
ISSUE DATE: 1ST FEBRUARY 2013

REQUIRED MEASURES 1(A) AND 1(B)

SUBMISSION IN RESPONSE TO ACCC DISCUSSION PAPER DATED DECEMBER 2012

SUMMARY: This document addresses the ACCC's discussion paper on the Migration Plan Required Measures relating to the pull through connection process dated December 2012 (the Discussion Paper). Except for direct quotes from the Discussion Paper, all capitalised terms have the meaning set out in the Required Measures 1(a) and 1(b) or the Migration Plan unless otherwise defined.

Telstra is responding to the ACCC's December 2012 Discussion Paper on Required Measures 1(a) and (b), which deal with Telstra's role in NBN Co's use of 'pull through' of fibre in Telstra lead-in conduits (LICs) to connect Premises to the NBN fibre network.

Before addressing the ACCC's specific questions, Telstra has the following general comments:

- pull through should not be characterised as 'disconnection' for the purposes of the Migration Plan Principles;
- NBN Co has indicated it will use pull through as a fall back and only following an order from a retail service provider (RSP) for connection; and
- the primary responsibility to manage Migration with the end user, including the consequences of pull through, must necessarily lie with the NBN RSP (which owns the customer relationship for the ordered services over the NBN).

1. THE PULL THROUGH PROCESS

At the outset, it is important to recognise three things:

- Pull through is a process that is conducted in a practical sense by NBN Co and not by Telstra. It is undertaken by NBN Co contractors as part of the connection of NBN services. Telstra has no control over when or how pull through processes are undertaken in respect of wholesale customers' copper services.
- Pull through, of itself, does not involve *Disconnection* of copper services, as that term is used in both the Migration Plan Principles and the Migration Plan to describe Telstra or a wholesale customer permanently ceasing to supply services to a premises. Rather, where it occurs, pull through is intended to be a step in the NBN connection process that will lead to a short service outage.
- Where a problem occurs during pull through, NBN Co may, in certain circumstances, install a alternative temporary service.

Telstra (when it is not the NBN RSP) has very little, if any, direct involvement in the timing or activities associated with pull through. This is reflected in the very limited scope of Telstra's obligations in clause 10 of the Migration Plan, as reflected in Required Measures 1(a) and 1(b). These Required Measures are limited in both cases to information flows (consents and notifications) and not any direct responsibility for how or when pull through takes place.

In terms of the approach proposed by the ACCC to assessing Required Measures 1(a) and 1(b) against the Migration Plan and Migration Plan Principles¹, this means:

- **While the MPPs require Telstra, to the greatest extent practicable, to give wholesale customers autonomy over decisions about the timing of disconnection of their services**, pull through activity is not the same as Disconnection. The Retail Service Provider (RSP) that is ordering an NBN service controls the timing of connection and associated pull through – not the supplier over the Copper Network.
- **The obligation to minimise disruption of services is only to the extent that it is "in Telstra's control"**. Telstra has little, if any, control over pull through timing and processes, which are the responsibility of NBN Co.
- **As a result, Telstra cannot be solely responsible for the equivalent treatment of wholesale customers and retail business units in the pull**

¹ Discussion Paper, page 4.

through process. Telstra's limited role in the pull through process as described in the Required Measure is confined to the notice and consent activities. This Required Measure achieves equivalence in respect of the notice and consent processes.

2. PULL THROUGH IS ALWAYS DRIVEN BY AN RSP ORDER

Underlying a number of issues raised in the Discussion Paper is a concern that RSPs will not be forewarned of pull through and as a result will not have adequate opportunity to manage the pull through process with their end users.

RSPs supplying NBN services and their end users should be made aware when NBN Co decides to use pull through. As the ACCC notes, NBN Co does not intend to use pull through as part of the initial 'build drop' deployment in a Rollout Region.² Premises which can only be connected by use of pull through will be 'skipped' and will be connected during the Migration Window on a Premises by Premises basis in response to an order from an RSP for NBN services.

