Response to NICTA Public Consultation:

"a Draft Rule Specifying the Acceptable Form for Reference Interconnection Offers"

Submitted by Telstra International PNG Limited

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1. Introduction

Telstra International PNG Limited (**Telstra**) welcomes the opportunity to comment on NICTA's proposed rule in relation to the acceptable form of a reference interconnection offer (**Draft Rule**).

Telstra sees publication of the rule and the draft reference interconnection offer (**Sample RIO**) as an important step in fulfillment of NICTA's role of providing guidance to the industry about the form and terms appropriate for a reference interconnection offer (**RIO**). Telstra notes that the principal functions of a RIO are to state terms upon which an Access Provider will fulfill its non-discrimination obligations under section 136 of the *National Information and Communications Technology Act (2009)* (the **Act**), these terms to be as NICTA considers would be appropriate to further the achievement of the competition and efficiency objectives stated in the Act[1] and stated in sufficient detail to enable an Access Seeker to determine the price or non-price terms or both on which the relevant Access Seeker will supply the relevant declared service.[2]

Telstra's response to the public consultation is presented in this submission in two parts:

- Section 2 provides Telstra's comments on the *Draft Reference Interconnection Offer Rule, 2011*; and
- Sections 3 and 4 provide specific comments on the Sample RIO.

2. The Proposed Rule

Telstra wishes to make the following comments regarding *the Draft Reference Interconnection Offer Rule, 2011*, as set out on pages 10 to 12 of the consultation document –

2.1 ONE RIO PER LICENSEE

In 5(2) of the Draft Rule, NICTA makes clear its intention that each licensee submitting a RIO should construct their RIO in a way which makes it capable of governing all of the declared services that the particular licensee wishes to have governed by a RIO.

Telstra supports this approach, noting that variations specific to particular declared services can be accommodated within the Parts of the Interconnection Agreement dealing with those services. This assists Access Seekers by reducing the inherent complexity of telecommunications service descriptions and terms, avoiding unnecessary repetition of many common terms across a suite of declared services.

2.2 RIO MUST CONTAIN BOTH PRICE AND NON-PRICE TERMS

In 5(3) of the Draft Rule, NICTA requires that a single RIO should contain both the price and non-price terms and conditions of supply of declared services. This appears to differ from the approach under the Act in which section 141(1)(a) and section 141(3) would permit a Access Provider to determine whether it wishes to offer proposed price terms or proposed non-price terms, or both, in its RIO.

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[1] Section 124(1)(a) and (b) respectively.

[2] Section 141(3).

Given the fundamental nature of the requirement in 5(3) of the Draft Rule and the possible risk to the regulatory structure in Papua New Guinea if this requirement was found subsequently to be inconsistent with the Act, Telstra suggests that NICTA should clarify the basis upon which it can stipulate in the Draft Rule that both price and non-price terms must be included in the RIO.

2.3 VOLUME DISCOUNTS AND THE NON-DISCRIMINATION OBLIGATION

5(5) of the Draft Rule would permit a licensee to include in its RIO alternative pricing where the alternative pricing is justified on the basis of volume or other factors associated with the ordering or delivery of a declared service.

A rule of this kind presumably permits the licensee to offer discounted prices for Access Seekers who have a larger customer base and are able to take advantage of volume discounts. Telstra presumes that the reference to "other factors" in this context means that a licensee would be permitted to offer differential pricing to Access Seekers based on specified differentiated quality of service parameters e.g. enhanced activation or provisioning time frames may be offered for a price premium.

From a policy perspective Telstra understands the basis for this rule. That noted, Telstra considers that it would assist the industry to understand how this rule should be interpreted together with 5(4) of the Draft Rule. 5(4) requires that prices and charges offered by an Access Provider under a RIO must be available to all Access Seekers on a non-discriminatory basis and that if a declared service is offered under a RIO and the Access Provider agrees to offer new or different rates for that declared service to any single Access Seeker, then the Access Provider should make those rates available to all Access Seekers. This is typically described as a 'most-favoured-nation' or 'MFN' obligation.

Telstra suggests that NICTA may wish to provide further guidance as to how these rules will operate in practice.

For example, if an Access Provider and Access Seeker reach commercial agreement on price terms without needing to rely on the RIO, or before a RIO has been approved, is the Access Provider still required to offer these terms to Access Seekers whose interconnection agreements are based on an approved RIO developed and approved at a later date?

