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## **TELSTRA CORPORATION LIMITED**

### **Submission to the Department of Communications and the Arts regarding the review of the 2015 Telecommunications in New Developments Policy**

**Public version**

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## Executive Summary

Telstra agrees that a review of the 2015 Telecommunications in New Developments (**TIND**) policy is necessary, given the significant changes which have taken place in the telecommunications sector since 2015, including the expected completion of the NBN fixed-line rollout in June 2020, and the expected commencement of the Statutory Infrastructure Provider (**SIP**) regime by 1 July 2020.

The 2015 TIND policy was put in place when Telstra was a key provider of fixed-line infrastructure. Now, in early 2020, the NBN is nearing completion. This means that, under the 2015 TIND policy, NBN Co effectively has Infrastructure Provider of Last Resort (**IPOLR**) responsibility for fixed-line infrastructure throughout its fixed-line footprint, while Telstra's IPOLR role is effectively limited to the provision of voice infrastructure outside NBN Co's fixed-line footprint. At the same time, the proposed SIP regime has been reintroduced into Parliament and will put into legislation many of the requirements in the 2015 TIND policy. NBN Co will be the SIP for the whole of Australia once its network is declared built and fully operational, other than for "nominated service areas" and "designated service areas" served by other SIPs. SIPs will be required to connect and supply wholesale services to carriage service providers on request, so they can supply voice and broadband services to end users.

Against this background, the 2015 TIND policy needs to be revised to clearly reflect the roles NBN Co and Telstra have now and will occupy going forward. In particular, Telstra considers that **IPOLR responsibility under a revised TIND policy should align with SIP responsibility** under the proposed SIP legislation. This would make NBN Co the IPOLR for all of Australia (other than nominated and designated service areas), for the provision of voice and broadband services in its fixed-line and fixed wireless areas, and for the provision of broadband services in its satellite footprint. As for our role, we believe Telstra retaining the IPOLR role for voice services outside NBN Co's fixed-line footprint is at odds with the SIP legislation and should not continue. As the USO provider, Telstra will continue to have a legal obligation to supply fixed Standard Telephone Services to consumers, which will ensure we provide sufficient telecommunications infrastructure where necessary to meet our obligation.

To support the delivery of USO voice services, **NBN Co's fixed wireless service should be made USO-compliant**. This is the logical next step from the SIP legislation, which will require NBN Co's "qualifying fixed wireless network" to have voice and broadband capability. It also lends support to our position that Telstra should no longer be the IPOLR outside NBN Co's fixed-line footprint.

Whether or not Telstra ultimately retains an IPOLR role under the revised TIND policy, **the interaction between the SIP regime and the USO must be clarified**. While other carriers can choose whether to deploy infrastructure, and therefore whether to assume the role of SIP, the USO provider must, where necessary, deploy infrastructure which is at least capable of providing USO voice services. Entry into a contract with a developer to deploy telecommunications infrastructure should not trigger the application of the SIP regime – which would require the provision of superfast broadband infrastructure – if the contract is only to supply USO voice services. Telstra has been seeking regulatory certainty regarding the Minister's ability to provide an exemption from the SIP nomination obligations where the entry into the contract is solely for the deployment of infrastructure to provide USO voice services. The position reached in relation to these exemptions ought to be reflected in the revised TIND policy.

Apart from the issues of IPOLR responsibility and SIP/USO interaction, our submission addresses a range of topics to assist with the preparation of a revised TIND policy. These include measures to facilitate retail competition over alternative carriers' networks, the process for confirming who has



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infrastructure responsibility to service a new development, overbuilding of alternative carriers' networks by NBN Co, network and service standards, and developer responsibilities for the installation of telecommunications infrastructure in new developments.

In relation to **retail competition over alternative networks**, we believe NBN Co's central position in Australia's telecommunications landscape means it has an important role to play in facilitating a standard business-to-business interface, and in routing traffic from alternative networks, in order to support retail competition over those alternative networks. We believe NBN Co should be required to work with industry to deliver on these objectives.

In relation to **confirming infrastructure responsibility for new developments**, this has been a challenge for Telstra under current policy arrangements, so we welcome the requirement under the proposed SIP legislation for carriers to notify the ACMA where they are the SIP for a new development.

In relation to **overbuilding by NBN Co**, we do not agree that the requirement for NBN Co to demonstrate to Shareholder Ministers the commerciality of a proposed overbuild should be removed from the TIND policy. While the consultation paper suggests that the requirement is self-policing, it may in fact be rational for NBN Co to overbuild without a commercial business case, due to its overall sub-commercial rate of return. NBN Co should continue to be required to seek approval from Shareholder Ministers for overbuilds on the basis of a truly commercial business case.

In relation to **network and service standards**, it will be important for the Minister to use the SIP framework to set minimum network and service standards for carriers servicing new developments, including in relation to connections, fault repairs, network performance and upgrades. It will also be important to ensure that any standards, rules and benchmarks set as part of the SIP regime take account of, and are consistent with, other reviews and inquiries regarding network and service standards in the telecommunications sector, which have highlighted the importance of aligning incentives between RSPs and wholesalers to ensure end users receive the services they need and expect.

