



TELSTRA CORPORATION LIMITED

Submission on draft “Telecommunications (Statutory Infrastructure Providers – Circumstances for Exceptions to Connection and Supply Obligations) Determination 2020”

22 December 2020



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01 INTRODUCTION

The Statutory Infrastructure Provider (**SIP**) regime was introduced to ensure that all Australian premises can access superfast broadband services. SIPs are required to connect premises and supply wholesale broadband services in response to a reasonable request from a carriage service provider (**CSP**). However, what constitutes a “reasonable request” is not currently defined and so is the subject of this consultation.

Telstra is both a SIP and a CSP. We are also the provider of the Universal Service Obligation (**USO**), and subject to mandatory disconnections from our legacy networks under the Migration Plan, which governs the progressive migration of voice and broadband services to the nbn. Our feedback in response to the draft instrument is provided in the context of these roles.

NBN Co will be the default SIP for Australia once its network is declared built and fully operational. Until then, NBN Co is the SIP in areas it has declared “ready for service”. In some new developments and designated service areas there will be other SIPs (such as Telstra), but for the majority of Australia, NBN Co will be the default provider of connections. Accordingly, NBN Co’s interpretation of “reasonable” is paramount for the effectiveness of the SIP regime.

SIPs are required to publish the terms and conditions under which they will connect premises and supply eligible services. In December 2020, NBN Co released its updated Connection Terms and Conditions (**Connection Terms**) and Connection Approvals Policy (**Connection Policy**). In the updated Connection Policy, NBN Co has removed the limitation on connection requests for premises that are not “ready to connect”. This indicates NBN Co will now allow CSPs to make SIP connection requests on behalf of end users at addresses that are unserviceable. This is a welcome development for customers in unserviceable premises, many of whom have been waiting for an nbn connection for a considerable period.

We believe there are two other terms in NBN Co’s Connection Terms that should be addressed, to help make the SIP regime more effective. These are:

1. NBN Co will take up to 12 months to make a SIP connection, and that could be extended due to factors outside its control.¹
2. NBN Co requires the CSP to provide written permission from the site owner for NBN Co to enter that site and install certain infrastructure, within 5 Business Days of a request.² There is no requirement for NBN Co to provide details of the work that will be required, or an estimate of the date that they will require access or complete the work.

In Section 2 of this submission, we provide our feedback in relation to the approach for determining the “reasonableness” of SIP connection requests.

In Section 3 of the submission, we provide our specific comments on the draft instrument. In providing our comments, we note the “Introduction and Important Notice” provided on page 1 of the Consultation Draft, which states:

¹ Clause 4.2 of the Connection Terms, available here: <https://www.nbnco.com.au/corporate-information/about-nbn-co/policies/telecommunications-policies>.

² Clause 5 of the Connection Terms, available here: <https://www.nbnco.com.au/corporate-information/about-nbn-co/policies/telecommunications-policies>.



"This draft determination draws on a number of concepts contained in the Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination (the USO instrument). However, a more principles based approach has been taken to try to simplify this draft determination".

While the SIP instrument seeks to adopt a more principles-based approach than the USO instrument, given Telstra typically relies on nbn infrastructure to provide USO voice services in the fixed-line footprint, the SIP instrument should generally deliver the same outcomes as the USO instrument in terms of the types of premises and the circumstances in which connection requests must be fulfilled. There will be difficulties if NBN Co as the SIP is able to reject a request which Telstra as the USO provider is required to meet.



02 COMMENTS ON APPROACH

Telstra is both a SIP and a CSP that will make connection requests to other SIPs. Below we set out our approach to connection requests, and discuss our preference for a Ministerial instrument to define the parameters of reasonable requests to help ensure the SIP regime achieves its objectives.

2.1. Telstra’s approach to SIP connection requests

Telstra has now published terms and conditions as a SIP for the South Brisbane and Velocity FTTP Networks (**FTTP networks**).³ The terms of supply are governed by the declared Superfast Broadband Access Service, which is currently the subject of an inquiry by the Australian Competition and Consumer Commission (**ACCC**).⁴

Telstra expects connection requests to be assessed for reasonableness using a three stage process:

1. Confirm premises is within footprint – the premises will need to be within an area where Telstra is the SIP for it to qualify for a SIP connection.
2. Confirm network infrastructure requirements for connection at premises – if there is only a requirement to provide a subscriber drop and ONT (the equipment required to connect a premises to network at the boundary), then it constitutes a “standard” connection. All other requests are classified as “non-standard”.
3. Consider whether any of the circumstances discussed in Section 3 apply – this will determine whether the connection request is reasonable and, if it is, may affect the estimated timeframes (e.g. if dependent works need to be arranged).