Alternatively, if the parties agree on new or different pricing from that already available under an approved RIO, is the requirement that the Access Provider should amend the RIO and must thereby make the same offer to all other Access Providers who are receiving services under interconnection agreements based on that RIO? Or is this MFN obligation capable of being discharged through multiple individual agreements with each Access Seeker outside of an existing RIO?

NICTA could provide guidance to the industry on how 5(4) and 5(5) will be applied together. Telstra notes that one of the difficulties with a strict mandatory MFN obligation is that it creates a disincentive for an Access Provider to offer to any individual Access Seeker a discount beyond the existing RIO price terms, or an additional feature or other benefit beyond the existing RIO non-price terms. NICTA will need to carefully consider whether there is merit in permitting such individual benefits for a period of time before they are passed on to all other Access Seekers, or in certain circumstances, provided that there is no anti-competitive consequence.

Telstra notes that the Australian Competition and Consumer Commission (ACCC) has this week released draft guidance materials about the approach it will take to enforcement of the non-discrimination provisions under the *Australian Competition and Consumer Act 2011*. The draft rules provide practical guidance to access providers (specifically, NBN Co and providers of Layer 2 bitstream services over superfast networks) on when they may negotiate different terms with

different access seekers without breaching the non-discrimination provisions.[3] It may be helpful for NICTA to observe how the ACCC grapples with this similar issue in the Australian context.

2.4 FORMAT REQUIREMENTS

5(6) of the Draft Rule is prescriptive in terms of the format requirements that NICTA sets for RIOs.

This degree of prescription may in fact unduly limit the appropriate exercise of discretion by NICTA. This rule could be qualified to indicate the extent to which NICTA will tolerate reasonable departures from these format requirements – for example, where rationalisation of the document is appropriate or a departure is required to align with existing (or preferred) contracting structures.

2.5 CONSEQUENCES OF ACCEPTANCE OF A RIO

Section 142(5)(b) of the Act suggests that NICTA's acceptance of a RIO amounts to an acceptance that the RIO:

- meets the criteria specified in section 141 of the Act (in terms of coverage and level of detail);
- is sufficient to discharge the Access Provider's non-discrimination obligations;
- contains terms and conditions that are reasonable under section 126 of the Act; and
- contains pricing terms that are consistent with the general pricing principles and any service specific pricing principles under sections 134 and 135 of the Act.

The Act is not clear about whether acceptance of the RIO has the consequence that a term of the RIO cannot later be determined to be void (under section 134(3) of the Act) because it is inconsistent with the general pricing principles.

Nor is the Act clear about what the status of a RIO is in relation to any model terms that NICTA may make under section 133 of the Act.

Telstra submits that it would assist the industry if the Draft Rule included rules clarifying the status of an accepted RIO in relation to both the general pricing principles and any model terms, including guidance about the relative hierarchy of these documents and relevance in the event of a dispute.

3. Terms of the Sample RIO

In this section Telstra provides a number of comments on the Sample Rio –

3.1 THE PURPOSE AND FUNCTION OF THE SAMPLE RIO

A Sample RIO provides guidance to industry as to the appropriate content and matters to be included in the wholesale supply of declared telecommunications services and provides minimum standards and commitments by operators to ensure fair access to bottleneck infrastructure.

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[3] ACCC, *Part XIC non-discrimination guidelines: ACCC explanatory material relating to Part XIC anti-discrimination provisions for NBN Co and providers of declared Layer 2 bitstream services over designated superfast telecommunications networks*, Draft issued December 2011, available at: http://www.accc.gov.au/content/index.phtml/itemId/998536.

In Papua New Guinea parties retain autonomy to choose to seek a commercial outcome and negotiate bespoke arrangements or to enter into interconnection agreements on RIO terms. For efficient negotiations, RIO terms should be sufficiently detailed having regard to the complex nature of the arrangements they support and to meet the requirement of the Act that a RIO contain "sufficient information for an Access Seeker to determine the basis on which the Access Provider will supply the relevant declared service".[4]