This means that:

- pull through will occur where the end user has made a decision to migrate to the NBN or obtain new services over the NBN, and has signed up with an RSP (either a customer's existing RSP or a new RSP) who has the responsibility for arranging the connection. The RSP will have the opportunity during the sales process to offer solutions to smooth the transition to the NBN, including interim products such as call diversion;
- the RSP should know from inquiries of NBN Co's service qualification (SQ) system when there is a possibility of pull through being used by NBN Co. NBN Co proposes to classify Fibre Footprint Premises into Service Classes based on the extent of NBN infrastructure already in place at the Premises. Premises classified as Service Class 1 are NBN Serviceable but without an existing physical connection, which will tell the NBN RSP that these Premises may potentially require pull through.³ Thus, the NBN SQ information will allow NBN RSPs to efficiently target their mitigation strategies at customers where pull through may be required to facilitate NBN connection;
- NBN Co will inform NBN RSPs in advance of the installation date. There will be some period after the connection order is lodged with NBN Co before the installation date when pull through would occur. This provides an NBN RSP with a significant lead time to plan with an end user and implement measures to mitigate any impact should NBN Co's field staff decide to use pull through on the arranged installation date. For example, the RSP would have time to instruct the end user in the use of call diversion or to provide a mobile phone if the end user does not have one; and
- Telstra expects that NBN Co may consult with the relevant end user of the NBN service prior to conducting pull through.

² Discussion Paper, pages 7 and 8.

³ Service Class 3 Premises have a physical connection but not NTD and Service Class 4 have both a physical connection and an NTD: see NBN Co *Customer Installations*, 28 September 2012, p.9.

3. ROLES AND RESPONSIBILITIES IN PULL THROUGH

The Discussion Paper comments that “there is a lack of clarity regarding the precise nature of the roles and responsibilities that all parties will take on in the end-to-end pull through process”.⁴

Telstra has already noted above that its role under this Required Measure in respect of pull through activities is extremely limited, being restricted to facilitating the provision of consents and notifications required as part of NBN Co undertaking these activities. It has also undertaken in the Migration Plan that it will continue to ensure that call diversion is available to end users during the period of any outage caused by NBN Co undertaking pull through (per clause 10.4 of the Migration Plan).

In Telstra’s view, responsibility for dealing with the end user can only lie with the RSP proposing to supply that end user with services on the NBN, as it is this RSP’s success in signing up the end user which triggers the connection process in which pull through occurs. The RSP who owns the customer relationship for the ordered services over the NBN will be best placed to interact with their customers about steps they can take to manage any downsides of pull through.

The NBN RSP may not be the current provider of services to the end user over the copper network: the end user may have decided to migrate to the NBN with another provider (i.e. both migrate and churn). While pull through interrupts the copper-based services of the ‘losing’ service provider, it is not practical or appropriate for the responsibility of managing the consequences of pull through with the end user to be in the hands of the losing service provider because:

- the customer has already decided to cease the commercial relationship with the losing service provider;
- as they are losing the end user, the losing service provider will have less incentive than the gaining RSP to ensure that migration proceeds smoothly;
- as the losing service provider may not know of the end user’s decision to migrate before the service cancellation order is lodged (which may be after the installation date), it has less practical opportunity to put in place measures to deal with the service outage, including call redirect;
- as the gaining service provider should already have made arrangements to deal with service interruption, potentially involving the losing service provider would create confusion and rivalry over roles and responsibilities for interim services while the gaining RSP’s services are connected; and
- if the losing service provider is informed in advance of the pull through, the losing service provider might use the information to try to win back the end user and stop the churn to the gaining service provider.

Only the NBN RSP has the incentive, opportunity, and sufficient notice of the possibility of pull through to be able to manage the risks of pull through with the end user.

⁴ Discussion Paper, page 8.

