



Australian  
Competition &  
Consumer  
Commission

# **Assessment of Telstra's revised Migration Plan**

**Discussion Paper**

**April 2015**



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# Contents

List of acronyms and abbreviations .....	ii
Executive Summary .....	1
Introduction .....	2
1 Background .....	5
1.1 Acceptance of the existing SSU and Migration Plan .....	5
1.2 Move to a multi-technology mix NBN and the revised Definitive Agreements .....	6
1.3 The Migration Assurance Policy .....	6
2 The legislative framework for assessment of the revised Plan .....	8
2.1 Legislative Framework .....	8
2.2 Amendments to assessment framework .....	9
3 The Migration Plan Principles .....	12
3.1 Different types of principles .....	12
3.2 General principles for the disconnection of carriage services .....	12
3.3 Specific principles for disconnection of carriage services .....	13
4 Discussion of issues .....	24
4.1 Compliance with the four key objectives of the Migration Plan Principles .....	24
4.2 Continued access to the voice band provided on same terms and conditions as the ULLS .....	25
4.3 Process for disconnecting premises in FTTB and FTTN areas, and HFC areas .....	25
4.4 In-train order premises .....	28
4.5 Required Measures and Replacement Schedules .....	30
4.6 Protection of migration and wholesale customer information .....	31
4.7 Potential consumer or competition issues that cannot be addressed through the Migration Plan .....	32
ATTACHMENT A - Mapping of Telstra's revised Plan against the Principles .....	34
ATTACHMENT B – Questions for discussion .....	41

# List of acronyms and abbreviations

## List of acronyms

ACCC	Australian Competition and Consumer Commission
ASP	Application Service Provider
FTTB	fibre to the basement
FTTN	fibre to the node
FOTP	fibre to the premises
HFC	hybrid fibre-coaxial
ITA	Independent Telecommunications Adjudicator
MAP	Migration Assurance Policy
MDU	multi dwelling units
MTM	multi-technology mix
NBN	national broadband network
RSP	retail service provider
SSU	structural separation undertaking

## List of abbreviations

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Abbreviation	Full reference
CCA	<i>Competition and Consumer Act 2010 (Cth)</i>
NBN Co	NBN Co Limited
Principles	<i>Telecommunications (Migration Plan Principles) Determination 2015</i>
revised Plan	Telstra's request to vary its Migration Plan, submitted to the ACCC on 20 March 2015
SSU	Telstra's Structural Separation Undertaking, accepted by the ACCC on 27 February 2012
Telco Act	<i>Telecommunications Act 1997 (Cth)</i>
Telstra supporting submission	Telstra's submission in support of the varied Migration Plan, provided on 20 March 2015

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# Executive Summary

The ACCC is seeking stakeholder views as to whether it should approve Telstra's proposed variations to its Migration Plan, which is an important element of the structural reform of the telecommunications industry.

Importantly, the ACCC must approve the revised Plan if it is consistent with the Specified Matters Instrument and the Migration Plan Principles issued by the government in January 2015.

Subject to its consideration of the views raised by stakeholders, the ACCC is currently minded to approve the revised Plan.

The proposed changes to the Plan are extensive and include those necessary to reflect the recently revised commercial agreements between Telstra, NBN Co and the government. These Definitive Agreements were modified in December 2014 to recognise the implementation by NBN Co of a multi-technology network rollout.

The proposed changes to the Plan include:

- extending the provisions so that they provide for the migration of services to a range of fixed line technologies used by NBN Co, not just fibre-to-the-premises (FTTP)
- adopting the regulatory concessions provided for by the Principles, such as extending the list of matters for which Telstra is not responsible under the Plan
- adjusting the managed disconnection arrangements to apply at the end of the disconnection period to better support consumers in light of experience gained in the initial NBN rollout areas and
- incorporating processes ('**Required Measures**') that were developed by Telstra and approved by the ACCC after its approval of the original Plan.

While the Principles have dealt extensively with many of the issues that could arise in the migration to the NBN, there are a number of matters that the ACCC wishes to test with stakeholders. These include:

- whether the proposed changes to the disconnection arrangements for premises that are the subject of an outstanding NBN order at the disconnection date ('in-train order premises') provide suitable assurance that those consumers are not left without a service and
- whether the proposed disconnection arrangements to apply where an in-use copper cable is used to connect a premise to the NBN will promote beneficial consumer and competitive outcomes.

The ACCC is also seeking views on whether other consumer or competition issues will potentially arise during the migration to the NBN.

The deadline for submissions is 4 May 2015. The ACCC intends to proceed directly to a final decision on Telstra's revised Plan following the consultation period.

