

TELSTRA CORPORATION LIMITED

**Submission on the Commission's November 2012 Consultation Paper on proposed amendments to
the Audit of Telecommunications Infrastructure Assets – Record Keeping Rules 2007**

25 January 2013

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Executive Summary

1. This submission has been prepared in response to the Australian Competition and Consumer Commission's (**the Commission**) Discussion Paper on the Infrastructure Record Keeping Rules (**RKR**), November 2012 (**Discussion Paper**).
2. Telstra broadly supports the Commission's overall objective of collecting appropriate and relevant data about the scope and extent of competitive infrastructure in order to enable it to properly consider regulatory roll-back for services such as DTCS in areas where there is effective competition.
3. Telstra has three primary concerns with the changes to the existing RKR which have been proposed by the Commission for consideration in its Discussion paper. These are set out below.
4. **First**, the Commission's proposed requirement that record keepers report on the extent to which access and core network infrastructure is decommissioned and commissioned over the 12 months preceding the reporting date would, in Telstra's view, impose an unnecessary and costly additional burden on record keepers. The costs of which cannot be justified in the context of the RKR's purpose. Specifically:
 - a) The proposed requirement is unnecessary because the Commission already has sufficient information collected under the existing Infrastructure RKR to determine the difference in geographic coverage of a record keeper's access and core network infrastructure between two reporting dates by calculating the relevant coverage delta.
 - b) Further, as written, the proposed requirement will likely impose significant additional costs on Telstra (and other record keepers) as it will require the capturing of significant additional information on the decommissioning and deployment of infrastructure assets within a given period. This will be required to be reported even in instances where there is no change in the geographic coverage of that infrastructure between two consecutive reporting periods. For example, if Telstra were to replace a given piece of infrastructure between reporting date 1 and reporting date 2, it would be required to report on the decommissioning of the old infrastructure and the deployment of the new infrastructure – even in circumstances where there is no resulting difference in the geographic extent of that infrastructure at the second reporting date. Telstra is currently unable to comply with such a requirement with respect to several infrastructure categories covered by the RKR.
 - c) The proposed requirement will result in the provision of data that goes beyond the purpose of the RKR. A primary purpose of the RKR is to provide the Commission with a contemporary record of the geographic extent of key telecommunications infrastructure. The proposed amendment appears to require a detailed record of decommissioning and deployment *activity* over a given period. This information is not directly relevant to the key matters to which the RKR is designed to provide information to the Commission about i.e. scope and deployment of competitive infrastructure at the time the information is collected.

In Telstra's view, the Commission should not require record keepers to report on the geographic extent of any deployment or decommissioning activity of either CAN or core network assets as

part of the RKR, therefore the proposed clause 5(2)(b)(ii) and clause 6(2)(b) of the Infrastructure RKR should be removed.

5. **Second**, although the inclusion of the proposed additional record keepers (listed under “Group B”) will improve the completeness of information captured through the RKR (and improve its usefulness in assisting the Commission in assessing the competitiveness of particular telecommunication markets), the proposed 2013 reporting exemption for Group B record keepers will remove any potential benefit from extending the RKR to these entities. That will be of significant detriment in the context of processes such as the upcoming DTCS review.
6. As the Commission notes in its Discussion Paper, a key benefit of the RKR has been to assist the Commission in several assessments of the DTCS, and the Commission considers that the inclusion of the additional Group B entities (which include NBN Co) will provide greater insight into competition in the DTCS market, assisting in its upcoming review:

The ACCC considers that the roll out of NBN Co's fibre access network and the provision of business and enterprise services by NBN Co is likely to provide substitute services to current DTCS services in areas where the NBN roll out is completed. Information obtained through the Infrastructure RKR will assist the ACCC in considering whether it should remove DTCS regulation in these areas.

7. However, by not requiring NBN Co and other Group B entities to report on the geographic extent of their access and transmission networks as part of the 2013 RKR, the Commission (and the broader industry) will not immediately benefit from the inclusion of these entities in upcoming reviews that may take place prior to the 2014 RKR being made available.

