication services in Australia, with the objective of promoting the long term interests of end users (**LTIE**). However today, the National Broadband Network (**NBN**) is nearing initial build completion, significant migration to the NBN is occurring and the need for Telstra's legacy copper network is fast diminishing.

Given this environment of structural change, a detailed FAD pricing review would result in a significant regulatory burden for industry and the ACCC, which would not be in the LTIE. It would also divert industry attention away from issues of greater relevance, including NBN migration and the end user experience, and 5G investment.

The ACCC's proposed rollover of price and non-price terms and conditions provides an appropriate regulatory back-stop for the small number of services that will remain on Telstra's legacy copper network.

The remainder of this submission responds to the questions raised by the ACCC in its consultation and position paper.

Pricing structure

Question 1: In light of the influences affecting the cost of providing services, is the LTIE best served by maintaining the current price levels in nominal terms for fixed line and wholesale ADSL services?

Telstra agrees with the ACCC's position that the LTIE is best served by maintaining current price levels in nominal terms. This position is supported by: (i) the transition to the NBN and the declining relevance of Telstra's legacy copper network and services; (ii) the benefits of competition that end users on legacy services continue to experience; and (iii) potential price shocks if the ACCC's fixed line services model (**FLSM**) were applied to set prices.

As noted in our submission to the ACCC's preliminary consultation paper, the relevance and importance of the legacy copper network for competition and telecommunications services in Australia is fast diminishing as the rollout of the NBN nears completion (**Figure 1**). In this environment end users are best served by an expedited and simple FAD process which provides price stability and certainty. This would ensure that end users that remain on the legacy copper network receive price protection.

Importantly, price stability will also allow industry to focus on more important issues for the future of the communications industry and the benefit of Australian end users, including NBN migration, mobile investment and 5G.

Figure 1: Wholesales lines / SIOs on Telstra's legacy network

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[c-i-c ends]

It is also the case that end users have continued to benefit from lower prices for services provided over Telstra's legacy copper network. The ACCC's annual assessment of telecommunications market competition shows that between 2013-14 and 2017-18 prices on non NBN fixed broadband services have fallen by 12%.[1]

Finally, wholesale prices would increase if the FLSM were applied for the new FADs, with price increases potentially flowing to end users. This would not be in the LTIE, especially for those end users who remain on the legacy copper network. In preparing for this FAD inquiry we have made a preliminary update of the ACCC's FLSM, applying the model consistent with the ACCC's application during the last FAD, including maintaining the ACCC's "nbn scale adjustments".[2] Our preliminary update of the model suggests a once-off uniform price increase of over 30% in order to cover the building block revenue requirement.

This preliminary estimate is despite Telstra forecasting significant cost reductions during the next FAD period (**Figure 2**).