# Introduction

The Migration Plan sets out the steps that Telstra will take to progressively migrate voice and broadband services from its copper and HFC networks to the NBN as it is rolled out across Australia. The ACCC approved Telstra's Migration Plan in February 2012 and it became part of Telstra's Structural Separation Undertaking (SSU).

A change in government policy has led to a multi-technology mix (MTM) rollout of the NBN. The Definitive Agreements between Telstra, NBN Co and the government were revised in 2014 and include a condition precedent that the ACCC approve a varied Migration Plan from Telstra that reflects the new MTM arrangements. Telstra submitted a proposed revised Migration Plan (**the revised Plan**) to the ACCC on 20 March 2015.

This discussion paper seeks submissions from interested parties in relation to the ACCC's assessment of Telstra's revised Plan.

The *Telecommunications Act 1997* (**the Telco Act**) requires the ACCC to consult publicly on its assessment of the revised Plan.<sup>1</sup> The ACCC does not intend to issue a draft decision in relation to its assessment of the revised Plan but will proceed to a final decision following this consultation.

When assessing Telstra's revised Plan, the ACCC must consider whether it complies with the Migration Plan Principles (**the Principles**). The ACCC's mandate is to:

- approve the revised Plan if it is consistent with the Principles or
- refuse to approve the revised Plan if it is not consistent with the Principles.

While the ACCC will conduct a critical assessment of the revised Plan, it does not have the discretion to seek changes solely based on a preference for a particular approach to an issue, or to seek revisions that are inconsistent with the Principles. The ACCC must approve the revised Plan if it complies with the Principles.

The smooth migration of services to the NBN requires more than Telstra meeting its commitments under the Migration Plan. Telstra is but one stakeholder in the migration process and the Migration Plan is limited to a precise range of matters. As such, there are a number of other processes underway that consider matters beyond Telstra's activities in relation to the Plan. This includes the government's Migration Assurance Policy, industry developing migration related arrangements through Communications Alliance working groups, and a proposed carrier licence condition on NBN Co regarding the disclosure of information.

Within this context, while the ACCC is primarily seeking views on the revised Plan, it is also interested to receive comments on any competition or consumer concerns that may arise during the migration to the NBN. This is discussed in section 4.7 of this paper.

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<sup>1</sup> Telco Act, section 577BF(4)

## Timeline and consultation process

### Deadline and format of submissions

Submissions may address the specific questions raised in Part 4 of this discussion paper, as well as any other relevant matters.

Submissions are requested by no later than **4 May 2015**. The ACCC may be limited in its ability to fully consider submissions received after the deadline.

The ACCC prefers to receive electronic copies of submissions in either Adobe PDF or Microsoft Word format that is text searchable.

Please send submissions to [ssu-migration@acc.gov.au](mailto:ssu-migration@acc.gov.au).

### Enquiries

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### Confidentiality claims

To facilitate an informed and open consultation, the ACCC will treat all submissions as public and publish them on the ACCC website. If interested parties wish to submit commercial-in-confidence material to the ACCC, they should submit both a public and commercial-in-confidence version of their submission. In the confidential version, confidential material should be clearly identified and marked as confidential. In the public version, confidential material should be redacted and replaced with an appropriate symbol or '[c-i-c]'.

It is the ACCC's preference that as much material is disclosed in the public version as possible.

### Materials to assist parties making a submission

The following materials may assist interested parties in providing informed feedback on Telstra's revised Migration Plan:

- Telstra's revised Plan, lodged with the ACCC on 20 March 2015<sup>2</sup>
- Telstra's supporting submission to the revised Plan, lodged with the ACCC on 20 March 2015 (**Telstra supporting submission**)<sup>3</sup>
- Telstra's SSU, accepted by the ACCC on 27 February 2012<sup>4</sup>
- the Migration Plan Principles made by the Minister on 27 January 2015<sup>5</sup> and

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<sup>2</sup> <https://www.accc.gov.au/regulated-infrastructure/communications/industry-reform/telstras-migration-plan/variation-request-submitted-multi-technology-nbn-revised-definitive-agreements>

<sup>3</sup> Ibid

<sup>4</sup> <https://www.accc.gov.au/system/files/Structural%20Separation%20Undertaking.pdf>

- the Specified Matters Instrument made by the Minister on 27 January 2015.<sup>6</sup>

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<sup>5</sup> [http://www.communications.gov.au/\\_data/assets/pdf\\_file/0016/244231/Telecommunications-Migration-Plan-Principles-Determination-2015.pdf](http://www.communications.gov.au/_data/assets/pdf_file/0016/244231/Telecommunications-Migration-Plan-Principles-Determination-2015.pdf)

<sup>6</sup> [http://www.communications.gov.au/\\_data/assets/pdf\\_file/0017/244232/Telecommunications-Migration-Plan-Specified-Matters-Instrument-2015.pdf](http://www.communications.gov.au/_data/assets/pdf_file/0017/244232/Telecommunications-Migration-Plan-Specified-Matters-Instrument-2015.pdf)

# 1 Background

## 1.1 Acceptance of the existing SSU and Migration Plan

In November 2010, the government introduced a legislative package to structurally reform the telecommunications industry and support the NBN. A key element of this package was to provide for Telstra to submit a voluntary undertaking to structurally separate.