In Telstra's view, the Commission should not exempt the Group B record keepers from reporting in 2013. To do so would reduce the effectiveness of the RKR in assisting the Commission in undertaking the upcoming review of the DTCS.

8. **Third**, the Commission is proposing a series of changes to the RKR, which if implemented, will require existing record keepers to extract additional information at the reporting date (31 January). However, the proposed variation to the order is unlikely to be published by this date – and even if the Commission does publish an amended order by this date, record keepers will have insufficient time to comply with any modifications. In many instances Telstra's GIS data is recorded in “real time” systems. Hence, in order to comply with the RKR, Telstra will be required to run specific queries on its data sets on or about the reporting date. It is not practical to report on many of the data points required retrospectively.

Telstra believes the Commission should consider changing the reporting date for 2013 only to 31 March. This will provide existing and newly added record keepers with sufficient time to ensure they are ready to capture required information by the reporting date.

9. Telstra hopes the comments included in this submission will assist the Commission in finalising changes to the RKR. Telstra would be happy to meet with the Commission to further explain its concerns and suggested amendments.

01 Introduction

10. The remainder of this submission sets out Telstra's concerns in greater detail and provides answers to the questions posed by the Commission.
11. Section 2, sets out Telstra's position on the Commission's approach to updating the list of record keepers, as well as the Commission's proposed changes to what is required to be reported under the RKR
12. Section 3 of this submission contains Telstra's responses to the questions set out in the Discussion Paper.
13. In addition, Telstra sets out in Annexure 1 of this submission its suggested amendments to the Commission's proposed list of relevant record keepers as set out in Schedule 1, Part 1 of the draft RKR amendments that the ACCC published with the Discussion Paper. Annexure 2 summarises the changes required to remove exemptions relating to subclauses 5(2)(b) and 6(2)(b) of the Infrastructure RKR for Group B.

02 The Commission's proposed amendments to the RKR

2.1 Commission's proposal to require reporting of decommissioning and deployment of infrastructure

14. Telstra considers that the Commission's proposed requirement that record keepers report on what access and core network infrastructure has been decommissioned and commissioned over the 12 months preceding the reporting date is unnecessary. It would be a significant additional reporting requirement, the costs of which cannot be justified in the context of the RKR's purpose.
15. The proposed change is unnecessary because the Commission is already able to determine the difference in geographic coverage of a record keeper's access and core network infrastructure between two reporting dates by itself calculating the relevant coverage delta. If the Commission is seeking to understand the extent to which the geographic coverage of certain infrastructure has changed in the period since the previous reporting date, then Telstra considers this can be easily derived by comparing two record keeper returns.
16. However, if the Commission is actually seeking data on the activities undertaken by record keepers in decommissioning and deploying infrastructure assets – even where these activities do not in net terms change the geographic coverage of infrastructure, then Telstra considers this requirement will impose additional costs on record keepers (and in some cases will not be able to be fulfilled) and goes beyond the stated purpose and objectives of the RKR.
17. As written, the proposed requirement will likely impose significant additional costs on Telstra (and other record keepers) as it will require the capturing of significant additional information on the decommissioning and deployment of infrastructure assets within a given period. This will be required to be reported even in instances where there is no change in the geographic coverage of that infrastructure between two consecutive reporting periods. (For example, if Telstra were to replace a given piece of infrastructure between reporting date 1 and reporting date 2, it would be required to report on the decommissioning of the old infrastructure and the deployment of the new infrastructure – even in circumstances where there is no resulting difference in the geographic extent of that infrastructure at the second reporting date.)

