



12 November 2019

Mr M. Wilkinson (MG)

Sent via email: [foi+request-5814-9c5d5ce6@righttoknow.org.au](mailto:foi+request-5814-9c5d5ce6@righttoknow.org.au)

Our Ref: 1920/35.02

Dear Mr Wilkinson

### **nbn FOI request**

I am writing in relation to your request to **nbn** under the *Freedom of Information Act 1982 (FOI Act)*.

#### **FOI Request Terms**

On 30 October 2019, **nbn**'s FOI Team received a request from "MG" (**the Applicant**) via the "Right to Know" website. In that request, the Applicant sought:

*On 13 September 2017, NBNC Co received a written Question on Notice from the Joint Standing Committee on the National Broadband Network (45th Parliament) (sic):*

*"There are concerns for consumers who are in theory located in fixed line areas but are too far from the node to guarantee the minimum speeds. In some of these cases nbn is assigning these consumers to satellite technology. Due to potential interference these consumers may not be able to keep ADSL services. It is understood that POTS is compatible but that ADSL and FTTN cause interference issues. After the 'co-existence' period the legacy ADSL services may have to be switched off to ensure FTTN services can function. This would leave these premises with Sky Muster as their only potential fixed line service. Other consumers with Sky Muster are able to keep their ADSL. "*

*"3. What is the future of Telstra fixed line services in this scenario which share the same lines that nbn is using to deliver FTTN/B services? How many lines are estimated to be in this situation and what is the impact likely to be?"*

*The answer provided by NBNC Co states:*

*"As at August 2017, approximately 1,500 services outside the fixed-line footprint are potentially impacted by this scenario. "*

*In the Joint Standing Committee on the National Broadband Network hearing held on 1 August 2017, NBN CEO Mr Bill Morrow stated nbn was still looking into the options to address this impact:*

*"there is a rare circumstance where a home that is served by satellite, while the majority of the 400,000 can still elect to stay on the ADSL through the Telstra network if it's available there, these few will not be able to. That's where we are looking to see if that's reasonable and fair, and what the other options are."*

*Can you please provide information/documents on the following:*



As at August 2017:

1. A breakdown of the number of premises by State (please also include Suburb name if readily available in the data) of the approximately 1500 premises that were identified by NBNC0 outside the fixed line footprint that will not be able to stay on the ADSL network.

As at the time of this request (30 October 2019):

a. The number of premises outside the fixed line footprint that will not be able to stay on the ADSL network.

b. For (a) above, how many of this number comprises of the "original" ~1500 premises identified by NBNC0 in 2017? (Have any of the "original" 1500 premises been moved off Satellite to alternate technologies? Have any more premises that will not be able to stay on the ADSL network been identified since August 2017?)

c. For (a) above, a breakdown of the number of premises by State (please also include Suburb name if readily available in the data).

### **Background information and findings**

Following receipt of the Applicant's request, I undertook discussions with relevant subject matter experts within **nbn** in relation to the terms of your FOI application and statements made by **nbn**'s past CEO, Mr Bill Morrow during Senate Hearings in 2017. In that regard, I was informed that **nbn** has never made definitive statements that certain premises "will not be able to stay on the ADSL network". In addition, I was informed of the following:

- Potentially Impacted Premises – Mr Morrow's comments referred to an estimated 1500 premises outside **nbn**'s fixed line footprint (**FLF**) that may have been potentially impacted (**Potentially Impacted Premises**) by the possible degradation of legacy ADSL services that may co-exist with **nbn**<sup>TM</sup> network connections.
- Link to Long Copper Tails – The Potentially Impacted Premises would have been located outside the FLF and, in the main, would have had long copper lines. These are commonly referred to as long copper tails (**LCTs**). It is my understanding that the 2017 estimate of the 1500 Potentially Impacted Premises corresponds to an estimate of premises with LCTs outside the FLF.
- Inside FLF – There is a mandatory discontinuation of legacy services, such as ADSL, (roughly) 18 months after a premises has been declared ready-for-service (**RFS**) inside the FLF.
- Outside FLF –
  - There is no mandatory discontinuation of legacy services.
  - Legacy services may co-exist with **nbn** services after a premises has been declared RFS and even after being connected to an **nbn**<sup>TM</sup> broadband access network service.
  - **nbn** does not have control over the continuation of legacy services, such as ADSL.
  - It is incumbent upon **nbn** to ensure that premises (outside the FLF) have access to **nbn** satellite or fixed wireless services prior to retail service providers' (**RSP**) withdrawal of legacy ADSL services.
  - However, **nbn** is not responsible for discontinuing or terminating legacy services outside the FLF.
  - Providing legacy services (outside the FLF) is a commercial matter for the legacy RSP.
- No testing or diagnostics, nor data – **nbn** does not test or run diagnostics over legacy services, nor does **nbn** collect related data. If faults exist with legacy ADSL products delivered over **nbn**'s copper assets outside the FLF, **nbn** only becomes aware of such issues after an RSP has lodged a service incident with **nbn**. At that point, **nbn** would seek to rectify the fault.