4. OBTAINING CONSENTS FROM WHOLESALE CUSTOMERS

ACCC questions:

1. Does the process for obtaining wholesale customer consents for pull through comply with the requirements of the migration plan and the migration plan principles?
2. Does the global nature of the consents sought under the Deed Poll undermine wholesale customer capacity to minimise the period of any service outage and disruption to the supply of communication services to their end users?
3. What arrangements for providing consent to pull through would be most likely to benefit wholesale customer autonomy while also not unduly limiting the timeliness and efficiency of the pull through process?
4. Would the inclusion in the required measures of a notification process to wholesale customers ahead of the use of pull through assist wholesale customers manage service continuity for their end users?

The ACCC queries whether the process for giving consent only on a global basis is consistent with the MPPs because “by providing the consents on a global basis, wholesale customers would appear to lose control over the timing of pull through and the capacity to minimise the period of any service outage and disruption to the supply of communication services to any individual consumers for whom pull through would not be appropriate.”⁵

Where the wholesale customer providing the global consent is the service provider lodging the NBN connection request, it will have capacity to minimise the service interruption from pull through because:

- the installation date on which the pull through could occur is settled between NBN Co and the NBN service provider through the NBN provisioning process, and the date can be changed by the NBN service provider as permitted by the NBN Co rules; and
- as the NBN service provider will know the installation date well in advance, it has the opportunity to have service interruption measures in place in the event pull through occurs.

The ACCC notes that where an end user decides to migrate to the NBN with a different service provider, their current service provider may not be aware of the installation date and, in the absence of notice of pull through, would be unable to arrange interim services (or withdraw consent to pull through). However as Telstra notes above, although it is the losing service provider’s services which are being interrupted, responsibility for managing the service interruption issues in Migration should lie with the gaining RSP.

The MPPs do not specify a role for the losing service provider. The MPPs require “that the migration plan must provide, to the greatest extent practicable, for disconnection processes that enable wholesale customers autonomy over decisions about sequencing disconnection with connection to the NBN in order to minimise disruption to the supply of communications services.” As the losing service provider has nothing to do with connection to the NBN services, the relevant wholesale customer to which the MPPs must be taken to be referring is the gaining RSP on the NBN.

⁵ Discussion Paper, page 11.

The ACCC refers to a proposal from some wholesale customers to require prior notification of pull through line by line, presumably as Telstra is notified by NBN Co. However, as noted above:

- Telstra will not know whether its current wholesale customer and the gaining RSP requesting the connection are the same or whether a 'churn' is involved with the Migration;
- the limited notice which Telstra can give (less than an hour) is unlikely to be of much practical value to the current wholesale customer in managing any service interruption; and
- as Telstra set out in its supporting submission, line by line notification to wholesale customers will substantially complicate the pull through process.

The ACCC proposes that when giving global consent, a wholesale customer can place a condition on the global consent by carving out specified lines or types of customers or ('opt out'). The ACCC notes that "ultimately, any benefits of allowing wholesale customers to undertake a more granular approach to providing consent for pull through must be balanced against any efficiency costs, including any potential limits to NBN Co's capacity to undertake pull through in a timely manner".⁶

In Telstra's view, the efficiency costs outweigh the benefits of any proposal along the lines suggested by the ACCC, as:

- such a proposal would complicate Telstra's task in responding to NBN Co pull through requests by requiring Telstra to identify, access and match the 'opt out' data of each wholesale customer providing services on any lines in the relevant LIC (not just the line which will be used for pull through). Telstra only has an hour to turn around pull through requests;
- the ability to carve out specified lines or types of customers from the global consent may reduce the opportunities for NBN Co to utilise pull through and add to the cost of deployment. NBN Co has said that it will only use pull through where there is not a more readily available alternative. If NBN Co cannot use pull through at a premises, it may have to resort to more costly solutions to connect the premises, such as building a new LIC, or not connecting the premises at all (in which case, the premises would still have to be disconnected at the Disconnection Date and the end user would suffer a continuing outage); and
- Given that service providers already have the ability to notify NBN Co when an end user is a priority assist customer, it is unclear in what other circumstances a wholesale customer should be able to carve individual lines out of the global consent. If the wholesale customer's opt out right is unrestricted, NBN Co may need to use higher cost or slower connection alternatives to pull through. If the opt out grounds are to be limited, this raises issues as to how to verify that individual wholesale customers are abiding by the opt out rules.