Lastly, in relation to **developer responsibility and compliance**, we agree that developers should remain responsible for organising and meeting the costs of pit and pipe infrastructure, and for ensuring telecommunications services are available in their new developments. We expect ongoing work will be needed to help ensure all developers arrange for the provision of telecommunications infrastructure, including further awareness raising of policy and legislative requirements, as well as the adoption, maintenance and enforcement of complementary planning measures. We also agree that carriers should be able to charge developers for providing telecommunications infrastructure, or otherwise recover the costs of doing so (but, in the interests of end users, consideration should be given as to how to appropriately limit the shifting of costs to end users).



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## 01 Introduction

Telstra welcomes the opportunity to respond to the review of the 2015 Telecommunications in New Developments (**TIND**) policy being undertaken by the Department of Communications and the Arts (the **Department**).

Telstra agrees that a review of the 2015 TIND policy is necessary now, given the significant changes which have taken place in the telecommunications sector since 2015, including the expected completion of the NBN fixed-line rollout in June 2020, and the expected commencement of the Statutory Infrastructure Provider (**SIP**) regime by 1 July 2020. In particular, as discussed in the Department's consultation paper:

- The 2015 TIND policy was put in place when Telstra was a key provider of fixed-line infrastructure and NBN Co had a long way to go to complete the rollout of its network. Now, the NBN is nearing completion and, under the 2015 TIND policy, NBN Co effectively has Infrastructure Provider of Last Resort (**IPOLR**) responsibility for fixed-line infrastructure throughout its fixed-line footprint. By contrast, Telstra's IPOLR role under the 2015 TIND policy is now effectively limited to the provision of voice infrastructure outside NBN Co's fixed-line footprint, reflecting its role as the Universal Service Obligation (**USO**) provider.<sup>1</sup> Consistent with this, Telstra announced in June 2019 that, from July 2019, it would generally no longer enter into commercial agreements for telecommunications infrastructure in new developments inside NBN Co's fixed-line footprint. Telstra included a statement to this effect on its Smart Community website.<sup>2</sup>
- The SIP Bill was reintroduced into Parliament in November 2019.<sup>3</sup> Under the proposed SIP regime, NBN Co will become the SIP for "interim NBN service areas" as it rolls out its network, and will be the default SIP for the whole of Australia once its network is declared built and fully operational, other than for "nominated service areas" and "designated service areas". Nominated and designated service areas are carved out of NBN Co's general service area, and are served by alternative carriers who are the SIP for the area. A non-NBN carrier may become the SIP for an area where it has a contract with a developer to install telecommunications infrastructure in a new development, or it is designated by the Minister. SIPs will be required to connect and supply broadband services to carriage service providers (**CSPs**) on request, so the CSPs can supply voice and broadband services to end users. The proposed SIP regime will put into legislation many of the requirements in the NBN Co Statement of Expectations, and the 2015 TIND policy.<sup>4</sup>
- The circumstances in which non-NBN carriers will have an opportunity to build infrastructure that is capable of supporting both voice and broadband services (as opposed to infrastructure that only supports voice infrastructure) will be significantly narrowed under the proposed changes to the Superfast Network Obligations contemplated by the Telecommunications Legislation Amendment (Competition and Consumer) Bill 2019.

Accordingly, Telstra agrees with the Department that a significantly shorter and more targeted TIND policy is appropriate now.

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<sup>1</sup> Review of the 2015 Telecommunications in New Developments (TIND) policy: Request for Comments, 20 November 2019, page 4.

<sup>2</sup> See: <https://www.telstra.com.au/smart-community>.

<sup>3</sup> Telecommunications Legislation Amendment (Competition and Consumer) Bill 2019.

<sup>4</sup> Review of the 2015 TIND policy: Request for Comments, page 6.



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To assist with the preparation of a revised TIND policy, this submission addresses the following issues:

- the ongoing need for an IPOLR, and the respective roles NBN Co and Telstra should play;
- measures to facilitate retail competition over alternative carriers' networks;
- the process for confirming who has infrastructure responsibility to service a new development;
- overbuilding of alternative carriers' networks by NBN Co;
- network and service standards; and
- developer responsibilities for, and compliance regarding, the installation of telecommunications infrastructure in new developments.



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## 02 IPOLR

### 2.1. The ongoing need for an IPOLR

The Department's consultation paper highlights the importance of consumers having ready access to telecommunications infrastructure of an appropriate standard. The paper also recognises that developers are likely to have strong commercial incentives to ensure their new developments include adequate telecommunications infrastructure, and carriers are likely to have similarly strong incentives to service new developments and connect premises in them. Nevertheless, there may be some circumstances where a developer faces difficulties engaging a telecommunications provider to service a new development.

Under the 2015 TIND policy, the purpose of the IPOLR is to ensure that, in circumstances where a developer is not otherwise able to find a network provider to service a development on a commercial basis, NBN Co or Telstra will be required, as providers of last resort, to offer commercial quotes to service the development.<sup>5</sup>

As discussed in the Department's consultation paper, the introduction of the SIP regime will supersede a large part of the 2015 TIND policy relating to the obligations of IPOLRs.<sup>6</sup> However, the Department's consultation paper also states that the SIP regime *"does not seek to regulate developers in organising telecommunications for their new developments. It envisages these matters will still be guided by commercial and policy arrangements for the most part. However, the SIP rules will come into play once a developer has selected a carrier to service its new development, ensuring that the carrier services the development and all premises within it on an ongoing basis"*.<sup>7</sup>

Telstra accepts that the SIP legislation does not seek to regulate developers in organising telecommunications for their new developments and that, for non-NBN networks, the SIP rules will only come into play once a developer has selected a carrier to service its new development (or the Minister designates a carrier to be the SIP for a certain area). However, we note that, from the designated day onwards, NBN Co will be the default SIP for all of Australia (excluding "nominated service areas" and "designated service areas" served by other SIPs). This means that, on reasonable request by a CSP, NBN Co will be obliged to connect premises to a qualifying telecommunications network so the CSP can provide carriage services to the end user at the premises. This obligation will apply across Australia, except in geographic areas where there is another SIP.