We understand that it is NICTA's intention to publish the Sample RIO as a detailed draft in order to provide guidance to any licensee who may wish to submit a RIO in future, and that a RIO which NICTA ultimately approves will have more detail and may otherwise differ from the Sample RIO. Despite the useful detail that has been included in the Sample RIO, there are areas which could be better addressed through further detail. Telstra appreciates that in the Sample RIO text NICTA will not wish to pre-determine specific terms of what should be a commercial offer that a licensee makes to Access Seekers. However, where the Sample RIO intentionally omits detail for this reason but NICTA reasonably expects detail to be included in any RIO lodged by an Access Provider, NICTA should clarify this for the benefit of both Access Providers and Access Seekers, either by way of a statement in the Sample RIO itself or as a guidance note accompanying the Sample RIO. Statements of this kind would be a useful indication to licensees of NICTA's expectations as to which provisions would need to be fleshed out with the appropriate detail in a RIO lodged for NICTA's consideration even though, understandably, those provisions are not drafted in detail in the Sample RIO.

3.2 KEY ISSUES

a) Formation, structure and agreement management

Telstra wishes to make the following points regarding formation and structure of the RIO, as well as ongoing contract management –

- The relationship between the operation of clauses 6.1(a) and 6.1(b) should be further clarified so there is certainty as to the process for entering into interconnection agreements under a RIO. Clause 6.1(a) of the Sample RIO provides that the Access Provider must enter into an Interconnection Agreement on the RIO terms with a licensed operator where requested. Clause 6.1(b) appears to contemplate a "process" or period of separate negotiation between the parties. If a RIO is developed and approved by NICTA then it should be sufficiently detailed to allow the parties to enter into an interconnection arrangement without the need for further negotiation. Telstra respectfully submits that clause 6.1(b) would benefit from further clarification.
- The order of precedence between the different components of the Sample RIO should be clearly set out. The RIO is structured in a manner consistent with international practice where the agreement broadly has the following distinct sections: substantive contractual terms; detailed service descriptions; specific operational terms; and contact information. In order to avoid potential conflict between these sections – for example, inconsistencies between a party's obligations in an operations manual and service description – an upfront determination of priority is important and clause 2 should be amended setting out default rules of precedence.
- Wholesale telecommunications agreements are typically long-term arrangements, in part due to capital required to provide services. For some services greater investment will be required than

[4] s 141(3).

others (for example, compare where an Access Seeker acquires transmission capacity versus wholesale line rental services). Therefore, agreements need to reflect the general long-term nature of the arrangement whilst providing flexibility to allocate appropriate terms to individual services. This distinction in the Sample RIO should be clearly stated – for example, the upfront term of an interconnection agreement entered into under the Sample RIO could be specified in clause 11, with the individual terms set out in each Part describing the different services to be supplied under the RIO.

- The sample RIO imposes tight controls regarding the processes for variation and amendments to interconnection agreements entered into pursuant to the Sample RIO. The Sample RIO contemplates that interconnection agreements will generally only be varied where there is a change to the underlying RIO, thus requiring regulatory oversight by NICTA. However, Telstra suggests that the terms of the Sample RIO ought not to preclude amendment of an interconnection agreement where the amendment is mutually sought by the parties. It may also be appropriate for some parts of the interconnection agreement to be subject to specific variation rights: for example, operational documents / specifications or contact information may need to be updated on a regular basis.

  Even if the above approach was not adopted, the general terms might set out more clearly how the interconnection agreement can be varied in the circumstances provided for in the Sample RIO. For example, clause 18.2 states that an interconnection agreement "shall be deemed to be automatically amended in respect of any changes to the rates and charges in the Price Schedule". The Sample RIO does not clearly set out how changes to the Price Schedule may be made. It may be NICTA's intention that any changes to regulated prices in respect of declared services will automatically flow through to the interconnection agreement: however, this is not entirely clear and NICTA may wish to provide appropriate clarification.

b) Suspension and termination

Contractual arrangements need to provide appropriate delineation between rights that may be exercised in relation to suspension and termination, including how they apply (and interact) as between individual services and the agreement as a whole.

For example, certain events in the RIO which give rise to suspension, such as a failure to pay invoices in respect of a service, do not directly give rise to a termination right in circumstances where the underlying circumstances that led to the suspension continue to persist. Whilst an Access Provider may terminate the provision of a service if the Access Seeker has failed to rectify non-performance in accordance with clause 13.2(d), the Sample RIO should give mutual rights to terminate where an event giving rise to suspension persists for a prolonged period (for example, 90 days).