5. WAIVER AND INDEMNITY

5. Does the release under draft clause 1.6(c) of the Deed Poll undermine the capacity of wholesale customers to minimise the period of any service outage for their end users?

The ACCC expresses concern that, as a consequence of the release of Telstra and NBN Co from liability for loss or damage arising from pull through "in the event of an

⁶ Discussion Paper, pages 11 and 12.

extended period of service outage, in circumstances where there is delayed commencement of the NBN fibre service, the wholesale customer would appear to have little capacity to ensure continuity of service for their end users.”

As a point of commercial principle, Telstra should not be potentially liable for activities over which it has no effective control. In this case, Telstra has no control over when NBN Co will exercise its discretion to use pull through, nor can it control the manner in which NBN Co will perform the pull through or copper rectification, or the quality of any temporary cables installed by NBN Co. Winding back the releases in the global consents so that Telstra assumes any liability to wholesale customers or their end users would, in effect, involve Telstra ‘insuring’ NBN Co for any deficiencies in its pull through related work.

Therefore, the required measures and the consents between Telstra and wholesale customers are not the appropriate vehicles for any safeguards which the ACCC considers necessary to deal with the service quality of temporary cables or any other aspects of NBN Co’s pull through activities.

6. PRIORITY ASSISTANCE AND MEDICAL ALERT SERVICES

6. Do the required measures provide assurance that wholesale customers of Telstra obtain and supply information to NBN Co regarding the existence of priority assistance and medical alert services?

7. What information do wholesale customers currently provide to Telstra about priority assistance and medical alert services?

8. Could the required measures be amended in any way to provide additional assurance that priority assistance and medical alert customers will be identified to NBN Co?

9. What other measures could be established to provide such additional assurance?

Telstra shares the ACCC’s concern that extensive service outages could have serious consequences for customers with priority assistance (PA) or medical alert services. The proposed arrangements allow these risks to be appropriately managed, because:

- as explained above, NBN Co is using pull through where there are not other practicable and efficient means of connecting premises. This will mean that, as with all customers, most PA customers will have an existing NBN lead-in and electronics already installed on their premises during the build drop phase. These customers can be connected to the NBN with no service interruption;
- as pull through is only ever to be used in response to an NBN connection order, the NBN RSP will have a substantial lead time to discuss with the end user and manage any service interruption issues. As noted above, if the premises is not classified as Service Class 2 or 3 in the NBN SQ system, the RSP will know to raise the possibility of service interruption on the installation date because pull through may need to be used. The NBN RSP will, in effect, be on notice that it needs to investigate whether these customers have special needs which could be adversely affected by pull through;

- in any event, the NBN RSP will need to raise priority assistance with the end user. This is because a service provider supplying standard telephone services, including over the NBN, has a regulatory obligation to:
 - inform the customer that the RSP offers priority assistance; or
 - inform the customer that the RSP does not offer priority assistance, and provide a list of suppliers that do offer priority assistance;⁷
- Telstra expects that pull through will involve relatively short outages but this may vary subject to work practices defined and implemented by NBN Co. This should be well within the minimum timeframes required for service restoration under priority assist requirements. Applying some form of service continuity standard (or prohibiting use of pull through because it does interrupt a PA service) would be imposing a higher standard for PA in the course of Migration than applies generally;
- Telstra expects that NBN Co field personnel will be on the premises during pull through, except during some types of Pull Through Exception Events, and until the copper connection is restored or a temporary cable installed;
- high mobile penetration means that virtually all end users will have an alternative means of placing emergency calls; and
- if the copper service is not restored in time, the priority assistance provider may have to provide an interim service.

