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Draft decision: Decommission and physical removal of POTS-only sites – Decision to change the “copper decision”

1 Introduction

The Norwegian Communications Authority (Nkom) refers to the dialogue at the meetings between Telenor, access buyers and Nkom held in connection with the work on the migration plan in the spring of 2021, where Telenor raised the issue of removal of “POTS-only” sites.

Nkom refers to the decision in the wholesale market for local access to fixed access networks (the Market 3a Decision) and the decision in the wholesale market for centralised access to fixed access networks (the Market 3b Decision), 20 December 2018, collectively referred to as the “Market Decisions”. Nkom also refers to the decision to amend the decisions in Markets 3a and 3b – obligation to maintain access to copper-based access networks of 2 September 2020 (the “copper decision”).

On 3 February 2022, Nkom notified a change in Telenor’s obligation to maintain access to the entire copper-based access network, which entails that “POTS-only” sites are exempt from this obligation. Nkom has received comments on the notification from GlobalConnect AS (GlobalConnect) on 22 February 2022 and from Telenor ASA (Telenor) on 16 February 2022.

2 Current regulation

On 20 December 2018, Nkom adopted a decision on the designation of a provider with significant market power and the imposition of special obligations in the wholesale markets for local and centralised access to fixed access networks (Markets 3a and 3b). Based on identified competition problems, obligations were imposed on Telenor relating to access, price and accounting control, non-discrimination, transparency and accounting separation in these two wholesale markets.

Shortly after these decisions were made, at the end of January 2019, Telenor announced that it had decided to discontinue the copper network by the end of 2022.

Based on Telenor's decision, Nkom found it necessary to assess whether there was a need to reconsider or clarify any of the obligations imposed on Telenor in 2018. Nkom concluded that there was such a need and made a change decision on 2 September 2020. In this "copper decision", Telenor was required to maintain access to copper-based access networks for up to 5 years from the entry into force of the decision.

Nkom concluded that the access obligation had to include the entire copper-based access network in order for the access obligation to be suitable to fulfil this purpose, and therefore did not make any exception according to what the elements of the copper access network had been used for. The obligation was described as follows in the decision:

"463c. Telenor's obligation to maintain access to the copper-based access network pursuant to section 463b concerns Telenor's entire copper-based access network. The access obligation concerns all parts of the copper access network that are not validly decommissioned in accordance with Telenor's obligations pursuant to the current Market Decision dated 20 December 2018, or the previous Market Decision dated 20 January 2014. The access obligation thereby also concerns parts of the access network that have been notified to be decommissioned, but which have not yet been decommissioned. The access obligation concerning the copper-based access network entails an obligation for Telenor to retain and maintain the copper access network for as long as the access obligation exists."

3 Background to the notification

At a meeting with Nkom on 29 April 2021, Telenor requested Nkom to change the regulation so that sites that have only been used for telephony, called Plain Old Telephone Service (POTS-only) sites, can be shut down and physically removed. Telenor also addressed the topic of “POTS-only” sites in the Broadband Forum, specifically at the actor meetings held in May/June 2021 in connection with the work on the migration plan. Telenor sent an overview of the “POTS-only” sites to the wholesale customers who attended the meetings on 7 June 2021.

When Telenor made this request, the company assumed that there were approximately 1,000 such “POTS-only” sites, but in an e-mail dated 18 February 2022 Telenor has informed Nkom that there are 586 sites in this category, as Telenor has defined this concept. This number includes 44 sites where access seekers have had broadband services, but where they have chosen to decommission their broadband provision using these sites before 2019.

Appendix 1: E-mail from Telenor dated 18 February 2022

At its meeting with Nkom on 29 April 2021, Telenor furthermore requested Nkom to start a process to facilitate those sites which have been used for broadband, but which are now running out of DSL customers, can be physically removed earlier than 2 September 2025 (“empty sites”). Nkom points out that this is not covered by either the notification or this decision.

4 Remarks received concerning the notification

Consultation remarks

Telenor is positive about Nkom’s notification of change and supports the assessments made.