Clauses 12 (Suspension) and 13 (Termination) also only give rise to rights with respect to "Services", not the agreement as a whole. The nature of a contractual breach will determine whether it is appropriate for the Access Provider to exercise rights in whole or in part with respect to the agreement. However, the Access Provider should have suspension and/or termination rights with respect to the entirety of the agreement for certain events (for example, termination where the Access Seeker ceases to hold an operator licence). Additionally, it is noted that the titles of Clauses 12 and 13 both refer to the ability to suspend and terminate the interconnection agreement.

Termination for convenience rights should be included and approached symmetrically. A strict reading of clause 13.1(c) might be that an Access Seeker could formally request a termination of a Service at any time by written request, creating significant uncertainty for Access Providers. A mutual convenience termination right with an appropriate notice period (i.e. 6 months) should be included in the Sample RIO. Of course, such a right may only be exercised by an Access Provider where consistent with an Access Provider's general obligations at law to supply declared services.

Mutual termination for breach rights might also be included. As currently drafted the Access Provider only has this right (under clause 13.2(d)) and may exercise the right if it has given 6 months notice of termination to the Access Seeker. Telstra submits that a shorter notice period would be more appropriate, potentially in the range of 60-90 days – recognising that some leeway may be required for strict compliance with contractual obligations as competition and interconnection develops in Papua New Guinea.

c) Regulatory overlay

Telstra queries whether it is appropriate to include a specific contractual term requiring the Access Provider to comply with a regulatory obligation such as non-discrimination as exists in clause 7 of the Sample RIO.

The drafting of clause 7 potentially narrows the scope of the contractual non-discrimination commitment (limited only to "quality of service" and not including price) against an Access Seeker's obligations under the regulatory framework. A more flexible approach would be to include a general obligation on both parties to comply with all applicable laws and regulatory obligations. This approach would avoid misalignment of contractual and legal commitments, but also ensure that there is a contractual requirement to comply more generally with other important legal and regulatory obligations including occupational health and safety, environmental and consumer protection measures.

d) Management of risk

Risk allocation is a fundamental function of contractual arrangements.

Whilst it would not be appropriate for the Sample RIO to limit the ability of parties to agree appropriate arrangements, given their unique circumstances the Sample RIO should acknowledge that in principle parties will require provisions which adequately manage and share risk under an interconnection agreement – for example, through liability caps and indemnities. These terms will need to vary depending on the nature of the service provided, for example, the Access Provider may reasonably expect the Access Seeker to assume a greater degree of risk where the provision of the relevant services involves granting the Access Seeker access to the Access Provider's sites, buildings or facilities.

e) Services

The Parts containing service descriptions and specific terms require further detail and are currently very brief. As these are developed it is important that the service descriptions adequately match the corresponding descriptions of services which are declared under sections 130 and 131 of the Act.

f) Access Provider performance standards

The Sample RIO provides no guidance on the appropriate performance standards with which an Access Provider must comply in relation to the two key obligations of provisioning and fault rectification. When exercising its discretion to approve a RIO that an Access Seeker has proposed, NICTA should consider whether the timeframes proposed in the RIO discharge an Access Provider's non-discrimination obligations as required by section 136 of the Act and any minimum retail performance standards which may be required by NICTA.

4. Comments on specific provisions in Sample RIO

Telstra wishes to make a number of comments on specific provisions contained in the Sample RIO, which are set out in Table A overleaf.

Table A: Comments on specific provisions in Sample RIO

Item	Sample RIO Reference	Comment
General terms		
1	4 (Relationship between the Parties)	This type of clause is typically drafted to demonstrate a clear intention of the parties to be a relationship of independent contractors and oust any other legal or equitable relationship arising (e.g. a partnership), and should be redrafted on this basis. The clause as currently drafted refers to "equals": if the use of the word "equals" is to re-emphasise non-discrimination obligations then this issue can be dealt with more appropriately by NICTA and the regulatory framework.
2	9.1(c) (Management of Interconnection Agreement)	The phrase "to their mutual advantage" should be deleted as it could be taken to inadvertently suggest possible collusive behaviour.
3	16 (Confidentiality)	The confidentiality clause could be further expanded to provide greater clarity to industry. Areas which the Sample RIO could consider include whether the Access Provider is able to use non-aggregated information for network planning and management purposes only.
4	18.3 (Variation of RIO)	The parties' obligation to review an existing agreement against any changes made to the relevant RIO should apply from the date the variation to the RIO is approved by NICTA. As currently drafted, the obligation applies from the commencement date of the variation, a time which may be delayed into the future.
5	19.4 (Notices)	The notices clause could be improved to provide greater certainty around the rules for receipt of electronic communications.
Attachment A: Request for Services		
6	A.3.2(c) (Preliminary Response)	If an Access Provider requests more time to assess a Service Request the agreement should specify the process that follows and whether there are limits to extensions so that decisions do not get delayed without justifiable reason. Telstra notes that A.3.8 provides for a limitation on the use of delaying tactics once the Considered Response has been provided, however the absence of a similar limitation in the context of the Preliminary