We expect that NBN Co's role as the default SIP for all of Australia will incentivise NBN Co to enter into agreements with developers to install telecommunications infrastructure in new developments, so it can meet its SIP obligations and do so as efficiently and economically as possible.

Similarly, we note Telstra's ongoing role as the USO provider – which requires us to ensure fixed Standard Telephone Services are reasonably accessible to all people in Australia on an equitable basis – means we will build or install infrastructure where necessary to fulfil our obligations.

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<sup>5</sup> Telecommunications infrastructure in new developments: A new approach to competition (2015 TIND policy), 1 March 2015, page 22.

<sup>6</sup> Review of the 2015 TIND policy: Request for Comments, page 6.

<sup>7</sup> Review of the 2015 TIND policy: Request for Comments, page 6.



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For these reasons, there will only be a residual need for a revised TIND policy allocating IPOLR responsibilities for new developments, to ensure developers are able to secure the installation of telecommunications infrastructure in their developments in circumstances where commercial or other incentives do not otherwise ensure the delivery of this infrastructure during the development phase.

To the extent that the revised TIND policy continues to allocate IPOLR responsibility, it needs to clearly reflect the roles Telstra and NBN Co have now and will occupy going forward.

In addition, a revised TIND policy may also set out some additional requirements regarding the activities of the IPOLR, over and above the legal obligations to which they are subject (for example, see the discussion in Section 2.5 below).

## 2.2. Ongoing roles for Telstra and NBN Co

The Department's consultation paper states that:

*"There should no longer be an IPOLR role for Telstra in NBN Co's fixed-line footprint, although it will continue to have such a role outside that footprint when it comes to voice services (which it may provide using a range of technologies including fixed wireless and satellite)."*<sup>8</sup>

This statement suggests that Telstra and NBN Co should effectively keep their current IPOLR roles going forward; that is, NBN Co should be the IPOLR inside its fixed-line footprint, and Telstra should be the IPOLR outside NBN Co's fixed-line footprint for the provision of voice services.

In our view, a different division of responsibility is now warranted. In particular, Telstra considers that IPOLR responsibility under a revised TIND policy should align with SIP responsibility under the proposed SIP legislation. More specifically, we consider that:

- NBN Co should be the IPOLR for Australia for the provision of voice and broadband services in its fixed-line and fixed wireless areas, and for the provision of broadband services in its satellite footprint (unless and until such time as NBN Co's satellite becomes suitable for the delivery of voice services as well). This would be consistent with the proposed SIP regime under which NBN Co will be (1) the default SIP for all of Australia (other than nominated service areas and designated services areas served by other SIPs), and (2) required to connect premises to a qualifying fixed-line or fixed wireless network to enable the supply of voice and broadband services, or a qualifying satellite network to enable the supply of broadband services only. In fact, making NBN Co the IPOLR for Australia would support the SIP regime by requiring NBN Co to install during the development stage the infrastructure it would then use to meet its SIP obligations in that new development. It would also reflect commercial reality, namely the forced migration of customers in NBN Co's fixed-line footprint from Telstra's legacy systems to the NBN, as well as the advertised availability and suitability of NBN Co's fixed wireless network for voice and broadband services, and its satellite network for broadband services.
- Similarly, IPOLR responsibility for any developments within nominated service areas and designated service areas (e.g. vacant lots, subdivisions and knock-down rebuilds) should rest with the SIP for that geographic area.

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<sup>8</sup> Review of the 2015 TIND policy: Request for Comments, page 8.





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- Telstra being the IPOLR for voice services outside NBN Co's fixed-line footprint is at odds with the position under the SIP legislation, and should not continue under the revised TIND policy. In particular, we note that:
    - Under the draft SIP legislation, if Telstra is the IPOLR and is forced to enter contracts with developers for telecommunications infrastructure in new developments, it will also be required to nominate as the SIP and provide superfast broadband as well as voice services, instead of that being NBN Co's responsibility.
    - If Telstra is the IPOLR but is exempt from the requirement to nominate as the SIP when it installs infrastructure to meet its USO (discussed in detail below), then NBN Co would remain the default SIP for the development. This is clearly the right outcome under the SIP framework, but may pose practical questions for developers. For instance, in these circumstances, would a developer contract with Telstra as the USO provider and NBN Co as the default SIP? Or, would the relevant planning authority approve the development on the basis of the contract with Telstra, leaving NBN Co to connect individual premises on request from a CSP?

Removing Telstra's IPOLR role, and having NBN Co as the IPOLR for Australia (other than nominated and designated service areas), would resolve these complexities and inefficiencies by bringing the TIND policy into line with the proposed SIP regime.

- It is not necessary for Telstra to continue to have IPOLR responsibilities for the provision of voice services outside NBN Co's fixed-line footprint. As the USO provider, Telstra will continue to have a legal obligation to supply Standard Telephone Services to consumers. This will continue to ensure we provide sufficient telecommunications infrastructure where necessary to meet our obligations, which may include wireless and satellite solutions in regional, rural and remote areas.

