

Submission to consultation on Telstra request for extensions to Ministerial exemptions for its South Brisbane and Velocity networks

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For many years now — far longer than anyone anticipated — Telstra has been able to charge a much higher price and offer worse service to Velocity customers, with no competitive alternatives available, and with no promise of change. While Telstra recently realigned its pricing in Velocity areas with its nbn offerings, customers in these network footprints are still captive to Telstra's higher pricing and poor speeds.

Telstra's request for a further exemption serves only the interests of itself. The Department, the people, the ACCC, and all other industry stakeholders have expressed their eagerness for a regulatory environment that promotes greater competition in these network footprints.

I invite the Minister to carefully observe Telstra's past behaviour. Over the past decade, they have not made any significant investment to improve speeds or pricing, and have continually requested extensions to their exemptions (at one point asking for the exemptions to be indefinite). At no point have Telstra made any real progress towards complying with the legislation prior a set expiry of their exemptions. At each 11th hour, they have come to the Government for a further extension of their special conditions. Telstra's latest submission makes clear their lack of empathy or understanding of the plight of residents in these areas, who are being forced to pay more and accept inferior service than other Australians.

Extending this quasi-monopoly for another three years is not the answer. I urge the Minister to reject Telstra's request, and implement some measure of enforceable undertaking that requires Telstra to maintain the current service provided, while providing monthly updates to the Department on its progress towards satisfying its legal obligations under Parts 7 and 8 of The Telecommunications Act 1997.

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Sale of the networks

The broad expectation was that Telstra would negotiate a sale of the Velocity networks (similar to the sale of its HFC network) to nbn. However, in 2015 negotiations between Telstra and nbn were reported to have broken down.

In 2019, The Australian Communications Consumer Action Network (ACCAN) argued that although “at a commercial level this impasse has . . . not necessarily been unfavourable for Telstra or [nbn], consumers in the network footprint are significantly negatively affected”. Their research shows that in the prior five years, consumers within the network paid an extra \$900 to \$1200 for services over and above comparable options on the nbn.

The Australian Competition and Consumer Commission (ACCC) agrees. In July 2016, it stated that “the retail plans in South Brisbane and in Velocity estates have largely remained unchanged . . . These prices are higher than those offered on nbn and other regulated networks. For example, Exetel offers a 30/1 Mbps service with a 100 GB data allowance, provided on Telstra’s [fibre] network in South Brisbane, for \$80 per month. This can be compared to Exetel’s offer of a 25/5 Mbps [nbn] service with the same allowance for \$49 a month.” While this was in 2016, little has changed.

Further, the ACCC found “the lack of competitive retail options suggest there is insufficient pressure on vertically-integrated suppliers to remain competitive both on price and non-price terms and may, over time, lead to a larger divergence between retail offerings by vertically-integrated providers and those where wholesale competition is present.”

Divergence on price and non-price terms

In 2020, the most affordable internet plan available on Telstra’s South Brisbane network is \$75 per month, with 500 GB included and speeds of 30/1 Mbps. Exetel’s lowest offering is \$90.99 per month. Meanwhile, on the nbn, plans as low as \$29.99/month are commonly available from providers such as TPG for users with low data requirements.

This is a matter of equity — in 2019, ACCAN found that in the South Brisbane network area there were “1,065 age pensioners; 621 Disability Support pensioners and 746 low income families on Family Tax Benefit A many of whom use Velocity services at significant mark-up”. It is unconscionable for these individuals to be subject to a minimum access price of \$75 per month to access what is — in this day and age — a fundamental human right.

Due to the large number of service providers on the nbn, a myriad of different plan and price options are available to end users. This allows them to find the right fit, and in every instance at lower prices for comparable services. Residents in the Velocity footprints are afforded no such luxury.

Arguably, however, the more significant divergence is occurring on non-price terms. Telstra has not made any significant investment in its South Brisbane network since the rollout completed. While at present, 100/5 Mbps speeds are available to customers, for extended periods of time residents were not given the option to pay extra for speeds greater than 30/1 Mbps due to insufficient network investment.

On equivalent price terms, high quality RSP's such as Aussie Broadband and Launtel (with superior customer service offerings to Telstra and low contention ratios) are offering unlimited 100/40 Mbps plans for \$90 per month — \$20 less than Telstra.

Meanwhile, as I am sure the Department is aware, on Friday 29 May nbn launched residential Gigabit plans on FTTP and limited HFC networks across the country. For \$149/month, residents on equivalent FTTP technology have access to unlimited 1000/50 Mbps internet. This is ten times greater than the best offering on Telstra's Velocity networks.

It is difficult to overstate the divergence on non-price terms between Telstra's Velocity networks and the nbn.