Item	Sample RIO Reference	Comment
		Response process may lead to a *de facto* situation where an Access Provider's Preliminary Responses take advantage of the ability to delay the provision of a proper Preliminary Response until the 30 day deadline contained in A.3.4.
7	A.3.2(d) (Preliminary Response)	The Access Provider should only be required to request information "reasonably required" to assess a request.
8	A.3.4 (Considered Response)	Telstra's view is that the Access Provider's response options to a service request should be limited to three categories: accept, reject, or an extension of time to accept or reject. Telstra notes that the Sample RIO does address the possibility of a part acceptance of a Service Request in A.3.7, however Telstra is concerned this may lead to complexity and interminable delay.
9	A.3.6 (Considered Response)	An Access Provider should only be able to reject a request in limited and pre-defined circumstances (bearing in mind the obligation to supply declared services). For example, rejection rights should be limited to incomplete/ inaccurate requests, etc.
Attachment B: Ordering and Provisioning Process		
10	B.1.6-1.7 (Forecasting)	The consequences of the Access Seeker failing to order at least 80% of forecasted requirements could be expressed more clearly. At present the penalty for such failure is difficult to determine in advance, which is likely to result in overly conservative forecasts which in turn will stymie long term traffic growth and network development. An example of a clearer approach would be that the Access Seeker must pay a nominal amount for each service not ordered (e.g. the first month's rental). There should be a threshold applying where the Access Seeker places orders in excess of forecasted requirements (e.g. 5-10%) before the Access Provider is under a reasonable endeavours obligation to carry the traffic – i.e. there should be some tolerance for both over and under forecasting.
11	B.2.10	It is suggested that ancillary charges such as the cost of drawing up a Firm Estimate, be subject to the requirement that the cost be "reasonable". This is an example of ancillary charge which would not typically be included in model price terms or declared service terms, and therefore should be kept within reasonable

Item	Sample RIO Reference	Comment
		bounds by the terms of the RIO itself. (There are other instances of ancillary charges in the Sample RIO which should be addressed in a similar fashion. Telstra suggests a general provision covering the entirety of the RIO which will require ancillary charges to be subject to a reasonableness requirement.)
12	B.2.14 and B.2.16 (Advanced payment of charges upon provisioning stages)	Query whether it is appropriate for the Access Seeker to have to pay these charges upfront and whether the drafting is appropriate (for example, the specific meaning of "advanced rental" is not clear). Upfront payments are usually only appropriate where there exist legitimate creditworthiness or financial security concerns. B.2.16 also contemplates that the Firm Estimate will contain "commercial terms". It is important that these terms cannot be used by the Access Provider to unilaterally impose unfair or unreasonable terms.
13	B.3 (Network Changes and Data Amendments)	The network changes and modifications clause is generally consistent with an Access Provider's obligations under the Act. However, the Sample RIO should provide a clearer obligation on the Access Provider to provide network information as required by section 84 of the Act.
Attachment C: Traffic Management		
14	C.2.4	The responsibility attributed to the Access Seeker to order a sufficient number of additional services should be made conditional on the congestion problem having been caused by the Access Seeker's traffic.
Attachment D: Technical		
15	D.1.1 (Technical Standards – General)	Reference to a general body of technical standards should be avoided where possible and practical. It is preferable to refer to the specific standards which are applicable.
16	D.1.2 (Interception)	The parties should be under an obligation to reasonably co-operate for the purposes of lawful interception.
17	D.5 (Decommissioning)	Decommissioning may more appropriately be covered in Attachment B, as it relates to network changes / modifications rather than technical specifications.

