



Proposed Migration Plan Variation: Special Services and Other Amendments

Final Decision

October 2018

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Executive Summary

The Australian Competition and Consumer Commission (ACCC) has approved Telstra's proposed variation to the Migration Plan (**proposed variation**). The ACCC is satisfied that the proposed variation complies with the specific legislative requirements.

The Migration Plan sets out the steps that Telstra will take to progressively migrate voice and broadband services from its copper and hybrid-fibre coaxial (HFC) networks to the NBN as it is rolled out across Australia through mandatory disconnection of legacy services.

The proposed variation and a supporting submission was lodged by Telstra on 10 September 2018 and included measures to:

- change migration arrangements for Special Services and Special Services Inputs (i.e. business services) that delay the commencement of any disconnection activity until at least 29 January 2019 and provide an In-Train Order (ITO) process to users that have placed an NBN order
- amend Telstra's obligations relating to Hybrid Fibre Coaxial (HFC) Services, together with a number of other proposed changes to the Migration Plan relating to fire alarm and lift phone services and ITO arrangements, for which Telstra has previously received regulatory forbearance from the ACCC

This variation establishes an ITO process for Special Services which provides customers with 170 business days (BDs) after the specific initial Special Services Disconnection Date (SSDD) before mandatory disconnection occurs where a valid order is in place for migration to the NBN. This means for the first class of Special Services, customers will need to have an order in place before 12 November 2018 to take advantage of the new ITO process. Orders placed after 12 November 2018, for the first class of Special Services, would not have access to the ITO process but would obtain a benefit from the variation through deferred disconnection activity which would commence after 29 January 2019.

In accordance with subsection 577BF(3) of the *Telecommunications Act 1997* (Cth) (the Act), the ACCC must approve the proposed variation if the ACCC is satisfied that the final migration plan as varied complies with the Migration Plan Principles and must otherwise refuse approval of the variation.

On 18 September 2018, the ACCC placed a notice on its website requesting feedback from stakeholders on the proposed variation by 16 October 2018. The ACCC received seven submissions.

The ACCC is satisfied that the Migration Plan as varied by the proposed variation complies with the Migration Plan Principles. As such, the ACCC has approved the proposed variation pursuant to subsection 577BF(3) of the Act. The varied Migration Plan replaces the current version of the Migration Plan and all interim arrangements.

1 Introduction

On 10 September 2018, Telstra submitted a proposed variation to the Migration Plan (proposed variation) to the ACCC. The proposed variation included changes to migration arrangements for Special Services together with a number of other changes for which Telstra has previously received regulatory forbearance from the ACCC.

On 18 September 2018, the ACCC placed a notice on its website requesting feedback from interested stakeholders on the proposed variation and subsequently received submissions from Commpete, Exetel, Macquarie Telecom, NBN Co, Optus, TPG and Vocus.

2 Background

The Migration Plan sets out the steps that Telstra will take to progressively migrate voice and broadband services from its copper and Hybrid Fibre Coaxial (HFC) networks to the NBN. The first Migration Plan was approved by the ACCC on 7 March 2012.

Since the Migration Plan was approved in 2012, the ACCC has considered and approved a number of variations to the Migration Plan, including approving variations to:

- incorporate the shift to a multi-technology mix (MTM)
- facilitate the use of Fibre-to-the-Curb as an access technology for the MTM NBN.¹

3 Legislative framework

3.1 The Telecommunications Act 1997

The Act creates the framework for the assessment of a proposed variation to the Migration Plan. Part 33 sets out the regulatory framework for the structural separation of Telstra. Under subsection 577BC(1), Telstra may have a Migration Plan approved by the ACCC in order to implement its chosen structural separation.

The Act states that a Migration Plan must comply with the Migration Plan Principles and the Specified Matters Instrument. The Specified Matters Instrument defines the scope of the Migration Plan, by specifying matters that provisions in the Migration Plan ‘may’ and ‘must not’ deal with.

3.2 Migration Plan Principles

The ACCC’s role in assessing a variation to the Migration Plan is to ensure that the Migration Plan, as varied, complies with the Migration Plan Principles.²

¹ See: <https://www.accc.gov.au/regulated-infrastructure/communications/industry-reform/telstras-migration-plan>

The Migration Plan Principles define the objectives and scope of a Migration Plan and prescribe the way in which the Migration Plan can deal with certain issues. There are three types of principles:

- general principles – the overarching principles that must be met by the Migration Plan, including equivalence and service continuity objectives
- specific principles – further detail about how some of the general principles are to be given effect in the Migration Plan
- procedural principles – the procedural provisions that must be included in the Migration Plan.

