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Universal Service Guarantee Taskforce

Department of Infrastructure, Transport, Regional Development and Communications

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Telstra Carrier Licence Conditions – Regional Service Information

NBN Co Limited (**nbn**) is pleased to provide to the Universal Service Guarantee Taskforce (**Taskforce**) of the Department of Infrastructure, Transport, Regional Development and Communications (**Department**) its submission on the Exposure Draft of the *Telecommunications (Carrier Licence Conditions – Telstra Corporation Limited) Amendment (Regional Service Information) Instrument 2021 (CLC Exposure Draft)*.

nbn's core mission has always been to connect all of Australia to a fast, reliable broadband network, at affordable prices, and at least cost to the taxpayer. **nbn** connects Australians through a mix of technologies: Fixed Line (FTTP, FTTN, FTTB/C, HFC), Fixed Wireless and Satellite. Around 12 million premises across Australia can order **nbn**TM network services, and just over 8.3 million premises have an active service. More than 3.6 million premises in regional Australia can access an **nbn**TM network service, and around 2.2 million have an active service. **nbn** is proud of its role in servicing these communities. **nbn**'s role as the default Statutory Infrastructure Provider (SIP) is a further extension and confirmation of its mission.

As noted in the press release accompanying the release of the CLC Exposure Draft¹, the Government “is proposing more rigorous reporting rules on Telstra to improve transparency in the delivery of voice services in regional and remote areas”. It is relevant to Telstra’s Universal Service Obligation (**USO**) to provide “a fixed standard telephone service on reasonable request to premises anywhere in Australia”² and to “provide an evidence base of Telstra’s performance in delivering the universal service obligation”³. If made, the reporting rules set out in the CLC Exposure Draft would be in addition to the substantial and already complex regulatory and contractual framework that governs Telstra’s provision of standard telephone services under the USO.

nbn notes the specific and distinct nature of the intent of the CLC Exposure Draft, that it is to apply to Telstra’s obligations in the delivery of standard telephone services under the USO. In contrast, **nbn**'s role in regional and

¹ Senator the Hon Bridget McKenzie, Minister for Regionalisation, Regional Communications and Regional Education, The Hon Paul Fletcher MP Minister for Communications, Urban Infrastructure, Cities and the Arts, Joint Media Release, 8 October 2021, Increasing Transparency in the Delivery of the Universal Service Obligation.

² Which is a reference to section 9(1)(a) of the Telecommunications (Consumer Protection and Service Standards) Act 1999 that provides the universal service obligation is the obligation to ensure that standard telephone services are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business.

³ See footnote 1.



remote Australia is primarily the supply of broadband services, noting its SIP requirement to enable voice calls but which is distinct from an obligation to supply standard telephone services. However, this distinction between the role of Telstra and **nbn** is only partially acknowledged within the drafting of the CLC Exposure Draft. By this submission, **nbn** is seeking to ensure that this distinction is appropriately acknowledged by the **removal of paragraphs (f) and (g) from the definition of “local access technology”**.

In so doing, this will ensure any regulatory instrument resulting from the CLC Exposure Draft does not introduce further complexity to the regulatory regime and therefore better facilitate any transition or changes to that regime into the future.

Clear distinction

The CLC Exposure Draft sets up a reporting regime in respect of each “**reportable service**”. Reportable service (as set out below) is defined with respect to a CSG service as defined in the *Telecommunications (Customer Service Guarantee) Standard 2011* and a CSG service under the Standard is a standard telephone service⁴.

The definition of “**reportable service**” is set out as follows:

“a CSG service (other than a fixed-line carriage service supplied using the national broadband network) that is supplied, or has been requested to be supplied, within a relevant ESA”.

This definition clearly excludes Fixed Line services supplied by **nbn**.

The CLC Exposure Draft requires Telstra to report the “**local access technology**” used to supply each reportable service (see subsection 13D(7)). The definition of local access technology includes:

- f) the national broadband network, with the use of a fixed wireless technology platform;
- g) the national broadband network, with the use of a satellite.

Therefore, although the CLC Exposure Draft specifically excludes **nbn**’s Fixed Line technology from the concept of a reportable service, it includes, through the definition of local access technology, **nbn**’s Fixed Wireless and Satellite services.