Item	Sample RIO Reference	Comment
18	D.5.3 and D.5.6	The costs and obligations placed on the Access Seeker in these two provisions should not apply if the Access Seeker did not request the decommissioning.
19	D.6 (Quality of Service)	The issues covered in this clause, including non-discrimination, network management and faults are dealt with elsewhere in the agreement and this clause could be removed.
Attachment E: Billing for Services		
20	E.1.4.5 (Terminating mobile short message service (SMS) calls); and E1.5.5 ([Example] Terminating mobile multimedia message service (MMS) calls)	Because these clauses deal with billing for the termination of calls on the Access Provider's network, and not termination on the Access Seeker's network or any reciprocal arrangement, in each case the relevant clauses should not refer to any calls being passed over the POI to the "Access Seeker". Suggest amending these clauses to state either "…calls that are not passed over the POI by the Access Seeker" or "…calls that are not passed over the POI to the Access Provider".
21	E.2.3 (Billing for non-usage based services)	A party should be under an absolute obligation to issue bills within a fixed period (the clause is expressed as "reasonable endeavours").
22	E.3.4 (Interest)	The clause as drafted would allow the supplier to charge interest on amounts which the Access Seeker disputes.
23	E.3.5 (Interest Rate)	The base for the interest rate applicable to overdue amounts is described as "the arithmetic mean of the Bank of Papua New Guinea". This is unclear: arithmetic mean over which period, which rates etc. This needs to be clarified (for example, is it the average cash rate of the PNG central bank during the relevant period + 3% ?)
24	E.5.2 (Billing errors)	This clause provides a separate right to back-bill charges which does not align with E.2.1.3 as there are two separate periods during which a back-bill right can be exercised (6 and 12 months). These rights should be aligned.
25	E.5.3 (Return of	A timeframe should be imposed on the party under the obligation to return any amounts overpaid.

Item	Sample RIO Reference	Comment
	overpayments)	
26	E.5.6 (Billing dispute threshold)	A materiality threshold could be included in a RIO as a principle. However, the specified amount would need to depend on the individual circumstances of the parties to an interconnection agreement formed under a RIO.
27	General – relationship between billing/general disputes and other legal rights	Clauses E.5.16, H.1.3 and H.2.1 all do not exclude recourse to litigation as an immediate option for either Party, but instead make all dispute resolution options available additional to those provided for in the Sample RIO. It would be preferable if these provisions instead offered certainty to the parties as to the appropriate dispute mechanisms to be invoked. For example, the RIO's contractual dispute resolution provisions could be expressed to be the primary avenue available for dispute resolution, excluding other legal rights save for circumstances justifying urgent equitable and/or injunctive relief in which case the aggrieved party would be free to approach the courts. Also, the dispute mechanisms need to be compartmentalised, so that if a party initiates a billing dispute it cannot raise the same issue in a general dispute and vice versa without at least terminating the existing process (to avoid duplication of disputes).
Attachment F: Fault detection, handling and rectification		
28	F.2 (Operational Procedures Manual)	If possible, the Operational Procedures Manual (**OPM**) should be developed prior to entering into an agreement. During the period in which the parties are negotiating the OPM and the Access Provider's procedures apply on an interim basis and unilaterally, the Access Seeker is potentially disadvantaged if those procedures are unbalanced or unfair. The interim procedures may apply for a significant period of time if the parties cannot agree the terms of the OPM.
29	F.2 (Variation of Operational Procedures Manual)	As an operational document there should be scope for this document to be amended as processes / procedures change over time.
30	F.4.2 (Fault reporting responsibility)	The intention of this provision appears to be that the fault reporting responsibility will lie with the party who has the retail relationship with the customer (and not be determined by which party's network is being used). However, the provision could be clearer on this point, since the current drafting may be misread to suggest that

Item	Sample RIO Reference	Comment
		Retail Customers could complain directly to the Access Provider.
31	F.5.7 (Faults and non-discrimination)	As discussed above, this clause could be removed as an Access Provider is required to comply with non-discrimination obligations under the regulatory framework.
32	F.6.1 (Fault repair target times)	The obligation to repair faults is expressed in terms of "best endeavours" with no consequences of a failure to meet the target (observation also applicable to provisioning measures). It is suggested that there should be committed targets and penalties for failure to meet those targets in the form of rebates.
33	F.6.3 (Hours of fault reporting)	Query whether this clause should be clarified so that the Access Provider's obligation is to provide a fault reporting centre *for the Access Seeker to report faults*.