Wholesale customers can, if they wish, exclude their PA customers from pull through. The form of global consent specified in the Required Measure enables NBN Co to require the wholesale customer to provide this information directly to NBN Co. As a result, if a wholesale customer has signed a global consent and NBN Co has requested information about the wholesale priority assistance services, the relevant copper line may not be used by NBN Co to conduct pull through if an end user migrates to the NBN with that RSP or a different RSP.

Medical alert services take many different forms, including the following:

- if the medical alert service is a back-to-base service that relies on a retail or wholesale Telstra telemetry service, it will be a Direct Special Service and cannot be used for pull through;
- if a wholesale customer is providing a medical alert service over a ULLS by means of its own remote telemetry service, it will be a Special Service Input which cannot be used for pull through (provided the relevant Wholesale customer has certified that the ULLS is being used as a Special Service Input); or
- if an RSP is supplying a medical alert service using CPE (such as an automatic dialling device which the end user can wear around his or her neck) in conjunction with a telephone or other service they are providing, the global consents provide a direct avenue of notification by wholesale customers to NBN Co.

Most CPE-based medical alert services are offered independently of the provider of the telephony or other connectivity service to the premises. The Personal Emergency Response Services Association estimates that such services are provided to over 100,000 people in households across Australia, in addition to 50,000 in aged care facilities⁸. As these services do not involve special connection to the underlying network, Telstra or the other RSP will not know about the existence of a medical alert service on a given line. The most effective way to deal with these services is through education of

⁷ Part 6 in Schedule 2 of the *Telecommunications Act 1997*

⁸ These figures are taken from the Personal Emergency Response Services Association website, available at <http://www.persa.com.au/>

end users and the suppliers of these services, such as through the public education campaign undertaken by NBN Co.

As required under the Migration Plan and Migration Plan Principles, Telstra's customer collateral on NBN services also identifies the risk that CPE-based medical alert services may not function on the NBN. Public education on these risks is outside the scope of the Required Measures.

7. TESTS TO DETERMINE WHETHER THE SERVICE OUTAGE IS OVER

10. In the absence of wholesale customer agreement to undertake Reinstatement or Remote Tests is there sufficient assurance that existing communications services will be able to recommence after pull through?

The ACCC queries whether the ability of a wholesale customer to opt out of the Reinstatement and Remote Tests is consistent with the service continuity principle of the MPP.

The MPP objective is to enable wholesale customers to minimise service disruption, not to mandate them to continue to provide service. Whether an RSP continues to provide services on a Copper Line after reinstatement following pull through is a contractual matter between the RSP and its end user. There may be no services left to provide and test over copper because they have all been migrated to the NBN or replaced by NBN services. The RSP's service contract may be technology neutral and allow the RSP to supply the services by alternative means, such as wireless. The RSP's service contract may allow the RSP to terminate all services in the event that some services are churned to another provider. Requiring the RSP to go to the expense and trouble of participating in retesting where the RSP has no continuing supply obligation serves no purpose.

Required Measures 1(a) and 1(b) can only apply to Telstra. If the ACCC wishes to ensure that particular arrangements are in place between RSPs and NBN Co in relation to when and how reinstatement and remote tests will be carried out, such arrangements cannot be effectively addressed in the Required Measures.

8. EQUIVALENT TREATMENT OF WHOLESALE CUSTOMERS AND TELSTRA RETAIL BUSINESS UNITS

14. Can wholesale customers access SIIAM records to check the fault status of a line without contacting Telstra Wholesale?

The Linx Online System (LOLS) provides for the lodgement, monitoring and clearing of wholesale customer service assurance issues for PSTN, ADSL, ULL, Spectrum Sharing and data services, in a secure online browser environment. Wholesale customers can report faults directly into LOLS and can use LOLS to track the progress of their service

assurance incidents.

If an incident is logged directly within SIIAM on a service number of a wholesale customer, information concerning that incident and its status is available within LOLS for the wholesale customer.

This will include incidents generated as a result of pull through which are logged in SIIAM. This means that wholesale customers will have visibility within LOLS of incidents impacting wholesale customers that relate to pull through.