Where Telstra is the SIP for the FTTP networks, we have committed to a 20 business day timeframe for standard connections. Non-standard connection requests will need to be assessed on a case-by-case basis. This is because the circumstances for each connection may differ based on what work is required for the connection, whether the developer has provisioned third-party pit and pipe, delays associated with parts for redundant assets, weather, and labour availability.

This process is similar to the approach we take for estimating timeframes and determining reasonableness as the USO provider. These requirements broadly align with those in the draft instrument.⁵ We have provided specific comments in Section 3 regarding how we expect them to apply in the context of the SIP regime.

We believe that administrative or compliance costs associated with an instrument consistent with the draft instrument will be low. A list of circumstances for “unreasonable” connection requests can also create consistent business rules that can be applied and can remove delays and ambiguity that may be present with subjective decision-making.

³ <https://www.telstrawholesale.com.au/products/broadband/fibre-access-broadband.html>. Telstra notes it has entered into a binding agreement to sell the South Brisbane and Velocity FTTP networks to Uniti Group Limited. Telstra expects to be the SIP until network transition, when the SIP role will transfer to Uniti.

⁴ See <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/lbas-sbas-declarations-inquiry-2020>.

⁵ Telecommunications Universal Service Obligation (Standard Telephone Service – Requirements and Circumstances) Determination (No 1) 2011.



2.2. NBN Co’s approach to SIP connection requests

In our view, a Ministerial instrument is required to define the parameters for reasonable connection and supply requests, so that the SIP regime will be effective in ensuring all Australian premises have access to superfast broadband services.

NBN Co will be the default SIP for Australia once its network is declared built and fully operational. Until then, NBN Co is the SIP in areas it has declared “ready for service”. In some new developments and designated service areas there will be other SIPs (such as Telstra), but for the majority of Australia NBN Co will be default provider of connections. Thus, NBN Co’s interpretation of “reasonable” is paramount for the effectiveness of the SIP regime.

In July 2020, NBN Co released its initial Connection Terms and Connection Policy. Three aspects of these documents raised some concerns for Telstra at that time: the treatment of premises which are not “ready to connect”, the 12 month maximum connection timeframe, and the requirement for an upfront customer authority.

In December 2020, NBN Co released its updated Connection Terms and Connection Policy.⁶ The updated policy has removed the limitation on SIP connection requests for premises that are not “ready to connect”. This indicates that NBN Co will now allow CSPs to make SIP connection requests on behalf of end users at addresses that are unserviceable. If the SIP connection request is accepted and the premises is made “ready to connect”, CSPs will be able to order a service for supply to their customer. This is a welcome development for customers waiting for an nbn connection, and should provide a way forward for customers who have faced delays to access superfast broadband infrastructure and services. NBN Co will still need to consider the request against its Connection Policy, and accept or reject the request within 10 business days.

While the change to NBN Co’s approach for unserviceable premises is a significant improvement, we continue to have some concerns about the following connection terms and conditions:

1. NBN Co will take up to 12 months to make a SIP connection, and that could be extended due to factors outside its control.
2. NBN Co’s requirement for a customer authority does not require NBN Co to provide details of the work to be completed or an estimate of the date for access.

These terms may make it more difficult for CSPs to make SIP connection requests to NBN Co, due to the customer experience and uncertainty associated with the process. We believe these terms need to be addressed to ensure the SIP regime will be effective, including for those end customers still waiting for nbn connections. Each of these issues is discussed in more detail below.

2.2.1 Twelve months to complete a SIP connection

NBN Co states that its estimated connection completion date is up to 12 months from the date the agreement comes into force. This is a long time for customers to wait for a SIP connection, particularly in circumstances where customers in unserviceable premises may have already faced lengthy delays. A 12 month SIP connection timeframe will also make it difficult for CSPs to manage customer

⁶ See: <https://www.nbnco.com.au/corporate-information/about-nbn-co/policies/telecommunications-policies>.



expectations. By contrast, for the South Brisbane and Velocity FTTP networks, Telstra's standard connection timeframe is 20 business days.

NBN Co's Connection Terms also include the ability for it to extend beyond the 12 months for a range of reasons including third party delays and force majeure events. We agree it is reasonable for timeframes to be extended for circumstances beyond the SIP's control. However, the extension should be added to a shorter upfront target timeframe. The 12 month timeframe for SIP connections is too long, and extensions to that timeframe would compound customer frustration.