In this context, we wish to raise an additional issue about the provision of USO voice services outside NBN Co's fixed-line footprint. In our view, NBN Co's fixed wireless service should be made USO-compliant to facilitate the delivery of USO voice services outside the fixed-line footprint, including by ensuring the relevant Customer Service Guarantee (**CSG**) requirements can be met.<sup>9</sup> This is the logical next step resulting from the SIP legislation, which will make NBN Co the default SIP and require its "qualifying fixed wireless network" to have voice and broadband capability. Indeed, it would be neither logical nor efficient if NBN Co as the SIP was required to connect premises to a "qualifying fixed wireless network" with voice and broadband capability, but was not required to make that fixed wireless service USO-compliant, potentially requiring Telstra to deploy additional infrastructure to provide USO voice services to the same premises.

If this suggestion were implemented, Telstra would be able to use NBN Co's fixed-line and fixed wireless technologies to provide USO voice services, so there would be less need for Telstra to effectively duplicate the installation of infrastructure in order to provide these services in the future. This also lends further support to our position that Telstra should no longer be the IPOLR outside NBN Co's fixed-line footprint.

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<sup>9</sup> This would require changes to the NBN Wholesale Broadband Agreement (**WBA**), which currently prevents retail service providers (**RSPs**) from using NBN Co's fixed wireless service to provide a downstream CSG service. See, for example, clause 17.1 of the WBA NBN Ethernet Product Module – Product Terms.



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### **2.3. The interaction between the SIP and the USO must be clarified, particularly if Telstra continues to be the IPOLR outside NBN Co' fixed-line footprint**

It is critical that Telstra does not trigger the SIP obligations simply by installing telecommunications infrastructure to meet our USO.

As discussed with the Department previously, while other carriers have the choice of whether to deploy infrastructure, and therefore whether to assume the role of SIP, the USO provider must, where necessary, deploy infrastructure which is at least capable of providing the USO voice service. The entry into a contract with a developer to deploy telecommunications infrastructure should not trigger the application of the SIP regime – which would require the provision of superfast broadband infrastructure throughout the development – if the contract with the developer is only to provide a voice capable network or otherwise to meet the USO.

Telstra has been seeking regulatory certainty regarding the Minister's ability to exempt specified real estate development projects and building redevelopment projects from the SIP nomination obligations where the entry into the contract is solely for the deployment of infrastructure to provide USO voice services. Telstra considers that the position reached in relation to these exemptions from the SIP nomination obligations ought to be reflected in the revised TIND policy, although the exemptions will rely on legislative instruments to take effect.

The lack of regulatory certainty about the interaction between the SIP regime and the USO has made Telstra reluctant to offer quotes to developers for wireless technology in new developments outside NBN Co's fixed-line footprint, in circumstances where wireless technology may be more cost effective than extending the legacy copper network to service the new development.

We note that clarifying the interaction between the SIP regime and the USO will be particularly important if the Department and the Minister believe Telstra should remain the IPOLR outside the fixed-line footprint; however, it is an issue which should be resolved regardless, to cater for all situations where the USO provider enters into a contract with a developer to install telecommunications infrastructure for USO purposes.

If Telstra does continue to have IPOLR responsibility outside the fixed-line footprint, and is exempt from the SIP nomination obligations where it installs infrastructure to provide USO voice services, NBN Co will remain the default SIP for the area. In our view, NBN Co should also have IPOLR responsibilities to help ensure end users have timely access to broadband as well as voice services.

### **2.4. If Telstra continues to be the IPOLR outside NBN Co's fixed-line footprint, developers should be required to demonstrate they have sought to engage an alternative carrier**

In our experience, developers often treat Telstra as an infrastructure provider of first choice, rather than a true IPOLR. This is particularly so for developers associated with small to medium-sized developments. The consequence is that, for a period of time, residents / end users in these developments may only be able to receive voice services as required under the USO, and not internet services which they are likely to expect when moving in to their premises.

If Telstra is to remain the IPOLR for voice services outside NBN Co's fixed-line footprint, it may be worth requiring developers to demonstrate they have first sought to engage an alternative carrier to supply voice and broadband services in the new development, so Telstra's role as an infrastructure provider for voice services is genuinely that of an IPOLR (albeit only in relation to voice services).



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In addition, as mentioned above, even if Telstra continues to have IPOLR responsibility outside the fixed-line footprint, we believe NBN Co should also have IPOLR responsibilities outside the fixed-line footprint to help ensure end users have timely access to broadband as well as voice services.

**2.5. Regardless of whether Telstra is the IPOLR outside NBN Co's fixed-line footprint, NBN Co should be required to service adjacent developments with fixed-line infrastructure**

Under the 2015 TIND policy, there is an expectation that NBN Co will consider providing fixed-line infrastructure where a new development is adjacent to (i.e. within 1000 metres of) existing fixed-line infrastructure.<sup>10</sup>

In Telstra's experience, despite the 2015 TIND policy, NBN Co has rarely serviced adjacent developments using fixed-line infrastructure. While this may have been understandable in the past (when NBN Co's focus was on completing its brownfield rollout), we believe the revised TIND policy should generally require NBN Co to provide fixed-line infrastructure where a new development is within 1000 metres of existing fixed-line infrastructure, unless there is a compelling reason for it not to do so (which NBN Co should be obliged to explain publicly).