Wholesale-only layer 2 bitstream implications

While forcing Telstra to comply with Parts 7 and 8 is no panacea, it will help create an environment that is more conducive to competition, by lowering the barrier to entry to other RSPs. According to other reputable RSPs such as Aussie Broadband, interfacing with Telstra's current "emulated PSTN" network design is too onerous and costly, particularly given the relatively small number of premises in the networks.

If Telstra is required to comply with the legislation, we can expect to see a competitive environment similar to what is found on OptiComm networks. While prices there are still somewhat higher than on the nbn, a wider variety of choice and far greater speeds are available to end users.

Telstra's position

In 2011 and the years prior, it was well and truly on the cards that Fibre To The Premises was the preferred technology of choice for new connections in greenfield and brownfield estates. It was to end users and Telstra's detriment that they chose to implement a PSTN emulation design with limited scope for improvement in speeds without significant further investment.

Over the past decade, at each expiry of the exemptions, it has become clear that Telstra has made no genuine effort to bring its Velocity networks into compliance with the legislation. Why should they? Telstra has a captive market with

virtually no competition, and no real need or obligation to improve the speeds or prices available. As long as the bystanders — the Minister, the ACCC, and nbn — continue to sit on their hands, end users will continue to pay the price.

Contrary to the views held by all other stakeholders, Telstra insists that “no competition concerns have been raised in relation to those networks . . . any further regulation would be disproportionate to any competition concerns.”

Again, contrary to the position held by ACCC and other stakeholders, Telstra states that “any requirement to provide a Layer 2 bistream service over those networks . . . [would provide benefits] which are minimal given the operation of existing regulation”.

In 2015, Telstra stated that its “FAB service in its South Brisbane and Velocity estate networks will be migrated across to nbn in the next few years”.

In 2017, Telstra wrote to the Minister requesting that its exemptions in relation to the networks be extended indefinitely.

In 2020, Telstra stated that it is “continuing to explore a number of options for the operation of the FTTP Networks . . . we expect that this will be the last time we seek an extension.”

Given Telstra’s track record, there is no reason to expect that its demonstrations in this year’s submission hold any value. The company has made vague statements of dedication of resources and discussions with third parties, and when queried, it has hidden behind commercial confidentiality to avoid presenting any concrete evidence of this taking place.

Pending these alleged discussions, it is highly unlikely that Telstra will make any intermediate upgrades to its networks. Without any regulatory intervention, it is not unreasonable to expect that end users will still be subject to the same elevated pricing and poor speeds at the proposed date in 2023.

The Government’s position

It is no surprise to find that the Government was of similar mind to other stakeholders when the exemptions were most recently extended. The Government found that “Telstra will not be in a position to comply with Parts 7 and 8 by [the date] . . . The Government is disappointed by continued weak competition in South Brisbane and comparatively poor outcomes for end-users to those in [nbn]-serviced areas. Maintenance of the status quo is not a long-term viable option. The Government continues to view the exemptions as temporary.”

I find it difficult to imagine the circumstances under which the Minister, The Hon Paul Fletcher MP, could justify granting Telstra a further extension. The Minister is very familiar with Telstra’s past and present. Given the gross disparity in price and service quality — particularly of upload speeds — experienced by end users in Velocity network areas, it would be unconscionable for the

Government to permit the further extension of Telstra's exemption from the legislation.

I urge the Minister to reject Telstra's request, and implement some measure of enforceable undertaking that requires Telstra to maintain the current service provided, while providing monthly updates to the Department on its progress towards satisfying its legal obligations under Parts 7 and 8 of the *Telecommunications Act 1997*.

Survey of affected residents

In a survey of affected residents in the South Brisbane footprint, 83 per cent of respondents indicated that they pay \$90 or more for their internet per month.

The only neutral feedback was that the user was satisfied with the stability of their internet; nevertheless, they wished that the cost was lower. The remainder of the feedback was overwhelmingly negative:

"Paying [\$20 per month] for a speed boost to get 5 Mbps upload is a joke."

"For almost 8 months Telstra capped me at 30/1 Mbps . . . They only returned my service to 90/5 [Mbps] after months of calls and a mention of the ombudsman."

"Drop outs and slow speeds are a constant feature. Our contract expires in July, however there doesn't seem to be any other viable choice but to remain with Telstra because of this Velocity rort."

"It's incredibly frustrating as a small business (working from home) . . . Telstra limits the local Velocity network to 5 Mbps . . . it's very limiting for innovation and for most modern services."

"Our service is awful . . . We have lived in new apartment buildings in the same suburb [that are serviced by nbn] and they have high speed internet."

"We need the 5 Mbps for streaming . . . but the prices are absolutely exorbitant."

"We have lived in 3 buildings in the last 4 years in the area, each with a different internet setup. The one with NBN had the best speed and pricing, the one with TPG fibre had similar pricing to Telstra but double the speed, and the building we're in now with only the Velocity option is the slowest and most expensive of all three. It is infuriating."

"This is not fair for people with limited budgets as we can't choose a simple plan . . . This is the only choice we've got."