The general principles include:

- the efficient and timely disconnection of carriage services from the separating network
- minimising disruption to the supply of services to the extent that it is within Telstra’s control
- giving wholesale customers autonomy over decisions associated with disconnection to the greatest extent practicable
- providing for wholesale services to be disconnected in an equivalent manner to retail services to the greatest extent practicable.

3.3 The ACCC’s Role

The ACCC’s role in assessing Telstra’s proposed variation is limited to:

- approving the proposed variation if the varied Migration Plan complies with the Migration Plan Principles, or
- refusing to approve the proposed variation if the varied Migration Plan does not comply with the Migration Plan Principles.

The ACCC considers the Migration Plan as varied by Telstra’s proposed variation and does not have discretion to seek changes to the proposed variation merely based on a preference for a particular approach.

Where the proposed variation adopts an approach that is contained in a specific or procedural principle in respect of a matter, the proposed variation is taken to comply with all the principles in respect of that matter.

The general principles are relevant if the proposed variation does not accord directly with a specific or procedural principle, or if a matter is not dealt with at all by a specific or procedural principle. If this is the case, the ACCC must consider the matter in light of all the principles, including the general principles, and decide whether those provisions of the proposed variation should be accepted.

² See: <https://www.communications.gov.au/publications/telecommunications-migration-plan-principles-determination-2015>

4 Assessment of the proposed variation

The ACCC has assessed whether the Migration Plan as varied complies with the Migration Plan Principles. As a number of aspects of the proposed variation do not accord directly with a specific or procedural principle, the ACCC has assessed the proposed variation mainly with respect to the general principles.

4.1 Changes to the Migration Plan relating to Special Services and Special Services Inputs

Special Services (SS) and Special Services Inputs (SSI) (collectively, TSS) are typically business-grade services used for critical purposes other than standard landline phone or internet services. Under the current terms of the Migration Plan, each class of TSS is either required to be disconnected by SSDD, or a subsequent Rollout Region Disconnection Date (RRDD).

Telstra proposed certain changes to the disconnection arrangements for TSS. According to Telstra, these changes are designed to minimise disruption to end-users and promote service continuity.

4.1.1 Deferring disconnections for the first classes of TSS

The initial SSDD for the first class of TSS is 12 November 2018, with disconnections completed within 25 BDs.

Telstra proposed to amend the disconnection timeframes for this first class of TSS so that service disconnection will commence from 52 BDs after the SSDD with disconnections completed within 87 BDs after the SSDD.

The effect of the proposed changes will be that the commencement of disconnection activity for the first class of TSS is deferred until 29 January 2019. The variation does not affect subsequent classes or their SSDDs.

4.1.2 Introduction of an In-Train Order Period for TSS

An In-Train Order (ITO) process provides customers with a longer period before mandatory disconnection occurs where a valid order is in place for migration to the NBN. Such processes currently exist in respect of residential disconnections. Currently, the Migration Plan prevents Telstra from delaying disconnection of TSS beyond the SSDD and there is no ITO process available to provide a longer period before mandatory disconnection occurs where a valid order is in place for migration to the NBN.

Telstra proposed new ITO arrangements for TSS that will only apply to those premises where a valid order is in place to migrate the TSS to the NBN. They do not cover any TSS being migrated to a non-NBN network. Under these proposed ITO arrangements, premises with an NBN order in place will not be subject to compulsory disconnection before 170 BDs after SSDD.

The proposed variation would also apply the same disconnection timeframes to those Premises with “late landing” TSS. These are TSS due for disconnection as at the SSDD where the customer has not been notified earlier than 6 months prior to the SSDD of the proposed disconnection.

4.1.3 Additional amendments to TSS disconnection arrangements

Telstra also proposed a number of minor amendments to TSS disconnection arrangements. These include varying disconnection arrangements for premises where there has been a change in the technology that will be used and extending the timeframe for the permanent disconnection of some premises. Telstra submits that these changes are designed to protect service continuity and promote the orderly disconnection of TSS.

4.1.4 Submissions received

Commpete

Commpete supports the proposal to delay the Special Services mandatory disconnection date by 10 weeks.

Commpete also supports the proposal to push back the mandatory disconnection date for Special Services where a service order is in with an RSP and “in train” to migrate to an NBN service. According to Commpete despite having significant lead time to migrate, some customers are not yet ready, often due to complicated legacy equipment that is not yet compatible with NBN service types.

Exetel

Exetel submits that in addition to Telstra, Optus, Vocus and TPG there are also a number of smaller Tier 2 ISPs that have legacy copper services that need to be migrated. According to Exetel, this is often a quite complex process and a short extension of time will make this task less difficult for service providers and will also benefit customers.