We believe this requirement will lead to better outcomes for consumers and developers who are close to the fixed-line footprint and who will therefore be able to achieve comparable outcomes to their neighbours by obtaining fixed-line voice and broadband services. This is consistent with the Department's consumer focus for the future TIND policy.

To the extent the revised TIND policy continues to include some charging constraints on NBN Co, it should reflect the different costs associated with fixed-line infrastructure on the one hand, and fixed wireless and satellite technologies on the other.

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<sup>10</sup> 2015 TIND policy, section 4.3.



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### 03 Measures to facilitate competition over alternative carriers' networks

As discussed in the Department's consultation paper, Australia has had an open market for the supply of telecommunications infrastructure since 1997, and there are a number of network operators (besides NBN Co) who may supply infrastructure in new developments, including Uniti, OptiComm and Spirit.<sup>11</sup>

There is, however, a key difference between new developments serviced by NBN Co and new developments serviced by alternative carriers – namely, the number of RSPs to which end users have access. There are over 200 RSPs supplying services to end users over the NBN; by contrast, smaller alternative carriers typically have far fewer RSPs supplying services to end users over their networks.<sup>12</sup>

One reason for this disparity is that, in order for RSPs to sell services on alternative carriers' networks, they need to develop a business-to-business (**B2B**) interface with each of those alternative carriers. The cost and complexity associated with this means many RSPs simply choose not to sell services on alternative networks, limiting themselves to the NBN instead, given its national footprint.

To help address this issue and facilitate retail competition over alternative carriers' networks, the 2015 TIND policy stated that the number of B2B interfaces between carriers and RSPs should be kept to a minimum, or there should be a standard interface available for use by all network operators. In particular, the 2015 TIND policy stated the following:

*“One of the strengths of the NBN is the range and diversity of RSPs it offers to consumers. For alternative networks to be attractive to RSPs, the number of business-to-business interfaces RSPs need to integrate with for ordering and managing services should be kept to a minimum – or a standard interface should be available for use by all network operators. There are a range of models that could be used to facilitate this, ranging from a new third party industry interface through to the use of NBN Co's existing interface. Given the technical and operational considerations, this will, in the first instance, be left to industry. If there is commercial demand for it, NBN Co will make the specifications of its interface available to alternative providers on an ongoing basis on fair commercial terms so they can operate their own interface on the same basis.*

*It is also open to NBN Co to obtain access to infrastructure owned by alternative network operators and resupply services – potentially expanding its reach, earning a margin, and fostering retail competition.”<sup>13</sup>*

In Telstra's view, measures to facilitate competition on alternative carriers' networks remain just as important now as they were in 2015. If RSPs and alternative carriers are required to build individual interfaces with one another, there will be a large number of separate interfaces, the cost and complexity of which is likely to continue to be prohibitive. Similarly, if RSPs are required to build separate physical connections between their networks and each carrier's network, the cost of those separate connections may outweigh the benefits of gaining access to those alternative carriers' networks.

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<sup>11</sup> Review of the 2015 TIND policy: Request for Comments, pages 6 and 7.

<sup>12</sup> Review of the 2015 TIND policy: Request for Comments, page 7.

<sup>13</sup> 2015 TIND policy, section 3.3.4.



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In our view, NBN Co's central position in Australia's telecommunications landscape makes it a natural party to help solve this issue, by offering an intermediary service between alternative carriers and RSPs. Accordingly, we believe NBN Co should be directed to work with industry to:

- Provide a single B2B interface that can be used by both RSPs and carriers. More specifically, NBN Co could extend its existing systems to allow RSPs to order services from alternative network providers operating in new developments. This would effectively make NBN Co a "wholesaler of alternative networks", thereby avoiding the need for other network providers and RSPs to incur the additional cost and complexity of implementing separate B2B interfaces.
- Route traffic from alternative carriers to RSPs via NBN Points of Interconnect, to avoid the need for multiple interconnections with alternative network providers.

In addition, common technical and operational specifications for the physical connection to the customer equipment, and standardised product and service descriptions, would be required if alternative carriers and RSPs are to avoid the complexity and cost of having to build and maintain multiple customised interfaces and descriptions into their service delivery platforms.

We do not believe this is a matter which should be left to NBN Co's commercial judgment. The lack of progress to date suggests there is unlikely to be a sufficient commercial incentive for NBN Co to deliver on these objectives.

We note that the Minister has the power to require NBN Co to provide a specified carriage service or a service that facilitates the supply of a carriage service by making this a condition of NBN Co's carrier licence pursuant to section 41 of the *National Broadband Network Companies Act 2011* (Cth). This has the effect of making the service a declared service which NBN Co is then required to supply under the Category B Standard Access Obligations in the *Competition and Consumer Act 2010* (Cth).

In our view, NBN Co taking on this role will help ensure end users on alternative networks (including in existing "adequately served" areas) can be serviced by a broader range of RSPs. Having a greater number of RSPs may, in turn, help ensure the provision and maintenance of acceptable service standards, including backhaul capacity, service activation and fault remediation.<sup>14</sup> It may also encourage competition to supply telecommunications infrastructure in new developments, because developers may be more inclined to select an alternative carrier in circumstances where end users in the development will be able to access a wider range of RSPs.