2.2.2 Customer authority for NBN Co to enter site

NBN Co requires the CSP to provide written permission from the site owner for NBN Co to enter the site and install certain infrastructure, within 5 Business Days of a request. There is no requirement for NBN Co to provide details of the work that will be required, or an estimate of the date that they will require access or complete the work.

In addition, because of NBN Co's 12 month SIP connection timeframe, a customer could potentially be asked to provide NBN Co with written permission for its personnel to enter the site for a period of up to 12 months (or longer if circumstances require). This would likely create difficulties for customers, and it may also become ineffective, for example, if a tenant occupying the premises changes during the 12 month period.

To assist with CSPs' processes, NBN Co could commit to providing a template for the authority so it is clear what the customer is required to commit to, and to asking for the customer authority after an actual estimated date for a site visit has been provided.



03 COMMENTS ON DRAFT INSTRUMENT

3.1. Part 1 – Definitions

Telstra does not have specific comments on any of the proposed definitions, other than the definition of a Designated Private Residence. This is discussed below.

3.1.1 Designated Private Residence

The Department has provided the following note and question regarding the definition of a Designated Private Residence:

Note: *The reference to 'Continual or periodic' private residency above is intended to reflect the premises is able to support permanent residence or residence on some form of ongoing basis (for example, a farm could have a separate residence that is used on a seasonal basis). The reference to 'Independent private residency' is included to reflect an expectation that a residential premises would enable a resident to manage their own care, including having access to sanitation and facilities for food preparation. While such facilities would need to be reasonably available, they would not necessarily need to be fully self-contained (e.g. a premises could have access to shared laundry or cooking facilities).*

The definition of residential premises above is also intended to capture single residences at a site, but also recognises there may be additional premises (granny flats and other similar living quarters) at a site beyond the primary residence.

Question: *Although the USO instrument specifically qualifies an eligible residence as having certain characteristics (i.e. 'access to permanent sanitation facilities'), is the definition of residential premises in this draft instrument appropriate and sufficiently clear?*

We appreciate the additional information provided in the note and agree with the ordinary meaning of the phrase "continual or periodic private residency". However, we suggest that the definition should provide more clarity on the meaning of "capable" of supporting continual or periodic independent private residency.

That is, the definition should include the information provided in the note that a residential premises would enable a resident to manage their own care, including having access to sanitation and facilities for food preparation. In combination with the location having a mailing address, that should provide sufficient clarity on what structures should generally be connected.

Suggested amendment:

Designated Private Residence means a distinct house, flat, apartment or other self-contained structure that is:

- (a) ~~is~~ capable of supporting continual or periodic independent private residency **with access to sanitation and facilities for food preparation**; and
- (b) situated at a location which has a street or physical mailing address (regardless of whether or not it is the primary premises at that location).



While we have not made a suggested amendment in relation to paragraph (b) of the definition of Designated Private Residence, we believe further consideration may need to be given as to whether the language is sufficient to capture some rural and remote locations that may not be easily described by a physical mailing address.

3.2. Part 2 Division 1 – Determination of circumstances for connection requests

3.2.1 Circumstance (a)

Circumstance (a), under clause 5(1), appears to address the classification of the structure that would exclude it from being a reasonable request for connection by a SIP. There are four sub-categories in this clause – the premises is:

- i. under construction and will not be at lock up stage by the day nominated by the CSP for the connection to be undertaken;
- ii. a permanent structure that does not comply with all applicable planning and development laws pertaining to structural safety and integrity;
- iii. not one of the types of premises in the list (e.g. private residence, place of worship, business premises, government premises, educational premises, etc); and
- iv. a moveable structure not reasonably expected to be continuously located at the site where the connection has been requested.

Subject to our comments below, we agree that these items are reasonable grounds to decline a connection request.

In relation to item (i), we note that telecommunications network infrastructure can be installed during the construction phase of a building (indeed, this is required under the Telecommunications in New Developments (**TIND**) policy and under various state and territory planning approval processes as well).⁷ It may be possible for a SIP to accept a connection request even where premises are under construction, if the premises are expected to be completed (or liveable if not fully completed) within the SIP's target connection timeframe (and subject to the connection request otherwise being "reasonable"). This would facilitate quicker access to broadband services for end users moving into the premises, some of which do so prior to the premises being fully complete.

In circumstances where an **existing** SIP for an area has contracted with a developer in that area, item (i) appears to strike an appropriate balance in relation to premises that are under construction, by not requiring the SIP to accept connection requests received too early during the construction phase, but effectively requiring the SIP to accept connection requests in circumstances where the premises are expected to be completed (or liveable if not completed) within the SIP's target connection timeframe.

