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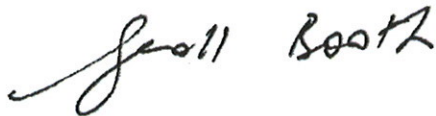
Dear Sir/Madam

**Inquiry into the Telecommunications Legislation Amendment (National Broadband
Network Measures No. 1) Bill 2009**

Telstra welcomes the opportunity to comment on this important Bill concerning the National Broadband Network. Please find enclosed a copy of Telstra's submission.

Telstra would be happy to elaborate further on the contents of the enclosed submission should you require. Please contact me if we can be of further assistance.

Yours sincerely



Geoff Booth
Group Managing Director
NBN Engagement

SENATE STANDING COMMITTEE ON ENVIRONMENT, COMMUNICATIONS AND THE ARTS

**INQUIRY INTO THE PROVISIONS OF THE TELECOMMUNICATIONS LEGISLATION
AMENDMENT (NATIONAL BROADBAND NETWORK MEASURES NO. 1) BILL 2009**

SUBMISSION BY TELSTRA CORPORATION LIMITED

1 INTRODUCTION

- 1.1 Telstra welcomes the opportunity to comment on this important Bill concerning the National Broadband Network (NBN). Telstra supports the NBN and remains committed to engaging constructively with the Commonwealth and other stakeholders on this nation-building initiative.
- 1.2 Telstra agrees that the builder and operator of the NBN, NBN Co, will need access to information from a range of telecommunications and utility infrastructure providers in order to deliver the Commonwealth's vision for the NBN.
- 1.3 As the Explanatory Memorandum (EM) to the Bill states, it is expected that Telstra, due to its existing networks, is likely to be the major discloser of information under the Bill (which will enable information to be collected over a 10 year period). However, many other carriers and the utility companies are also likely to be required to provide significant amounts of information under the regime. The EM also recognises that issues of competitive neutrality arise, particularly where carriers' information is disclosed to NBN Co (which is expected to remain in majority Government ownership for a considerable period).
- 1.4 Telstra therefore believes it important that the following two considerations are kept in mind when finalising the Bill:
- (a) First, that effective security arrangements are put in place to protect the information provided by carriers and utilities under the regime. There are very real and significant national security considerations surrounding this information. Setting an appropriate security framework is important to instil public and industry confidence in the effectiveness of the regime.
 - (b) Second, carriers and utilities providing information should have certainty about their rights, obligations and exposure in relation to the subsequent use and disclosure of the information provided under the regime.
- 1.5 To that end, Telstra makes four important points about the Bill.

2 SECURITY MEASURES

- 2.1 It is important that there is clarity in respect of the nature and extent of the security, handling and destruction rules that will apply to network information that is disclosed under the regime. These rules are critical to the effectiveness of the confidentiality regime.
- 2.2 The information to be disclosed for the roll-out of the NBN is likely to be significantly more detailed than was previously disclosed for the purposes of the Request for Proposals (RFP) process in 2008. Given the:
- (a) greater volume and scope of information which is likely to be provided,
 - (b) security and commercial sensitivity of that information,
 - (c) expanded number of people who are likely to have access to the information; and
 - (d) period of time over which that access may be provided (ie ten years),

Telstra believes strict security measures are imperative.

- 2.3 The strictness of the security arrangements will largely depend on the details of the security rules which the Bill contemplates will be made at some point in the future. However, the Bill should give carriers, utilities and the public a high degree of comfort, by requiring that those rules cover at least the following topics:
- (a) Physical security measures (such as secured areas and access logs);
 - (b) Software and network security measures (including email security, anti-virus measures, firewalls and cryptography);
 - (c) Access control and active security measures (including user identification and authentication, intrusion detection and access logging);
 - (d) Hardware and media destruction/sanitisation procedures (and destruction should be mandatory upon occurrence of specified triggers, including a material breach of any provision of Part 27A or of the Rules);
 - (e) Security compliance review and incident detection and management; and
 - (f) Personnel security measures (such as training programs and security clearances).
- 2.4 These principles could be specified in the Bill to provide guidance to the subsequent development of the security rules. Telstra also believes it important that the relevant Commonwealth security agencies be involved in the development of, and provide formal approval of, the detailed security rules.

3 CERTAINTY OF NATURE OF INFORMATION TO BE PROVIDED

- 3.1 Telstra notes that the Bill proposes to introduce a description of the type of information that can be collected under the regime. Telstra welcomes this approach as an improvement on the current regime and understands that the information to be collected is intended to comprise details of the physical components of the various telecommunications and utilities' networks.
- 3.2 However, the current drafting of the description proposed is broad and very uncertain and not obviously limited to that sort of information. It could be interpreted to extend to, for instance, business plans and other information concerning the way in which a carrier intends to use its physical network infrastructure commercially. Requiring disclosure of this type of information to NBN Co would raise serious issues of fairness and competitive neutrality, particularly given the majority stake of the Commonwealth in NBN Co and its position as a market participant in years to come.
- 3.3 To avoid these concerns, Telstra therefore suggests that the intended scope of the information which may be collected should be clarified in the Bill so as to specify only *information about the location and physical and functional characteristics of network facilities*.

4 PROTECTION FOR PARTIES PROVIDING INFORMATION

- 4.1 Telstra believes that carriers and utilities should not be exposed to the possibility of liability arising from complying with a requirement to disclose network information under the regime. Carriers and utilities could be exposed to, among other things, claims by NBN Co or its contractors for compensation if the information provided is unintentionally inaccurate in some way.
- 4.2 As it is the Minister, not the carrier or utility, who decides what information is to be disclosed, it would be reasonable for the Bill to include an immunity from claims against any carrier or utility who provides information under the regime.
- 4.3 At the very least, the Bill should recognise that the accuracy of information cannot be guaranteed and the information is provided on a "best efforts" basis. This could be done by, for instance, specifying

that the information to be collected is information the carrier or utility actually possesses in its business records or systems at the relevant time and which it uses to operate its own business.

5 UNINTENTIONAL DRAFTING OVERSIGHT

- 5.1 The final point relates to what may merely be a drafting oversight. The Bill automatically covers information previously provided to the Government and proponents in respect of the now-discontinued RFP process. However, under the Bill, if those former proponents still possess the information, they would be able to use it to create or develop their own broadband telecommunications networks (e.g. a 3G mobile network) or for the supply of services over such a network. Telstra believes this is unintentional and, if so, it should be rectified.
- 5.2 Telstra would welcome the opportunity to elaborate further on the contents of this submission.