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<sup>14</sup> The Minister's powers under the SIP framework to set standards, rules and benchmarks will also be important to address these types of issues. See discussion in Section 6 below.



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## 04 Confirming who has infrastructure responsibility to service a particular development

One of the challenges Telstra has faced under current policy arrangements is confirming who has infrastructure responsibility for a particular development. For example, in Telstra's experience, real issues can arise when outdated or otherwise inaccurate information is used to determine that an area is adequately served by a non-NBN carrier. This may happen where, for example, the initial contract with the developer does not ultimately reflect the actual boundaries of the network infrastructure deployed.

We acknowledge that the TIND Map – provided on the Department's website – does allow carriers to upload information about new developments they have contracted to service. However, the voluntary nature of the TIND Map means it has not been a "single source of truth" for confirming which carrier has infrastructure responsibility in a particular area.

Against this background, Telstra welcomes the requirement under the proposed SIP legislation for carriers to notify the ACMA where they are the SIP for a new development. For example, when a carrier enters into a contract with a developer to install telecommunications infrastructure in a real estate development project or a building redevelopment project, the carrier must describe the project area in a specified format and provide that information to the ACMA within a specified timeframe. These requirements should help ensure that a consistent and clear mapping system is used to describe SIP service areas going forward.

To ensure that this mapping system operates as intended, it will also be important for the ACMA to be provided with updated information where necessary, so this can be reflected in the ACMA's mapping system to help avoid the issues identified above. In this context, we note that under the proposed SIP legislation, the notification requirements imposed on non-NBN carriers will apply when they enter into a contract with a developer, and again once the relevant infrastructure has been installed.<sup>15</sup> This will help ensure that any differences between the original contract and the actual network deployment are reflected in the ACMA's mapping system, which will benefit consumers, developers, non-NBN carriers, and NBN Co.

We note that, under the SIP legislation, carriers will be obliged to describe the developments they serve in a TAB vector format using the GDA94 coordinate system.<sup>16</sup> Our understanding is that this will essentially define the boundaries of nominated service areas by reference to geographic coordinates, but will not include any addressing information. Our experience is that addressing information in new developments (and brownfield areas) can be problematic – for example, where Telstra has installed infrastructure in a new development to meet its USO it may have the relevant addresses in its database, but when NBN Co is subsequently contacted to provide a broadband service it may not yet have the address in its (separate) database. Further, we note that the same premises may be addressed differently in different databases. Accordingly, Telstra believes industry should consider how to minimise the issues associated with inconsistent addressing information in the future.

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<sup>15</sup> Telecommunications Legislation Amendment (Competition and Consumer) Bill 2019, sections 360H and 360HA.

<sup>16</sup> Telecommunications Legislation Amendment (Competition and Consumer) Bill 2019, section 360LA.





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## 05 Overbuilding of alternative carriers' networks by NBN Co

The 2015 TIND policy recognises the need for alternative carriers to have clarity about whether and when NBN Co may overbuild existing broadband infrastructure that provides NBN-comparable outcomes. In particular, the existing policy states:

*“NBN Co must advise Shareholder Ministers in advance of construction if it considers there is a commercial case to materially overbuild an existing network providing NBN-comparable outcomes. This will be reflected in the next Statement of Expectations. Shareholder Ministers will carefully scrutinise any such case, given the cost inherent in undertaking capital expenditure in areas that already have high speed broadband. Such a commercial case will need to be approved by Shareholder Ministers (or be shown to adhere to a set of strictly defined conditions that Shareholder Ministers determine should be used to judge such requests) before NBN Co can proceed.”<sup>17</sup>*

The Department’s consultation paper suggests that the requirement to seek the approval of Shareholder Ministers may no longer be warranted. In particular, the paper states that overbuilding is largely self-policing, because *“if it is not commercial, NBN Co will not have the incentive to do it. If it is commercial, however, it is consistent with Australia’s open and competitive market place and the Statement of Expectations that NBN Co should operate commercially”*.<sup>18</sup>

Telstra does not agree that the requirement on NBN Co to demonstrate to Shareholder Ministers the commerciality of a proposed overbuild of existing network should be removed from the TIND policy. While the consultation paper suggests that the requirement is redundant because NBN Co would not seek to overbuild existing network unless it is commercial to do so, it may in fact be rational for NBN Co to overbuild without a truly commercial business case, due to its overall sub-commercial rate of return requirement set out in its Corporate Plan.

The ACCC has voiced similar concerns in relation to NBN Co’s supply of Enterprise services:

*“Cross-subsidisation between individual products can be a concern where a regulated entity also provides services in contestable markets. This concern arises if there is the potential for the entity to cross-subsidise services provided in the competitive market from its regulated activities. Such cross subsidies can create advantages to the entity in the competitive market as a result of its regulated activities. These concerns can be alleviated through reporting and transparency requirements for costs and revenues pertaining to individual services.”<sup>19</sup>*

NBN Co should therefore be required to seek approval from Shareholder Ministers for overbuilds on the basis of a truly commercial business case. Without this requirement there is no check in place to assess whether NBN Co’s business case is commercial, because NBN Co does not separately identify costs and revenues for individual services, as identified by the ACCC.

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<sup>17</sup> 2015 TIND policy, section 3.6.1.

<sup>18</sup> Review of the 2015 TIND policy: Request for Comments, page 9.

