



14 June 2019

Mr. Scott Harding
Director, NBN & Pricing Coordination
ACCC
By Email: nbn@acc.gov.au

Copy to: Scott.Harding@acc.gov.au;
Dameron.Sadeghian@acc.gov.au

Dear Mr. Harding

Submission to ACCC consultation on variation to nbn co Special Access Undertaking: extension to non-price terms

This letter provides Telstra's submission to the ACCC's consultation on the proposed variation to the nbn co Special Access Undertaking (SAU): extension to non-price terms.

Telstra has no objections to the extension of the non-price provisions to 30 June 2023 per se. However, we provide some suggested improvements below which we consider, if adopted, could lead to improved customer outcomes. While we limit our comments in this submission to the Network Design and the Product Development Forum (PDF) process, we also refer to previous submissions¹ where we have raised key deficiencies in the SAU; namely related to price constraints and nbn co's conduct in the enterprise market. Getting the SAU right and fit for purpose is key to the future success of the NBN, as well as for the benefit of industry and consumers. We look forward to fully engaging in further consultation, particularly regarding price and regulatory protections, in the future.

1. Customer engagement and endorsement processes for network design changes are not being utilised

Under the current SAU, nbn co is able to make changes to its network design subject to meeting the prudent design conditions set out under the SAU. This can occur in two main ways – 1. Permitted Variations² and 2. Endorsed Network Changes³. As noted in the ACCC's consultation paper, all network design changes to date have occurred through the Permitted Variations provision, rather than the Endorsed Network Changes provisions. The latter provisions include extensive customer engagement and endorsement processes.

Telstra is supportive of nbn co offering flexible technology choice and upgrades to better align with individual use cases. However, it is not clear why all network design changes have only occurred through Permitted Variations. In instances where the changes are of sufficient scale,

¹ [Telstra Submission - LTRCM - May 2019](#), [LTRCM Submission to ACCC February 2019](#), [LTRCM Submission December 2018](#), [Telstra submission - LTRCM - May 2018](#)

² Footnote clause

³ Footnote clause



such as in large geographic areas or large customer premises, Telstra's preference would be for nbn co to use the Endorsed Network Changes which provide for extensive customer engagement and endorsement. As such, it may be appropriate for nbn co to specify when Permitted Variations or Endorsed Network Changes are the appropriate process for network design changes. As with previous submissions made by Telstra on NBN-related matters, this would be most efficiently done following consultation with industry.

2. Greater transparency of the Product Development Forum process and outcomes is required

While at face value the PDF is generally effective in allowing nbn co to consult industry and consumer groups on new product or product feature proposals, Telstra's view is that the PDF could be enhanced by greater transparency.

Telstra believes that greater transparency would enable improved consultation with Access Seekers and Consumer Advocacy Groups. It remains unclear to Telstra to what extent feedback through the PDF is taken into account by nbn co and feedback from industry is not routinely shared with PDF members. A requirement for nbn co to share industry feedback (recognising that some respondents may wish to provide confidential feedback) would lead to better outcomes by enabling RSPs to better understand and address other viewpoints when making submissions, and build on and enhance ideas. Accordingly, the ACCC may wish to consider whether the SAU should commit to a form of consultation process that provides increased transparency over nbn co's decision-making process. This could include nbn co criteria for considering RSP proposals, a requirement to provide detailed feedback outlining nbn co's decisions and a commitment to sharing industry submissions.

It is also not clear to Telstra how proactive industry as a whole has been in using the PDF to propose product ideas, rather than simply responding to ideas put forward by nbn co. In Telstra's observation, few proposals have been generated by RSPs. It is not clear whether this is because few proposals have been made or nbn co has chosen not to consult more broadly on submitted proposals. Given RSPs are the closest touch point to any customer generated feedback, we recommend that nbn co consider how it can encourage RSPs to put forward product ideas for consideration and potential development.

Further, it is sometimes unclear how nbn co prioritises product development and the basis (or criteria) on which nbn co reject or consider proposals from RSPs. nbn co have previously rejected product ideas submitted by Telstra on the basis that they do not consider they satisfy the requirements of a Product Idea under the SAU. While we recognise that nbn co has discretion to reject product ideas on this basis, it is a frustrating (and discouraging) outcome for RSPs who have gone to the effort of proposing a product idea.

Finally, while nbn co is not obliged to use the PDF to consult with industry on price proposals, Telstra appreciates that they have chosen to do so. However, in using the PDF in its current form, Telstra is concerned that the process gives nbn co ultimate discretion in the setting of prices including the Maximum Regulated Price for NBN Offers (and price levels for Discounts, Credits and Rebates). As raised in prior submissions, Telstra remains concerned there is no regulatory oversight of the Maximum Regulated Price, and that continuing in this fashion will further exacerbate affordability issues such as those raised by many RSPs and the ACCC Chair, Rod Sims.⁴

⁴ ACCC - NBN affordability a growing issue:
<https://www.accc.gov.au/speech/nbn-affordability-a-growing-issue>



The ACCC would appreciate that the current practice is highly unusual – allowing a statutory monopolist to set its own regulated price at its own discretion. While that feature of the Australian regulatory regime is not subject to the extension proposed in this proceeding, Telstra continues to advocate for a review of the way in which nbn pricing is set and the approach taken to change price levels. RSPs and the end users nbn ultimately serves deserve to at least understand more about how nbn goes about setting its own regulated price and have more input into and transparency of the factors that nbn takes into account.

We look forward to working collaboratively with nbn co, the ACCC and industry to arrive at a solution that is in the best interests of consumers.

If you would like to discuss or have any questions on this submission, please contact Justine Bond on (02) 9866 0269 or Justine.Bond@team.telstra.com.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Iain Little', is located below the 'Yours sincerely' text.

Iain Little
Economic Regulation Executive
Legal & Corporate Affairs
Iain.Little@team.telstra.com