In the light of how regulation is a means to achieve sustainable competition in relevant markets, **GlobalConnect** points out that the company is positive towards socio-economically rational adjustments, provided that these take place in a way which guarantees that the change does not adversely affect competition. GlobalConnect therefore emphasises that if the access

obligation is to be limited, this must take place in a way that ensures competition and gives Telenor incentives for compliance.

Regarding the definition of “POTS-only” sites, GlobalConnect believes that Nkom must take into account that this is a term Telenor has introduced and itself defined, and the term is therefore neither an objective industry designation nor a technical term with a specific content.

GlobalConnect states that since Telenor has a strong incentive to circumvent current access regulation, Telenor will easily be able to exploit a delimitation towards “POTS-only” sites to decommission sites which the access seeker needs in to utilise the copper network.

GlobalConnect highlights the need for a clear and unequivocal delineation of which sites the decision will affect.

The crucial aspect for GlobalConnect is that the delineation does not in any way reduce the access seekers’ coverage (“footprint”) or service provision compared with the current situation, and it therefore believes that certain requirements must be set for physical removal to be permitted.

GlobalConnect believes that Nkom must require that access seekers should be able to offer broadband services to the same end customers both before and after the closure of what Telenor refers to as “POTS-only” sites. In GlobalConnect’s opinion, the decision must be designed so that Telenor is required to offer relevant replacement products to the wholesale customers at the addresses affected by the decommission, where the access seeker serves both retail and corporate customers. GlobalConnect believes that fixed wireless broadband can be accepted for “POTS-only” sites in the case of resale, while where Global Connect uses copper accesses to provide services, the decision must stipulate the requirement that access seekers be offered VULA.

GlobalConnect furthermore believes that Telenor should be subject to an obligation to clearly state which specific addresses will be affected by the decommission, as well as which replacement products Telenor will offer at which addresses. In GlobalConnect’s opinion, it is not sufficient for Telenor to send access seekers an overview of sites, as the company generally did in 2019 and 2020. GlobalConnect justifies the view with the fact that the sites on which the company is not present at any given time (possible sites) are also an important input factor for GlobalConnect when provision is offered and when services, etc. are marketed in the wholesale and retail market.

GlobalConnect believes that Telenor should be required to notify the decommission with a deadline of at least six months per location, in order to be able to handle customer cases. The company states that any such deadline will not have significant consequences for Telenor compared with the benefits to competition.

Nkom's assessment of the consultation input

Nkom refers to **GlobalConnect's** comments that there is a need for a clear and unequivocal delimitation of to which sites the decision will apply. Nkom agrees that the scope of application of the decision must be clearly delimited. As stated above, Telenor specified in an e-mail to Nkom on 18 February 2022 that there are 586 sites which fall under "POTS-only" sites, as Telenor first defined this term.

According to Telenor's information, this number also includes 44 sites that access seekers have used to provide broadband services, but where the operator itself has chosen to discontinue the broadband provision here before 1 January 2019. Nkom was made aware of the clarification after the notification was sent for consultation, and after Telenor had submitted its comments on the notification. The fact is that consequently, there are 542 sites that have never been used to provide broadband services.

Nkom refers to how the authority assumed in the notification that the sites which Telenor wished to remove had "never" been used to provide broadband services. This is the situation on which the access seekers were given the opportunity to comment in their consultation responses, and in Nkom's opinion there is no basis for setting this requirement any less restrictively in the final decision. Nkom therefore believes that the scope of the notification is limited to "POTS-only" sites that have never been used to provide broadband services. It is thus only the 542 sites to which Telenor has specifically referred that can be decommissioned and physically removed on the basis of this decision.

Nkom requires Telenor to post on its website for wholesale products (www.telenorwholesale.no) a complete and correct overview of these sites for the access seekers, with the names of the sites, municipality, county and coordinates for the sites.

This must also provide information on when Telenor plans to remove the individual sites. The information must be made available on the websites of the access seekers before physical removal can be initiated. No notification deadline is imposed beyond this.

Nkom disagrees with GlobalConnect that this information is not sufficient for the access seeker to adequately safeguard its interests, given the limited practical significance of these sites in the copper network.