<sup>19</sup> <https://www.accc.gov.au/system/files/ACCC%20preliminary%20view%20note%20-%202020%20December%202019.pdf>.



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The thresholds for commerciality assessments should also be made transparent to give comfort to industry that the principles of competitive neutrality are upheld. In particular, it would be of concern if NBN Co's threshold for investment was its 3.2% forecast rate of return<sup>20</sup>, rather than NBN Co's 6.2% cost of capital.<sup>21</sup>

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<sup>20</sup> NBN Co, Corporate Plan 2020-23, page 55.

<sup>21</sup> NBN Co, 2018-19 Regulatory Information – LTRCM Spreadsheet, 4 October 2019.





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## 06 Network and service standards

### 6.1. Recent work regarding network and service standards

As the Department is aware, over the past few years there has been a considerable amount of work directed towards improving consumer experiences in the telecommunications sector, particularly on the NBN.<sup>22</sup> For example:

- In 2018, the ACMA made three instruments designed to improve consumer experiences when migrating to the NBN. The ACMA rules are mainly focused on the conduct of RSPs, but they also require NBN Co to provide reasonable assistance to RSPs performing their obligations.
- Also in 2018, the Department commenced a review of the telecommunications consumer safeguards framework. Part B of the Consumer Safeguards Review focused on the reliability of telecommunications services and considered a range of issues including maximum timeframes for connections and repairs, publication of reliability metrics by network operators, and collection and publication of data by the ACMA on fixed connections, repairs and appointments from both wholesale and retail providers.<sup>23</sup> In December 2019, the Department released its Part B Final Report, which contains a range of recommendations including in relation to (1) wholesale level regulation of connections, repairs, and appointment keeping timeframes to underpin whole of industry performance, and (2) retail level requirements for clear consumer information around service commitments together with transparency of performance.<sup>24</sup>
- The ACCC is currently conducting the NBN Wholesale Service Standards Inquiry to determine whether NBN wholesale service standards are appropriate, and to consider whether regulation is necessary to improve consumer experiences. On 1 October 2019, the ACCC released a draft decision indicating regulated terms are likely to be required to improve consumer experiences on the NBN.<sup>25</sup> The ACCC believes regulated terms will set out clearer service level commitments, provide strong incentives on NBN Co to meet these commitments, and provide greater clarity about the redress available to RSPs where service levels are not met. This will help improve the allocation of risk and responsibility between NBN Co and RSPs, and encourage NBN Co to invest in activities that reflect consumer preferences.<sup>26</sup> Telstra has expressed broad support for the principles adopted by the ACCC to guide the formulation of wholesale terms, noting the ACCC's recognition of the gap between retail obligations on RSPs and NBN Co's commitments under its wholesale terms, and the need to align incentives between RSPs and NBN Co as a pre-requisite to ensuring customers receive the level of service they expect on the NBN.<sup>27</sup>

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<sup>22</sup> Summarised in the ACCC NBN Wholesale Service Standards Inquiry, Draft Decision, October 2019, section 2.1.5.

<sup>23</sup> See: <https://www.communications.gov.au/have-your-say/consumer-safeguards-review-consultation-part-b-reliability-services>.

<sup>24</sup> See: <https://www.communications.gov.au/documents/part-b-reliability-services-consumer-safeguards-review-final-report>.

<sup>25</sup> See: <https://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/nbn-wholesale-service-standards-inquiry/draft-decision-submissions>.

<sup>26</sup> ACCC NBN Wholesale Service Standards Inquiry, Draft Decision, October 2019, page 5.

<sup>27</sup> While broadly supportive of the ACCC's approach, we have identified several areas where we believe the draft regulated terms could be strengthened to improve customer outcomes on the NBN, including in relation to connection delays, missed appointments, speed and performance, service level timeframes and exclusions, and compliance with existing consumer safeguards. Our submissions are available at: <https://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/nbn-wholesale-service-standards-inquiry/draft-decision-submissions>.



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## 6.2. Network and service standards for carriers servicing new developments

Under the SIP regime, the Minister will be able to set standards, rules and benchmarks that SIPs must comply with (or in the case of benchmarks, meet or exceed). According to the Explanatory Memorandum accompanying the SIP Bill, the matters that could be specified in standards, rules and benchmarks are broad. For example, standards could include timeframes for connecting premises and rectifying faults, and rules could be made about how premises must be connected and how complaints must be addressed. Benchmarks could be set in relation to a matter covered by a standard.<sup>28</sup>

We think it will be important for the Minister to use the SIP framework to set minimum network and service standards for carriers servicing new developments, including in relation to connections, fault repairs, network performance and upgrades. It will also be important to ensure that any standards, rules and benchmarks set as part of the SIP regime take account of, and are consistent with, the ongoing work discussed in the preceding section. It is clear from that discussion that addressing network and service standards, and allocating rights and responsibilities between wholesalers and RSPs, is complicated. It requires an understanding of the obligations on retailers and wholesalers, and the differing incentives acting at different levels of the supply chain, as well as appropriate mechanisms to align incentives between RSPs and wholesalers, ultimately to ensure end users receive the telecommunications services they need and expect.

Until such time as standards are set by the Minister under the SIP framework, there may be an opportunity to educate developers about factors to consider when choosing a carrier to service their development – including the number and identity of available RSPs – and also about the possibility of including network performance criteria in provisioning contracts with infrastructure providers for the benefit of end users in the new development.