This inclusion of **nbn**’s Fixed Wireless and Satellite services in the CLC Exposure Draft does not reflect the reality of CSG service provision in regional and remote Australia. Telstra does not use **nbn**’s Fixed Wireless and Satellite services to supply customers with a CSG service⁵. Therefore, paragraphs (f) and (g) are redundant.

Moreover, Telstra is specifically prohibited by **nbn** from using its Fixed Wireless and Satellite services to supply a CSG Service. **nbn**’s Wholesale Broadband Agreement (**WBA**) provides as follows⁶:

⁴ Under the *Telecommunications (Customer Service Guarantee) Standard 2011* a CSG service is defined in paragraph 4(1) as an eligible telephone service and an *eligible telephone service* is defined in paragraph 4(1) as a standard telephone service”.

⁵ Indeed, Telstra does not currently offer **any** commercial services using **nbn** Sky Muster™ and Sky Muster™ Plus satellite services, and has not done so in the more than five years since these services have been available for resale by **nbn**. NBN Co is not aware of any short-to-medium term plans by Telstra to offer Sky Muster™ services to customers.

⁶ See clause 17.1 of the Product Terms, **nbn**™ Ethernet Product Module, Wholesale Broadband Agreement.



RSP must not use, and warrants to nbn that it will not use, nbn™ Ethernet (Wireless) or nbn™ Ethernet (Satellite), or permit any Downstream Service Provider to use an RSP Product which relies on nbn™ Ethernet (Wireless) or nbn™ Ethernet (Satellite) as an input, to supply a:

- a) *Downstream CSG Service (including standard telephone services that are subject to retail service providers service guarantees for the purposes of the TCPSS Act); or*
- b) *Downstream Priority Assistance Service.*

This separation of **nbn**'s broadband networks from Telstra's ability to supply CSG standard telephone services under the USO in regional and remote Australia (as noted through all the versions of **nbn**'s WBAs) is reflective of the 20-year agreement Telstra entered into with the Commonwealth Government in 2012 in respect of the provision of the USO ("**Telstra's Agreement**"). Under Telstra's Agreement, Telstra receives payment from the Commonwealth to continue to supply voice telephony to customers in regional and remote Australia through its existing technologies (copper, high capacity radio concentrators (HCRC), Telstra Next G Wireless Link (NGWL), Telstra fibre and Telstra USO satellite).

Future regulatory design

Admittedly, by retaining paragraphs (f) and (g) in the definition of local access technology, Telstra could instead report "zero" against that category or omit it from reporting as no CSG services are supplied by Telstra using **nbn**'s Fixed Wireless and Satellite technologies.

However, such an approach would be:

- inconsistent with the exclusion of **nbn**'s Fixed Line network from the definition of a reportable service;
- inconsistent with current policy, regulatory and contractual arrangements; and
- presupposes and/or confuses future discussions for policy reform as Telstra's Agreement is reviewed⁷ or expires.

Any use of **nbn**'s networks in any future regulatory design with respect to any role via a vis the USO requires a multi-faceted consideration of any consumer protection gaps and any need for regulatory intervention, technology options, infrastructure-based competition, funding, cross-subsidy arrangements and the utility or otherwise of historical legacy regulatory underpinnings.

Telecommunications policy and regulatory reform is a core element of facilitating adequate services in regional and remote Australia. **nbn** is concerned that the current inconsistent drafting within the CLC Exposure Draft may precipitate unintended consequences. **nbn** is therefore seeking policy transparency and clarity through the removal of paragraphs (f) and (g) to ensure that no such consequences emerge.

nbn has consistently engaged with the USG Taskforce and the broader Department on USO issues in a co-operative and constructive manner and will continue to do so on this important area for regional and remote Australia in future policy deliberations.

⁷ The 29 September 2017 Australian National Audit Office report "*Management of the Contract for Telephone Universal Service Obligations*" noted that Telstra's Agreement included flexibility mechanisms at paragraph 2.42: "*When the TUSOPA was first established a number of flexibility mechanisms were built into the Agreement. One of these is a formal review in 2021 of the technology and systems used to deliver the services as described in Modules B (STS) and C (payphones) of the agreement. This review is to commence in July 2021, and is to be conducted by an independent third party.*" **nbn** understands that this review will be deferred for up to two years.



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