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18. In any event, Telstra is currently unable to comply with such a requirement with respect to several infrastructure categories covered by the RKR. For example, Telstra's does not currently have the system capability to provide a GIS-based geographic coverage report on deployment and/or decommissioning for wireless network infrastructure in a given year, where these changes do not alter Telstra's wireless network coverage. Telstra is also not currently in a position to be able cost the introduction of such a system. Further, Telstra does not have the resources available or capability with its GIS tool (used for calculating and reporting current wireless RKR information) to be able to calculate a map of the change in wireless coverage over the preceding 12 months.
19. The proposed change will also result in the provision of data that goes beyond the purpose of the RKR. The purpose of the RKR is to provide the Commission with a contemporary record of the geographic extent of key telecommunications infrastructure, whereas what is being sought through the proposed amendment is a detailed record of decommissioning and deployment activity over a given period. This information is irrelevant to the key questions to which the RKR is designed to provide information.

2.2 Updating the list of record keepers

20. In principle Telstra supports the Commission's approach to updating the list of required record keepers to take into account exit, entry, merger and/or acquisition, and the potential for alternative utility infrastructure sharing for telecommunication services. The Infrastructure RKR was introduced in December 2007 and has not been reviewed or updated since, despite the telecommunications industry being dynamic and having significantly developed since that time. For example, as at 8 January 2013, the Australian Communications and Media Authority (**ACMA**) reported it had granted 336 carrier licences, made up of 193 active carrier licences, 136 surrendered carrier licences and 7 cancelled carrier licences. This can be compared to 2007, where to that date there had been 244 carrier licences granted, made up of 121 active carrier licences, 123 surrendered carrier licences and 6 cancelled carrier licences¹.
21. Telstra agrees with the Commission that the list of record keepers needs to be updated, however Telstra is concerned that the Commission's list of required record keepers (and hence the Infrastructure RKR) still remains too narrowly focused on too few telecommunications providers, As a result it does not completely capture the level and effectiveness of competition emerging from alternative utility infrastructure providers.
22. Previously Telstra has suggested the Commission adopt the entire list of carriers maintained by the ACMA (for implementation of the Universal Services Obligation (**USO**) Levy Scheme) as the relevant list of required record keepers for the Infrastructure RKR². Telstra reiterates this position in principle, and notes that in its view the Commission's amended list of record keepers is too narrow a focus on too few telecommunications providers. For example, there were 51 'participating persons' listed by the ACMA (versus 22 entities in the proposed list of

¹ See http://www.acma.gov.au/webwr/_assets/main/lib310146/licensed_carriers-08jan2013.xlsx

² See Telstra, Disclosure of telecommunications infrastructure data response to ACCC Discussion Paper on disclosure of data collected under the Infrastructure Record Keeping Rule 2007, June 2010, p15, par64.

record keepers) as having earned 'eligible revenue' for the USO Levy Scheme in financial year 2012³.

23. Telstra considers the ACMA threshold of \$25 million of eligible revenue for the listed 51 participating persons provides an objective starting criterion for defining and updating yearly the list of relevant record keepers for the infrastructure RKR.

The Commission should not exempt the proposed Group B record keepers from the 2013 RKR return

24. The Commission's proposed amendments to the RKR include that record keepers in Group B (including NBN Co) are exempt from reporting information on subclause 5(2)(b) and 6(2)(b) of the Infrastructure RKR with respect to their 2013 return. Telstra considers that retaining reporting exemptions for entities in Group B will maintain significant gaps and/or omissions in the collection of the Infrastructure data, and will not help the Commission exercise its statutory functions and not be in the Long Term Interests of Endusers.
25. By not requiring NBN Co and other Group B entities to report on the geographic extent of their access and transmission networks as part of the 2013 RKR, the Commission (and the broader industry) risks omitting entities that provide significant competitive constraint in particular markets. For example:
- a. **Victorian Rail Track Corporation**⁴ – offers a direct competitive alternative to major transmission providers along its rail network within Victoria, particularly in metropolitan Melbourne, and markets itself as core telecommunications wholesaler;
 - b. **Queensland Rail**⁵ – owns, operates and maintains a substantial backbone telecommunications network across Queensland which it wholesales; and,
 - c. **Aurora and Basslink** – Basslink is one of only a few wholesale transmission providers that offers fibre optic submarine cable between Tasmania and mainland Australia. Aurora is a reseller of Basslink infrastructure in direct competition with Telstra, making both Aurora and Basslink strategically important competitors in telecommunications markets between Tasmania and mainland Australia.
26. Hence, Telstra proposes that Group B competitors should not be exempt from any Infrastructure RKR reporting requirements. Failing this, Telstra believes the Commission should ensure that at a minimum NBN Co is not exempt from any RKR reporting requirements, even if the Commission decides to retain the reporting exemption to subclause 5(2)(b) and 6(2)(b) of the Infrastructure RKR for all other Group B entities.
27. If the Commission has proposed a temporary exemption for Group B record keepers on the basis the amended order would not be in place prior to the proposed January 31 reporting