Macquarie Telecom

Macquarie Telecom supports deferring disconnections for the first classes of Special Services to allow for extra time to shift the migration process out of the holiday period.

Macquarie Telecom also supports the introduction of a Special Services ITO process and considers there are likely to be some customers with complicated environments and legacy communications equipment that might give rise to unexpected problems.

NBN Co

NBN Co strongly supports the proposed variation and considers the amendments are appropriate and necessary to continue to ensure the successful and timely migration of end users to the NBN, as well as provide for service continuity.

NBN Co supports the amendments to defer the commencement of disconnection of Special Services. It notes this deferral of Telstra’s disconnection obligations is consistent with what has previously occurred for residential services where the disconnection date has occurred during holiday periods.

NBN Co also supports establishing an ITO process for Special Services migrating to its network. According to NBN Co this process, which has worked well for residential

customers, establishes appropriate safeguards to defer Telstra's disconnection obligations under the Migration Plan if the end user customer has placed an order with it before the SSDD.

Optus

Optus supports all the proposed changes to the Migration Plan in relation to the ITO process and deferral of the commencement of disconnections. Optus considers that delaying the commencement of any disconnection activity for services with a deactivation date of 12 November 2018 until 29 January 2019 will minimise the potentially disruptive impacts of disconnections activity over the holiday period.

Optus also supports an ITO process for these services, but proposes an amendment to these arrangements. Optus submits that business customers have complex products and require significant time to migrate their services off the copper network, therefore additional time is required to ensure continuity to supply of services. According to Optus, the proposed Special Service In-Train Order process makes no provisions for orders processed after the SSDD. Optus recommends that the ITO process should be amended to also incorporate NBN Co orders processed after the SSDD which would be consistent with non-Special Service In-Train Order rules.

TPG

TPG has some concerns about the changes proposed in relation to ITOs for Special Services. TPG considers there is a high likelihood of business customers being stranded without service on the SSDD because NBN Co has not put in place products that meet the requirements of business customers.

According to TPG, the proposed Special Services ITO arrangements are also anti-competitive because they only apply if an NBN order is placed, and instead ITO arrangements should be available based on a customer having placed an order for services from any supplier.

Vocus

Vocus does not support Telstra's proposed variation that would have the effect of delaying the commencement of disconnection activity for the first class of Special Services until 29 January 2019. Vocus submits delaying the commencement of disconnection activity for TSS is not consistent with the general principle of ensuring the efficient and timely disconnection of carriage services from the separating network.

Vocus does, however, consider the extension of the ITO process to Special Services appropriately addresses the risk of businesses being without a working service and provides an important safeguard for businesses which have placed an NBN order before the disconnection date. Further, it considers the ACCC's approval of the proposed variation would both promote service continuity and provide a valuable incentive for businesses to raise a migration order.

4.1.5 ACCC views

The ACCC is satisfied that the Migration Plan as varied by Telstra's proposed variation complies with the Migration Plan Principles in relation to Special Service Class arrangements.

Deferring disconnections for the first classes of TSS will minimise disruption to end users and promote service continuity. The ACCC notes Vocus' concerns about the potential impact of this measure on the efficient and timely disconnection of services. That said, the ACCC also notes NBN Co comments that a deferral of disconnection obligations is consistent with previous practice where the disconnection date has occurred during holiday periods.

The introduction of an ITO process for Special Services will put in place a process that is well understood by industry and has proven to work effectively in improving the migration experience for residential customers and in promoting service continuity. Without the introduction of an ITO process, there is a risk that customers using Special Services will be mandatorily disconnected without having a working substitute service – preventing service continuity.

The ACCC notes the recommendation by Optus for a change to the proposed ITO arrangements, which would extend ITO arrangements for orders processed after the disconnection date. The ACCC considers this proposal might also be consistent with the Migration Plan Principles although it may carry a risk of providing an incentive to delay orders being placed. However, the ACCC also notes that this does not form part of the proposed variation.

The ACCC also notes TPG's view that access to an ITO process should not be dependent upon a valid order being in place for migration to the NBN. That said, the ACCC notes that under existing arrangements for residential customers, ITO operates solely on the basis of an order for NBN services only.

The ACCC considers that the proposed variation complies with Migration Plan Principle 18. This Principle sets out specific principles for disconnection of Special Services from a separating network, including that disconnections occur in accordance with General Principle 10, which minimises disruption to the supply of fixed-line carriage services.

4.2 Variations proposed relating to NBN Co's HFC pause

Telstra proposed a number of variations to the Migration Plan following NBN Co's 27 November 2017 decision to stop connecting premises to NBN services through HFC lines (the HFC pause).