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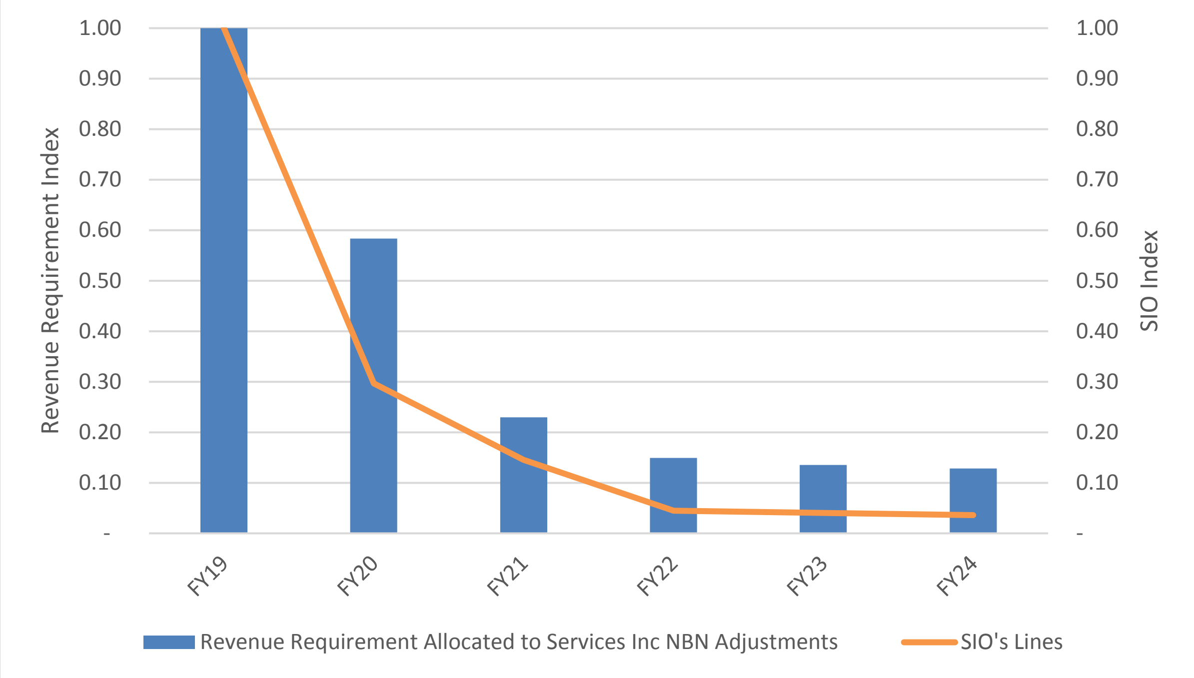
[1] See ACCC 2019, *ACCC communications market report 2017*-18, February, p. 19, available at https://www.accc.gov.au/system/files/ACCC%20Communications%20Market%20Report%202017–18—February%202019.pdf.

[2] In addition to applying the model consistent with the ACCC's application for the current FAD, we have maintained the "nbn scale adjustments" as a simple way of producing our preliminary update of the FLSM. However, there is a question as to whether the adjustments should apply post the NBN roll out, i.e. at a time when Telstra is required to maintain its legacy copper network for end users who are not required to migrate to the NBN.

Figure 2: Telstra costs (FLSM revenue requirement) and SIOs



The estimated price increase is driven by a number of factors. For example, customers outside of the NBN fixed line footprint are not required to migrate to the NBN. These customers tend to be in regional and rural areas, i.e. in areas with a higher cost to serve. However, there are also NBN fixed wireless and satellite customers in the vicinity of metropolitan areas and this poses the very real prospect that we may need to maintain a large number of exchanges in metropolitan areas for a relatively small proportion of customers. While Telstra receives USO funding, this funding does not cover the costs of maintaining Telstra's legacy copper network for remaining customers.

In terms of application of the FLSM, the model uses adjustments to remove price rises that would otherwise result from migration from Telstra's legacy copper network to the NBN (the ACCC's "nbn scale adjustments"). These adjustments are implemented by preventing unit costs for certain asset categories from increasing due to NBN migration. However unit costs for other asset categories can increase. Despite the forecast fall in expenditure on the regulated fixed line network (Figure 2), the rapid decline in SIOs results in unit cost increases for these other asset categories.[3] It is these other unit cost increases which drive the FLSM price increase of over 30%. However, for the reasons given above, Telstra does not believe that it is in the LTIE to increase prices on legacy services; instead we support the ACCC's proposal to maintain prices are their current levels.

Duration of future FADs

Question 2: Should the ACCC set prices in the FAD for five years or a shorter period noting that a variation could be requested at a later date as the operational circumstances of the copper network in the post NBN migration period become clearer? Please explain the reasons for your view.

[3] Telstra forecasts that by 2024 there will only be **[c-i-c begins]**

[c-i-c ends]

The ACCC asked a similar question as part of its preliminary consultation, asking whether separate prices should be applied pre and post NBN migration completion. For the same reasons submitted previously, Telstra believes that prices should be set for five years, consistent with the ACCC's decision to extend the declaration of fixed line services to 30 June 2024.