³ See

http://www.acma.gov.au/webwr/telcomm/universal_service_regime/universal_service_obligation/costing_funding/2011-12-universal_service_assessment.pdf

⁴ See www.victrack.com.au

⁵ See <http://www.queenslandrail.com.au/NetworkServices/Pages/TelecommunicationsNetwork.aspx>

date, then Telstra considers a better approach would be to delay the reporting date with respect to the 2013 RKR to 31 March 2013. See further section 2.3.

2.3 The Commission should change the 2013 reporting date to 31 March 2013

28. The Commission is proposing a series of changes to the RKR which, if implemented, will require existing record keepers to extract additional information at the reporting date (31 January).
29. However, the proposed variation to the order is unlikely to be published by this date – and even if the Commission does publish an amended order by this date, record keepers will have insufficient time to comply with any modifications.
30. Although the Commission is proposing to grant record keepers a six month extension for the provision of RKR data, this extension will not assist in circumstances where record keepers cannot retrospectively determine the geographic extent of their infrastructure (or other relevant RKR information) at the nominated reporting date. In order to extract information on the geographic coverage, Telstra will be required run specific queries on its data sets on or about the reporting date. As many of the systems Telstra would be required to interrogate to extract GIS data for this purpose are “real time” systems it is not practical to report on many of the data points retrospectively.
31. Telstra therefore considers that the Commission should change the reporting date for 2013 only to 31 March. This will provide existing and newly added record keepers with sufficient time to ensure they are ready to capture required information by the reporting date.

03 Telstra's responses to the questions raised in the Discussion Paper

32. Telstra's responses to the questions and issues raised by the Commission are provided below.

Are the proposed amendments to the list of telecommunications infrastructure providers required to report under the RKR appropriate?

33. In principle Telstra supports the Commission's proposal to update the list of relevant record keepers as presented in Table 1 of the Consultation Paper. However, Telstra believes, as outlined in section 2.2, that the criterion applied by the Commission to determine the amended list of required record keepers in Group A of Schedule 1, Part 1 of the Draft Variation is subjective and results in a list of required record keepers that is too narrowly focused.

34. Further, because clause 9 of the Draft Variation indicates that record keepers in Group B are exempt from reporting the geographic extent of deployment and decommissioning over the last 12 months for CAN and core networks, the RKR does not completely capture the level and effectiveness of competition emerging from alternative utility infrastructure sharing in the Australian telecommunications market.

35. Therefore, Telstra considers:

- a. The entire list of ACMA USO Levy Scheme Carriers list be, in principle, used to define Group A entities;
- b. The Commission should use its discretion to determine if an entity has "considerable significance"⁶ and therefore should be included in Group B if it does not meet the criterion for being in Group A; and,
- c. Group B required record keepers should not be exempt from subclause 5(2)(b) and 6(2)(b) with respect to the 2013 RKR (and, at a minimum, NBN Co should not be exempt).

36. Telstra's suggested list of Group A and B record keepers for Schedule 1, Part 1 of the Draft Variation is provided in Appendix 1. The list is compiled with reference to paragraphs a to c above.

Are there additional entities that are not included on the proposed list but who should be included on the list?