However, the situation is potentially more complex when there is an existing SIP in an area, and a **different** carrier has been contracted to service a new development in that area. Until the network installation is complete, the new carrier will not be required to nominate as (and become) the SIP in the new development, so connection requests will not be able to be made to the carrier who will become the SIP until that time.

⁷ The TIND policy requires developers to organise and meet the costs of pit and pipe infrastructure and telecommunications network infrastructure in their developments, so that services are available when people move into premises.



In relation to item (iv), the Department has asked the following question:

Note: Most premises where a request is likely to be made under the SIP regime are expected to be permanent structures. However, (iv) above is provided to recognise there may be instances where 'moveable structures' such as caravans, motorhomes or tiny homes may be located on a relatively permanent basis at a given site.

Question: Would there be benefit in providing a minimum specific threshold to quantify what is intended by 'continuously located'?

We agree it is reasonable to expect moveable structures to be continuously located at a site for which a SIP connection request has been made. There is benefit in providing specific thresholds to quantify what is intended by the term "continuously located", as too short a time period may create some commercial difficulties for SIPs; however, any minimum specific threshold should not be so high as to preclude and potentially discriminate against persons that reside in moveable structures.

We also suggest the following amendment to circumstance (a):

(a) at the time of the request, the premises specified in the request:

- (i) is under construction and will not be at lock up stage of the construction by the day nominated by the carriage service provider for the connection to be undertaken;
- (ii) is a permanent structure that does not comply with all applicable planning and development laws pertaining to structural safety and integrity;
- (iii) is not one of the following types of premises:
 - A. a Designated Private Residence;
 - B. a place of worship;
 - C. an Educational Premises;
 - D. a Government Premises;
 - E. a business premises;
 - F. a premises of a charity;
 - G. a not-for-profit entity's premises;
- (iv) is a moveable structure that is not reasonably expected to be continuously located at the particular site where the connection has been requested **based on reasonable access to a power source and sanitation facilities;**

3.2.2 Circumstance (b)

This circumstance provides that a connection request may be denied where a power source to support the connection has not been supplied or arranged to be supplied. We agree that this is reasonable grounds to deny the request (noting it would not be the SIP's responsibility to arrange for the necessary power supply).



3.2.3 Circumstance (c)

This circumstance provides that a connection request may be denied where fulfilling the connection obligation would constitute a contravention of an applicable law. We agree that this is reasonable grounds to deny the request.

3.2.4 Circumstance (d)

This circumstance provides that, if civil works to support the connection have not been supplied or arranged, the connection request may be denied. Our understanding is that, in most cases, this is likely to be a reasonable circumstance, although it should only provide a basis for rejecting a connection request if the civil works would normally be carried out by a party other than the SIP (e.g. an end user arranging for the civil works for a lead-in cable; a developer arranging for the provision of pit and pipe in the street, and starter pipe into each lot).

3.2.5 Circumstance (e)

This circumstance provides that a connection request may be denied where a connection request has already been received or the premises has already been connected. We agree that this is reasonable grounds to deny the request, although it should be made clear that this circumstance does not provide a basis to reject a connection request for a secondary residence for the reason that the primary residence already has a connection.

3.2.6 Circumstance (f)

This circumstance provides that a connection request may be denied where the premises is connected to another qualifying telecommunications network, and the SIP is satisfied that, at the time of the request, the end user at the premises is being supplied with a qualifying carriage service. The Department has provided the following note and question in relation to this circumstance:

Note: *The drafting at (f) above reflects that there may be alternative networks in competition with SIP networks. Broadly, it is envisaged a SIP would not be obliged to arrange a new network connection to a premises where a qualifying carriage service is already being supplied. However, the drafting also recognises that an end user could cancel a service provided over a third party network (e.g. due to concerns over price, quality or customer service) or a service could be withdrawn by the provider. It is envisaged that if a third party service is being withdrawn by a provider due to a breach of its terms and conditions by the end-user, this would not absolve a SIP of the need to consider a request, but it could consider the circumstance in doing so.*

Question: *Does the proposed drafting above appropriately balance the interests of SIPs, carriers operating third party networks, and consumers?*

We agree it is reasonable to deny a connection request where the premises is connected to another qualifying telecommunications network and is receiving a qualifying carriage service, noting that if the end user has been advised that the third party network provider is withdrawing the service within a specified timeframe, or the end user has requested to cancel that service, then this circumstance would not apply as a basis to reject the request. Similarly, if the SIP and another network provider both pass a premises, neither the SIP nor the third party network is providing a service to that premises, and the SIP is requested to connect and provide a service, it would not be able to reject the connection request relying on circumstance (f).