- *Reduced complexity:* determining prices for a longer period would reduce complexity (and time) of the review process(es). Two shorter FAD periods suggests a more focussed review of prices, which could include updating the FLSM and development of a new pricing approach for the post NBN migration period. Such complexity given the declining relevance of the legacy copper network would not be in the LTIE.
- *Promotes fit-for-purpose regulation:* a longer FAD period would promote regulation that is fit-for-purpose, reducing regulatory burden for both industry and the ACCC. This is sensible given the very small number of SIOs that will remain on the legacy copper network.
- *Avoids risk of material price increases:* a FAD post NBN migration comes with the risk of material price increases in higher cost areas which continue to be served by Telstra's legacy copper network.
- *Provides long term stability and certainty:* at a time of significant migration to the NBN and reduced relevance of Telstra's legacy copper services, a longer FAD period would provide stability and certainty for all industry participants.

Given the above, Telstra believes setting prices for five years promotes the LTIE — including by providing a smoother transition to the NBN and allowing industry and the ACCC to focus attention on more important issues. And as the ACCC notes, a variation to the FAD could be requested at a later date if market changes suggested this was necessary.

Fixed principles

Question 3: Do you have any concerns in relation to ACCC's views about the usefulness of the existing fixed principles for future FADs pricing?

Telstra agrees with the ACCC's position that it is not in the LTIE to apply the fixed principles for the first two years of the regulatory period for the new FADs or update the FLSM. The fixed principles and FLSM were not designed for end of network pricing considerations. Application of the model would imply a lengthy and complex FAD inquiry, which cannot be justified given the NBN will be completed early in the next FAD period and very few SIOs will remain on Telstra's legacy copper network.

Telstra also notes that following consideration by the Federal Court, the fixed principles were found to be "*flexible and not immutable*"[4], requiring the ACCC to at least give consideration to the principles when making the FADs. The ACCC may also take into account other matters when making its determinations, and may consider that the LTIE is best served by price stability, even if maintaining current prices would not deliver the revenue requirement calculated by the FLSM.

Given the proximity of NBN rollout completion and the flexible nature of the fixed principles, Telstra considers that the current fixed principles should be allowed to expire on 30 June 2021.

However Telstra reiterates that if the current fixed principles are allowed to expire the ACCC should consider what guidance can be given around how it will approach pricing of fixed line services in any future FAD periods (and whether the ACCC expects there to be future FADs beyond 30 June 2024).

While noting that there is some uncertainty about the demand for declared fixed line services after the expiry of the fixed principles and completion of the NBN rollout, Telstra will be required to continue its

[4] *Telstra Corporation Limited v Australian Competition and Consumer Commission* [2017] FCA 316, [180]-[181].

investment in the network to maintain services to those end users outside of the NBN fixed line footprint. Given the need for continued investment it is appropriate that the ACCC look to give some guidance on future pricing. This guidance does not need to be provided as part of this FAD inquiry process, but should be given separate consideration prior to the expiry of the fixed principles in 2021 (or at the latest prior to any subsequent fixed line services FAD inquiry).

Non-price terms and conditions

Question 4: Do you have any concerns about the operation of existing NPTCs in FADs? Are there any NPTCs that the ACCC should introduce into new FADs? Please explain the reasons for your view.

Telstra supports the ACCC's position that the FADs should include a targeted set of non-price terms and conditions (NPTCs) which provide a regulatory fall-back for matters that have typically raised competition concerns or have been the subject of disputes.

The existing NPTCs have served this purpose well — Telstra agrees with the ACCC that the existing NPTCs should continue under the new FADs. Telstra notes that since the commencement of the current FAD, wholesale customers have not raised any material issues in regard to the NPTCs.

Maintenance of the existing NPTCs is also consistent with rollover of existing prices. Detailed review of the existing targeted NPTCs or consultation on a comprehensive set of NPTCs would impose significant regulatory burden on industry and the ACCC. Given the NBN build is nearing completion and significant migration is occurring, detailed review of the NPTCs would not promote the LTIE.

Other

Question 5: Do you have any concerns about the ACCC's proposed approach to making new FADs for the declared services given the matters the ACCC is required to consider when making new FADs under the CCA? Please explain the reasons for your view.

For the reasons outlined above, Telstra supports the ACCC's proposal to rollover existing prices and NPTCs. In particular, given the NBN build is close to completion and significant migration is occurring, the LTIE would be best served by an expedited FAD process.

Question 6: Are there any additional issues or views that you consider are relevant to price and non-price terms for access to the declared services?

No further comment.