### **No documents**

I refer you to the points above. In particular, **nbn** does not actively collect data regarding the viability of legacy services, such as ADSL, outside the FLF. As such, **nbn** holds no documents within the terms of your request. In that regard, I also refer you to [section 24A](#) of the FOI Act.

**nbn**'s FOI Team spent approximately five hours reviewing and considering relevant information, making enquiries of relevant **nbn** personnel and drafting this FOI decision. This is in addition to the time spent searching for documents, which were ultimately found not to exist. **nbn** has determined not to impose any charges in relation to this FOI request per the *Freedom of Information (Charges) Regulations 2019* (Cth).

An FOI decision may be reviewed, subject to sections 53A and 54 of the FOI Act. Please refer to the Office of the Australian Information Commissioner's (**OAIC**) website at the following [link](#), which provides details about your rights of review and other avenues of redress under the FOI Act.

### **nbn's Commercial Activities Carve-out**

The FOI Act provides members of the public with a general right of access to specific documents, subject to certain exemptions. Per [section 15\(2\) of the FOI Act](#), a valid FOI request must provide such information concerning the requested document/s as is reasonably necessary to enable **nbn** to identify them, among other things. In circumstances where the scope of an FOI application is unclear, **nbn** will neither formally acknowledge, nor commence the processing of such requests. If you wish to make further FOI requests, I would ask that you review in detail the following paragraphs and links concerning **nbn**'s commercial activities carve-out (**the CAC**).

**nbn**'s commercial activities are carved-out from the application of the FOI Act per [section 7\(3A\)](#) and [Part II of Schedule 2](#) of the Act. Documents that relate to **nbn**'s current or future commercial activities are not subject to the operation of the FOI Act and would be exempt from release. The following link provides [general background document \(GB Document\)](#) concerning **nbn**'s CAC. The GB Document refers to two Australian Information Commissioner Reviews that considered **nbn**'s commercial carve-out – [Internode Pty Ltd and NBN Co Ltd \[2012\] AICmr 4](#) and the [Battersby and NBN Co Ltd \[2013\] AICmr 61](#).

In practical terms, the CAC ensures that **nbn** is not exposed to disadvantage in the marketplace and similar commercial environments. The CAC also enables **nbn** to function as any other commercial player in Australia's highly competitive telecommunications industry. If **nbn** were required to release commercially-related information under the FOI regime, this would undermine **nbn**'s ability to protect the company's valuable intellectual property, negotiate competitive contracts, develop products and services, grow market share and manage its staff, among other adverse effects. Disclosure of commercially-related information would also undermine **nbn**'s capacity to generate revenues, while driving up rollout costs. Ultimately, Australian taxpayers would have to bear those cost increases and other potentially adverse consequences.

In addition, I would flag the fact that **nbn** has previously refused FOI requests for documents and information concerning **nbn**'s contractual relations with its business and delivery partners, as well as RSPs. In addition, **nbn** has made previous FOI decisions refusing access to information regarding prospective rollout data, quality assurance processes and related data regarding **nbn**<sup>™</sup> broadband access network connections. Similarly, **nbn** has refused access to information about business decisions/cases regarding changes to access technology.

### **FOI Processing Period and Charges**

The statutory period for processing an FOI request is 30 days, subject to any suspension of the processing period or extension of the time period for deciding the application. Please also note that **nbn** may impose processing charges in relation to FOI requests. For your reference, processing charges for FOI applications are set by regulation and may be found at **nbn**'s website – and, in particular, its [FOI page](#). The hyperlink below outlines **nbn**'s approach to



processing charges: Submission to the OAIC [Charges Review](#). More information about charges under the FOI Act is set out in part 4 of the OAIC [FOI Guidelines](#).

**Disclosure Log**

**nbn** is required to publish documents provided to FOI applicants within 10 working days after release. The information you seek may be published in full (as released to you) or with some additional redactions as per section 11C of the FOI Act. For further information, please visit the [Disclosure Log](#) on **nbn**'s website.

Yours sincerely

**David Mesman**

General Counsel

FOI, Privacy & Knowledge Management