During 2018 (and 2017) Telstra requested, and obtained from the ACCC, forbearance from a number of obligations under the Migration Plan for the HFC pause on the basis that Telstra would subsequently submit a formal variation to the Migration Plan reflecting the revised arrangements. This has now been lodged which enables these arrangements to be formally documented in the Migration Plan.

4.2.1 Temporary lifting of cease sale for Premises impacted by the HFC pause

The Migration Plan includes cease sale provisions which prohibit Telstra from supplying most types of copper and HFC services to customers after the Cease Sale date for a Rollout Region.

Telstra proposed to amend the Migration Plan so that cease sale provisions do not apply to orders or requests for the supply of new services received between 1 December 2017 and 27 April 2018, at premises that are NBN serviceable using HFC, and for HFC Connected Premises where there is no active NBN service.

4.2.2 Additional time to migrate for serviceable premises impacted by the HFC pause

Due to the pause in the HFC rollout, Telstra requested an extended timeframe for disconnection of premises in HFC regions. This specific measure relates to those premises residing within Rollout Regions with Disconnection Dates from February 2018 until May 2018 (inclusive) which continued to be NBN serviceable using HFC.

4.2.3 Temporary suspension of disconnection communications to Premises impacted by the HFC pause

Under the Migration Plan³, Telstra is required to provide retail customers with active copper and HFC with a notification about disconnections.

Telstra proposed to vary its mandatory disconnection communications obligations so that it is not required to have provided disconnection notifications to retail customers at premises that are, or are proposed to be, HFC-Connected Premises from March to June 2018.

4.2.4 Submissions received

NBN Co and TPG both supported the proposed changes relating to the HFC Pause.

4.2.5 ACCC views

The ACCC is satisfied that the proposed variation's treatment of the disconnections of legacy services affected by the HFC pause comply with the Migration Plan Principles.

In particular, the ACCC considers that the proposed variation accords with General Principle 10(1)(b). This Principle requires Telstra to ensure disconnections occur in a way to minimise disruption to the supply of fixed-line carriage services to the extent it is in Telstra's control.

4.3 Other Variations

4.3.1 Extension of In-Train Order arrangements

Telstra proposed a number of amendments to the Migration Plan to extend the application of the existing ITO arrangements for residential customers beyond the current stated expiry date of 30 June 2018. The ACCC has previously provided

³ Clause 8.2(d)

forbearance to extend these arrangements until 12 November 2018. Telstra proposed that these arrangements be extended until 30 June 2022.

4.3.2 Disconnection extension for premises with registered fire alarms and lift phones

The Migration Plan currently states that Premises with registered fire and lift phone services will be disconnected as soon as reasonably practicable after the date that is 120 BDs after the RRDD.

Telstra proposed a number of changes to disconnection arrangements to Premises with registered fire and lift phone services. These include extending the disconnection timeframe for applicable Premises from 120 BDs after the RRDD to 155 BDs after the RRDD.

4.3.3 Submissions received

NBN Co supports the amendments relating to extending ITO arrangements and the disconnection extension for registered fire alarms and lift phones.

Optus is also in favour of extending ITO arrangements for these services, as it provides industry with long-term certainty around the operation of the Migration Plan.

4.3.4 ACCC views

The proposed variation extends service disconnection timeframes for ITOs and for Premises with registered fire and lift phone services.

This will provide RSPs with greater certainty around the disconnection process and promote service continuity in the migration of customers to the NBN. As such, the ACCC is satisfied that the proposed variation is consistent with the Migration Plan Principles in relation to ITO arrangements.

The ACCC also considers that Telstra's proposed variation for disconnection extensions for Premises with registered fire and lift phone services accords with Migration Plan Principle 10(1)(b). This Principle requires that, to the extent it is in Telstra's control, disconnection occurs in a way that minimises disruption to the supply of fixed-line carriage services.

5 The ACCC's Decision

The ACCC has approved Telstra's proposed variation to the Migration Plan pursuant to subsection 577BF(3) of the Act.

The ACCC has considered the proposed variation in light of submissions made in response to a notice published on the ACCC website under subsection 577BF(4) of the Act and the Migration Plan Principles.

The ACCC has concluded that the varied Migration Plan, as submitted on 10 September 2018, complies with the Migration Plan Principles.

The ACCC considers that the proposed variation promotes the efficient and timely disconnection of carriage services from Telstra's legacy networks and seeks to

minimise disruption to the supply of services to the extent that it is within Telstra's control.

As the ACCC has approved the variation, the varied Migration Plan replaces the current version of the Migration Plan and all interim arrangements.