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<sup>28</sup> Telecommunications Legislation Amendment (Competition and Consumer) Bill 2019, Explanatory Memorandum, page 11.



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## 07 Developer responsibilities for, and compliance regarding, the installation of telecommunications infrastructure

### 7.1. Developer responsibility for installation of telecommunications infrastructure

As discussed above, most end users in new developments expect telecommunications services to be readily available when they move in to their new premises. Accordingly, developers are likely to have a strong commercial incentive to provide telecommunications infrastructure in their new developments.

On top of this commercial incentive, the 2015 TIND policy and Part 20A of the *Telecommunications Act 1997 (Telco Act)* place obligations on developers regarding the installation of telecommunications infrastructure in new developments. In particular:

- Under the 2015 TIND policy, developers are responsible for organising telecommunications infrastructure in their developments, in the same way that they are responsible for arranging utilities such as power, water and sewerage. This generally involves arranging for the provision of pit and pipe infrastructure, and engaging with a carrier to install telecommunications network infrastructure within the new development.<sup>29</sup>
- Part 20A of the Telco Act requires the installation of “fibre-ready facilities”, and prohibits incorporated developers from selling or leasing a building lot or building unit unless fibre-ready facilities are installed in proximity to the lot or unit.

We agree with the Department that, going forward, developers should remain responsible for organising and meeting the costs of pit and pipe infrastructure in their developments, and for ensuring telecommunications services are available when people move into their new premises. As discussed in the Department’s consultation paper, this is consistent with developers’ responsibility to arrange for the provision of other infrastructure, and with the “user pays” principle.<sup>30</sup>

### 7.2. Developer compliance with requirements to install telecommunications infrastructure

We share the Department’s concerns that, while most developers are compliant, some developers do not always provide telecommunications infrastructure in their new developments. There are a variety of reasons for this, including smaller scale developers who are not aware of the requirements of the 2015 TIND policy, and / or are not aware of or bound by Part 20A of the Telco Act.

We have previously highlighted the need for State and Territory requirements similar to those in Part 20A of the Telco Act, in order to capture developers who are not incorporated and are not therefore subject to the Commonwealth legislation.<sup>31</sup> At the same time, we have noted that Part 20A appears to be based on the assumption that, if a developer installs fibre-ready facilities, the timely provision of fixed-line infrastructure will automatically follow, and that is not always the case.

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<sup>29</sup> Review of the 2015 TIND policy: Request for Comments, page 3.

<sup>30</sup> Review of the 2015 TIND policy: Request for Comments, page 7.

<sup>31</sup> For example, in our submission to the Government of WA on their Draft Position Statement: Fibre Ready Telecommunications Infrastructure, July 2019.



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Ultimately, a legislative obligation on developers to arrange for the provision of appropriate telecommunications infrastructure (not just “fibre-ready facilities”) is likely to be the clearest and most direct way to achieve the desired outcome.<sup>32</sup>

Short of this, we expect ongoing work will be needed to help ensure all developers arrange for the provision of telecommunications infrastructure in their new developments. This may include further awareness raising of relevant policy and legislative requirements, as well as helping to ensure the adoption, maintenance and enforcement of complementary planning measures in all States and Territories requiring developers to make arrangements for the provision of suitable telecommunications infrastructure to the satisfaction of local government or relevant planning authorities.

### **7.3. Ongoing ownership of fibre-ready facilities**

In the absence of an agreement between the developer and a telecommunications infrastructure provider, there is no automatic transfer of fibre-ready facilities to a telecommunications carrier. This is particularly likely to be an issue where a developer installs fibre-ready facilities, but contracts with a wireless telecommunications provider who does not need to use these facilities.

To the extent the Department continues to work with planning authorities to ensure all developers arrange for the provision of telecommunications infrastructure in their new developments, the Department may also wish to consider the issue of ownership and maintenance of pit and pipe infrastructure, with a view to minimising the risk that this infrastructure is not actively maintained in circumstances where it is on public land and does not transfer to a telecommunications provider.

### **7.4. Developer responsibility to pay for telecommunications infrastructure**

We agree with the Department that, given the costs associated with servicing new developments, carriers should be able to charge developers for providing telecommunications infrastructure, or otherwise recover the costs of doing so.<sup>33</sup>

In relation to charging, the Department’s consultation paper specifically notes that, while NBN Co is required to charge set amounts to developers, alternative carriers may come up with different charging arrangements including agreeing to “*waive provisioning costs for developers, potentially shifting these costs to end-users through higher charges*”.<sup>34</sup>

While we understand that reducing provisioning costs may be attractive for developers, we are concerned that if carriers waive these costs altogether, it may shift too much of the cost burden to end users (for example, through significantly higher connection fees). In the interests of end users in new developments, it may be appropriate to consider whether developers should retain some direct responsibility for funding the telecommunications infrastructure in their new developments. Further, we note the current version of the TIND policy sets a one-time end user contribution when an RSP places an order for an NBN service, which is a mechanism by which shifting costs to end users may be managed.

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<sup>32</sup> If a legislative obligation were to be imposed on developers, the issues discussed in Section 2 of the submission, including clearly allocating IPOLR responsibility and clarifying the USO/SIP interaction, would first need to be resolved.

<sup>33</sup> Review of the 2015 TIND policy: Request for Comments, page 8.

<sup>34</sup> Review of the 2015 TIND policy: Request for Comments, page 9.