Regarding **GlobalConnect's** comments that access seekers must be required to provide broadband services to the same retail customers both before and after the decommissioning of "POTS-only" sites, this will be ensured by the fact that only the 542 sites that have never been used to provide broadband services are permitted to be decommissioned by this decision. It is correct that the access seekers' coverage or, as GlobalConnect describes it, the network's "footprint" will be somewhat smaller in that some copper accesses can be decommissioned and physically removed. In Nkom's view, however, this cannot be given decisive weight, as these sites have never been used to provide broadband services. Nkom believes that the economic and environmental benefits of being able to physically remove these limited parts of the copper network clearly outweigh the somewhat reduced copper network coverage. A vital precondition for Nkom is precisely that this will not affect competition in this market.

Concerning **GlobalConnect's** comments that Telenor must offer replacement products, Nkom points out that any such requirement does not seem reasonable, since in Nkom's view this assumes that there are retail customers who depend on a replacement product being offered in order for the access seeker to be able to continue to provide services to retail customers. Nkom will therefore not set any such requirement for these cases that covered by this decision.

5 Legal basis

Section 4-1(1) of the Norwegian Electronic Communications Act grants the authority powers to require a provider with significant market power to "meet any reasonable request to enter into or amend an agreement on access to electronic communications networks and services". Access means making facilities and/or services available to other providers, on specific terms, with the objective of offering electronic communication services.

When the wording of the Act gives Nkom the authority to impose a duty of access on Telenor, it is also within Nkom's authority to limit the scope of the duty of access.

Section 4-1(2) of the Electronic Communications Act furthermore states that in considering whether a request is reasonable “an assessment shall be undertaken inter alia of the provider’s interest in control over its own infrastructure against the need to give others the access necessary to be able to offer competing services”.

6 Nkom’s assessment

To ensure competition in the broadband markets, it is a precondition that access seekers have predictable and real access to the copper-based access network. This precondition does not, however, apply to the same extent to the parts of the copper network that neither Telenor nor its access seekers have ever used to deliver broadband services.

In Nkom’s opinion, there are good reasons to indicate that Telenor can start the work of physically removing these elements of the copper network, when the vital criterion is that broadband services have never been provided using these 542 sites. Nkom has given emphasis to both the economic and environmental benefits of discontinuing and removing these sites, and assessed this against any drawbacks of the removal.

Telenor has costs related to the “POTS-only” sites, including electricity and maintenance. Removal of unused copper accesses could also provide an environmental benefit and reduce the risk that the copper lines might endanger human beings and animals. Landowners who have line alignments across their property might also be interested in removing the lines for practical or aesthetic reasons.

As GlobalConnect has pointed out in its comments, easing Telenor’s obligations with respect to these sites will reduce the total scope of copper accesses available to Telenor’s wholesale customers. On the other hand, it is not very forward-looking in a broader perspective to give decisive weight to access to more hypothetical potential copper customers, rather than emphasising the socioeconomic and environmental benefits of physically removing these elements of the copper network.

The fact – with the clear assumption made by Nkom – that access seekers have never deployed broadband equipment (broadband node) at these sites clearly indicates that the customer base and opportunities for earnings do not exist. Nkom has noted GlobalConnect’s comments on whether access seekers should be able to “provide broadband services to the same retail customers both before and after closure”, but in Nkom’s view, greater emphasis must be given

to the fact that, up until now, throughout the copper network's lifetime no access seekers have found a commercial basis for providing broadband services to these retail customers via the copper network.

It is furthermore unlikely that this picture will change in the remaining years in which Telenor must maintain access to the copper network. Nkom therefore believes that it is very unlikely that access seekers will request Telenor for access to these 542 "POTS-only" sites.

Nkom also gained the clear impression from the meetings of the Broadband Forum in 2021 (about the migration plan) that there were no major objections from Telenor's wholesale customers other than GlobalConnect to Telenor's discontinuation of these sites, where there were also more sites than Nkom actually grants permission for, under this decision. Nkom therefore assesses that removal of these "POTS-only" sites will not contribute to weakening competition in the market, but on the other hand that it will provide greater societal benefits that, in overall terms, it makes good sense to facilitate.