We also note that, as mentioned above, under the Migration Plan, Telstra is subject to mandatory disconnections from our legacy copper and HFC networks, as voice and broadband services progressively migrate to the nbn. Importantly, under circumstance (f), connection to a legacy network would clearly not be a reason to refuse a connection request under the SIP regime. The SIP regime must be implemented consistently with the Definitive Agreements and Migration Plan.

3.2.7 Circumstance (g)

This circumstance provides that a connection request may be denied where the installation of equipment necessary for the connection would put the SIP's employees, contractors or agents or members of the public at unreasonable risk of being exposed to health or safety hazards. We agree that this is reasonable grounds to deny the request.

3.2.8 Circumstance (h)

This circumstance provides that a connection request may be denied where the SIP requires access to land, premises or areas within a premises owned or occupied by a party which are not publicly accessible, and the consents required in the powers and immunities regime were not received within the relevant timeframes. We agree that this is reasonable grounds to deny the request.

3.2.9 Circumstance (i)

This circumstance provides that a connection request may be denied where the SIP requires consent for the installation and that consent was not received in the reasonable timeframe requested by the SIP. We agree that this is reasonable grounds to deny the request, although we note that, in seeking consent, the SIP needs to provide sufficient detail regarding the scope of works required and the timeframes involved.

3.2.10 Circumstance (j)

This circumstance provides that a connection request may be denied where the requesting CSP has not accepted the terms and conditions on which the SIP offers to connect premises in the relevant service area (provided the terms and conditions are not inconsistent with the SIP instrument). We agree that this is reasonable grounds to deny the request.

3.2.11 Circumstance (k)

This circumstance provides that a connection request may be denied where the end user is a person that is under the age of 18, is not the owner or lessee of the premises, and has not obtained the owner's or lessee's consent to make the connection request. This appears to be reasonable grounds to deny the request, although we note that the equivalent USO instrument does not contain the third limb (regarding the owner's or lessee's consent), and this may require further consideration and steps for SIPs to implement if they do not already ask for consent in these circumstances. We also note that, given this ground relates to the identity of the end user, SIPs are likely to rely on the CSP requesting the connection to provide the information relevant to this circumstance.



3.2.12 Circumstance (l)

This circumstance provides that a connection request may be denied where the SIP has a reasonable need to identify the end user and is unable to do so. We agree that this is reasonable grounds to deny the request.

3.2.13 Circumstance (m)

This circumstance provides that a connection request may be denied where the SIP believes on reasonable grounds that the request is fraudulent. We agree that this is reasonable grounds to deny the request.

3.2.14 Circumstance (n)

This circumstance provides that a connection request may be denied because the SIP believes, on reasonable grounds, that the end user does not have the legal right to occupy the premises. We agree that this is reasonable grounds to deny the request.

3.2.15 Suggested additional circumstance

Under section 360R of the *Telecommunications Act 1997* (Cth), a SIP is required to notify the Secretary of the Department and the ACMA if it becomes aware that it is likely that it will no longer be able to meet its obligations under sections 360P and 360Q. In our view, where this type of notification has been given, the SIP should generally be able to reject subsequent connection and supply requests. We suggest this circumstance be added to the SIP instrument.

3.3. Part 2 Division 2 – Determination of circumstances for supply requests

As the draft instrument notes, Division 2 largely mirrors Division 1, but with amendments to reflect a focus on “supply” rather than “connection”. Telstra does not have any comments regarding the circumstances for supply requests, beyond our comments on the equivalent parts of Division 1.

In relation to “supply”, we note that the FTTP network areas where Telstra is the SIP are subject to access regulation under Part XIC of the *Competition and Consumer Act 2010* (Cth). On 29 July 2016, the ACCC declared the Superfast Broadband Access Service (**SBAS**), and on 26 May 2017, the ACCC released the final decision report in the SBAS and Local Bitstream Access Service (**LBAS**) Final Access Determination (**FAD**) joint inquiry.

The ACCC declaration and FAD make separate provision for the Fibre Access Broadband (**FAB**) services offered by Telstra over the South Brisbane and Velocity FTTP networks, in recognition of the different technical characteristics of those networks compared to others.

The current SBAS declaration and associated FAD expire on 28 July 2021. However, the ACCC is currently conducting a re-declaration inquiry in relation to these services.⁸

⁸ <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/lbas-sbas-declarations-inquiry-2020>.