37. As discussed in Telstra's response to the preceding question, Telstra believes that in principle the entire ACMA list of USO Levy Scheme entities should be included in Group A of the list of required record keepers. At a minimum Telstra suggests that strategically important entities

⁶ ACCC, Regulatory Impact Statement, Telstra Customer Access Network Record Keeping Rule, September 2007, p4.

(such as those to be considered in the DTCS exemption process) that are currently on the USO Levy Scheme list, but not currently included in Group A, be included.

38. In addition the current Group B list does not completely capture the level and effectiveness of competition emerging from alternative utility infrastructure sharing in the Australian telecommunications market. Telstra suggests the list be expanded through the addition of entities that are not on the USO Levy Scheme list, but are considered to be of strategic importance.

39. Telstra's suggested list of record keepers for Schedule 1, Part 1 of the Draft Variation is provided in Annexure 1. The list is compiled with reference to paragraphs a to c in Telstra's response to the previous question and the discussion in section 2.2.

Should any entities on the proposed list not be required to report? For what reason?

40. Notwithstanding the categorisation of entities into Group A or B, Telstra believes that no entity should be exempt from Infrastructure RKR reporting if it appears on the list of required record keepers.

Are there any significant impediments in providing the additional information proposed to be reported under the amended RKR?

41. As set out in section 2.1, Telstra is concerned that the requirement to provide information on the decommissioning and deployment of infrastructure assets will result in significant additional cost being borne by record keepers, and in many circumstances will not be able to be reported using existing GIS databases.

Should the information reported under the RKR be updated to include identification of CAN and core infrastructure deployment in the preceding 12 months?

42. No, see section 2.1

Should the identification of major infrastructure ownership, lease and operating arrangements be reported separately?

43. Telstra agrees with the Commission that the identification of major infrastructure ownership, lease and operating arrangements, should be separately reported in the RKR. Such decomposition would, in Telstra's view, complement the Commission's assessment of competition in any relevant market.

Are there any obstacles that might prevent record keepers reporting the decommissioning of infrastructure assets in the preceding 12 months?

44. Yes, see section 2.1

Is the additional six months allowed for compliance with the amended RKR sufficient time to lodge returns? If not, what impediments are there to meeting this timeframe and what period of time would be needed?

45. As set out in section 2.3, although the additional six months will assist record keepers in validating RKR data and preparing the lodgement of their returns, it will not provide record keepers with any additional time prior to the reporting date of 31 January. As GIS data is often stored in “real time” systems, it is not possible to retrospectively interrogate these data sets in order to determine the extent of geographic coverage of infrastructure as at an earlier date

Do you have any additional comments on the proposed changes to the Infrastructure RKR as marked-up in the attached draft instrument?

46. Detail of Telstra’s amendments to the proposed changes to the Infrastructure RKR is provided in Annexure 2.

Annexure 1 — Telstra's suggested list of relevant record keepers

Carrier/ACN	Reason for inclusion
Group A	
AAPT Ltd	Originally in Group A
AARNet Pt Ltd	" "
Agile Pty Ltd	" "
Amcom Pty Ltd 0	" "
Ergon	" "
Macquarie Telecom Pty Ltd	" "
NextGen Networks Pty Ltd	" "
Optus Networks Pty Ltd	" "
Optus Mobile Pty Ltd	" "
Pipe Networks Ltd	" "
Primus Telecommunications Pty Ltd	" "
Silk Telecom (TPG Telecom)	" "
Telstra Corporation Ltd	" "
Transact Capital Communications Pty Ltd (iiNet)	" "
Verizon Australia Pty Ltd	" "
Vodafone Hutchison Australia Pty Ltd	" "
Group B	
Auracom Pty Ltd	Originally in Group B
Basslink Telecoms Pty Ltd	" "
Essential Energy	" "
NBN Co (including NBN Co Tasmania)	" "
RailCorp NSW	" "
SA Power Networks	" "
Victorian Rail Track Corporation	" "
Vocus Fibre Pty Limited	" "
Additional Suggested Entities	
Big Air Group Limited	Strategically important to DTCS
Digital Distribution Australia Pty Limited	On USO Levy Scheme List/ Strategically important to DTCS
Digital Technologies & Telecommunications Pty Limited	On USO Levy Scheme List/ Strategically important to DTCS
Ergon Energy Telecommunications	Strategically important to DTCS
Fibre Optic Infrastructure Holdings Pty Limited	Strategically important to DTCS