7 Decision to change the market regulation

On the aforementioned basis, Nkom notifies the following amendment to section 463c of the decision concerning changes to the decisions in Markets 3a and 3b – the obligation to maintain access to copper-based access networks (change in italics):

"463c. Telenor's obligation to maintain access to the copper-based access network pursuant to section 463b concerns Telenor's entire copper-based access network. The access obligation concerns all parts of the copper access network that are not validly decommissioned in accordance with Telenor's obligations pursuant to the current Market Decision dated 20 December 2018, or the previous Market Decision dated 20 January 2014. The access obligation thereby also concerns parts of the access network that have been notified to be decommissioned, but which have not yet been decommissioned. The access obligation concerning the copper-based access network entails an obligation for Telenor to retain and maintain the copper access network for as long as the access obligation exists. *Telenor's obligation to maintain access to the entire copper-based access network applies except for "POTS-only" sites. This means*

the 542 sites in Telenor’s copper access network that have only been used for telephony and have never been used to provide broadband services. On its website for wholesale products (www.telenorwholesale.no) Telenor will post a complete and correct overview with name, municipality, county and geographical coordinates for the sites to be removed. Information must also be presented on when Telenor plans to remove the individual sites. The information must be made available to the access seekers before physical removal can be initiated.”

Nkom furthermore notifies the following amendment to section 298c of the decision concerning changes to the decisions in Markets 3a and 3b – the obligation to maintain access to copper-based access networks (change in italics):

“298c. Telenor’s obligation to maintain access to the copper-based access network pursuant to section 298b concerns Telenor’s entire copper-based access network. The access obligation concerns all parts of the copper access network that are not validly decommissioned in accordance with Telenor’s obligations pursuant to the current Market Decision dated 20 December 2018, or the previous Market Decision dated 20 January 2014. The access obligation thereby also concerns parts of the access network that have been notified to be decommissioned, but which have not yet been closed down. The access obligation concerning the copper-based access network entails an obligation for Telenor to retain and maintain the copper access network for as long as the access obligation exists. *Telenor’s obligation to maintain access to the entire copper-based access network applies except for “POTS-only” sites. This means the 542 sites in Telenor’s copper access network that have only been used for telephony and have never been used to provide broadband services. On its website for wholesale products (www.telenorwholesale.no) Telenor will post a complete and correct overview with name, municipality, county, and geographical coordinates for the sites to be decommissioned. This must also provide information on when Telenor plans*

to decommission the individual sites. The information must be made available to the access seekers before physical removal can be initiated.”

8 Proportionality

Nkom refers to our assessment of the consultative input and to our assessments in Chapter 6, and considers that it would be proportionate to make the changes to the regulation related to these 542 “POTS-only” sites which this decision entails.

Nkom believes that the changes made in this decision are both suitable and necessary to achieve the required purpose of facilitating physical removal of the parts of the copper network that have never been used to provide broadband services. Nkom cannot see that the same purpose can be achieved in other ways than proposed with the decision, and emphasises that the scope of application is clearly limited to sites where broadband equipment has never been placed by access seekers.

Nkom believes that it is of greater benefit to society to allow physical removal of these “POTS-only” sites, and that this change in market regulation will not be of any practical significance to the competition in the broadband market, cf. Chapter 6 above.

9 Entry into force and appeal

The Decision enters into force immediately.

The Decision may be appealed, cf. Section 11-6 of the Norwegian Electronic Communications Act, and Section 28 of the Norwegian Public Administration Act. The deadline for appealing a decision is normally three weeks from the date when notification of the decision was submitted to the relevant party, cf. Section 29(1), first sentence of the Public Administration Act. Any appeal must be addressed to the Norwegian Ministry of Local Government and Modernisation and sent to the Norwegian Communications Authority (Nkom), cf. Sections 28 and 32 of the Public Administration Act.

It follows from Section 11-8(1) of the Electronic Communications Act that lawsuits concerning individual decisions made under or pursuant to this Act must be brought within six months after



the decision was made. The time limit for legal action is interrupted by an appeal against the decision and does not run as long as the appeal is being processed, cf. Section 11-8(2) of the Electronic Communications Act.

With kind regards,

Hans Jørgen Enger
Director Service Markets

Øyvind Halvorsen
Head of Section

The document has been approved electronically and sent without a signature.

Appendix 1: E-mail from Telenor dated 18 February 2022