Leading Edge Internet Pty Limited	Strategically important
NetWave Communications Pty Limited	Strategically important to DTCS
Queensland Rail	Strategically important to DTCS
Spartan Information Technology Pty Limited	On USO Levy Scheme List/ Strategically important to DTCS
Splash Internet Pty Limited	On USO Levy Scheme List/ Strategically important
Voice1Direct Pty Limited	On USO Levy Scheme List/ Strategically important to DTCS

Annexure 2 — Detail of Amendments to the marked-up Infrastructure RKR

Clause of the RKR	Comment	Changes required
5	Deletion of required record keepers from reporting on the deployment and decommissioning over a 12-month period for the CAN.	<p>Telstra suggests amending clause 5 as follows:</p> <p>CANs</p> <p>(1) A record-keeper who is listed in Part 1 of Schedule 1 must supply the information specified in subrule 5(2).</p> <p>(2) For each CAN owned and operated by a record-keeper, the record-keeper must:</p> <p>(a) specify whether any access media of the types listed in Part 2 of Schedule 1 is deployed on the network; and</p> <p>(b) if so,</p> <p>(i) Specify the geographic extent of each access medium deployed.</p> <p>(ii) specify the geographic extent of each access media deployed and/or decommissioned over the previous 12-month reporting period</p> <p>Note: For the purposes of subrule 5(2)(b) a record-keeper is required to provide this information in accordance with rule 7.</p>
6	Deletion of required record keepers from reporting on the deployment and decommissioning over a 12-month period for the core.	<p>Telstra suggests amending clause 6 as follows:</p> <p>Core Network</p> <p>(1) A record-keeper who is listed in Part 1 of Schedule 1 must supply the information specified in subrules 6(2) and 6(3).</p> <p>(2) For each core network owned and operated by a record-keeper, the record-keeper must <u>specify the geographic extent of any:</u></p> <p>(a) Separately specify the geographic extent of any:</p> <p>(a) (i) optical fibre core network;</p> <p>(b) (ii) microwave radio core network; and</p> <p>(c) (iii) other core network., and</p> <p>(b) Specify the geographic extent of each access media in subrule 6(2) (a) deployed and/or decommissioned over the previous 12-month reporting period.</p> <p>(3) The record keeper must separately identify <u>any</u> core network that it operates on behalf of or leases from third parties.</p> <p>Note: For the purposes of this rule a record-keeper is required to provide this information in accordance with rule 7.</p>
9	Deletion of the exemption of Group B required record keepers from not	Telstra suggests amending clause 9 as follows:

Clause of the RKR	Comment	Changes required
	<p>reporting on subclause 5(2)(b) and 6(2)(b).</p>	<p>Variation to reporting requirements for 2013</p> <p>(1) Subject to subrule 9(2), a record-keeper must provide the ACCC with a report containing the information specified in subrule 8(1) as at 31 January <u>March</u> 2013 on or before 1 September 2013.</p> <p>(2) The report to be provided by Group B record-keepers pursuant to subrule 9(1) is not required to contain the information specified in subrules 5(2)(b) and 6(2)(b).</p> <p>Note 1: Under section 151BX of the Act a person who contravenes a record-keeping rule may be subject to pecuniary penalties.</p> <p>Note 2: Subsection 36(2) of the Acts Interpretation Act 1901 (Cth) provides that where the last day of any period prescribed falls on a Saturday, on a Sunday or on a day which is a public holiday in which the thing is to be done, the thing may be done on the first day following which is not a Saturday, a Sunday or a public holiday.</p>