In June 2011, Telstra, NBN Co and the Commonwealth executed a number of commercial agreements. These ‘Definitive Agreements’ provided for Telstra to participate in the rollout of the NBN. Telstra agreed to provide NBN Co with access to certain infrastructure (e.g. ducts, exchanges), transfer fixed-line services to the NBN as it was rolled out, and to disconnect its copper and HFC networks. The Definitive Agreements were conditional on the acceptance of a structural separation undertaking (SSU) by the ACCC.

In July 2011, Telstra submitted a draft SSU and Migration Plan to the ACCC for acceptance. The SSU included a commitment to cease the supply of specified services over networks under its control from a designated date (expected to be the date that construction of the NBN is completed). It also included equivalence and transparency measures to promote the equivalent treatment of retail and wholesale customers in the interim period. The ACCC assessed the SSU against the legislative criteria and accepted it in February 2012.

The draft Migration Plan set out how Telstra would disconnect the specified services as a consequence of migration to the NBN. It also included an obligation to manage migration information obtained from NBN Co in a way that would not provide a competitive advantage to Telstra. The draft Migration Plan also included a commitment to develop certain operational processes (‘Required Measures’) in the future. The ACCC assessed the draft Migration Plan against the legislative criteria and approved it in February 2012. The Plan became part of the SSU upon its approval.

The following table shows the status of the Required Measures at the time of the release of this paper. Approved Required Measures form part of the Migration Plan.

No.	Required Measure processes	Status
1	Telstra activities to facilitate NBN Co use of ‘pull through’ connections	Approved
2	Managed disconnection of copper services on the Disconnection Date	Approved
3	Managed disconnection of HFC services	Approved
4	Building of copper paths at premises which had been previously been disconnected, in order to supply of Special Services and Special Services Inputs	Approved
5	Disconnection of copper services of each Special Service class	To be developed after NBN Co develops products that support Special Services
6	NBN Information Security Plan	Submitted to ACCC but we are still working with Telstra to make improvements

## 1.2 Move to a multi-technology mix NBN and the revised Definitive Agreements

Following a change in government in 2013, NBN Co has adopted an MTM rollout model, pursuant to which it will choose the network technology to deploy in each service area. The technologies include fibre-to-the-node (**FTTN**), fibre-to-the-basement (**FTTB**) and hybrid fibre cable (**HFC**) technologies, as well as fibre-to-the-premise (**FTTP**). The use of FTTN, FTTB and HFC technologies would require the use of additional network elements from Telstra's copper and HFC networks than was the case for a purely FTTP network.

To reflect this change, Telstra, NBN Co and the Commonwealth agreed to a new set of Definitive Agreements in December 2014. The revised Definitive Agreements see Telstra transfer ownership of its copper and HFC networks to NBN Co to facilitate the MTM model.

Other aspects of the revised Definitive Agreements or associated commercial arrangements provide for:

- the sharing of the networks during the migration period
- Telstra to continue to provide pay TV carriage services to Foxtel over the HFC network and
- Telstra to undertake work on behalf of NBN Co in relation to the design, construction and maintenance of the NBN (terms determined under a separate agreement).

The revised Definitive Agreements include a condition precedent that the ACCC approve a varied Migration Plan from Telstra that reflects the new MTM arrangements.

To support these changes, in January 2015 the Minister for Communications revised both the criteria against which the ACCC must assess the revised Plan and the instrument specifying what matters must be addressed in the revised Plan. The changes to these ministerial instruments are discussed in Section 2.2 of this discussion paper.

## 1.3 The Migration Assurance Policy

There have been several challenges in the initial migration of customers from Telstra's copper network onto the NBN, largely arising from a lack of NBN serviceability at premises and a lack of customer understanding of the need to migrate.

Recognising this, the government has initiated the Migration Assurance Policy (**MAP**) process in order to engage with industry to address these NBN migration issues going forward. This is intended to establish a framework document that identifies the responsibilities for different stakeholders and encourages participation by those stakeholders in a way that facilitates a successful migration of services to the NBN.

In September 2014, the government commenced consultation on the MAP. A further draft of the MAP framework document is expected to be released shortly.

In addition to the MAP, an industry process focussing on solutions for customer migration issues and information management is also currently underway via the Communications Alliance. This process provides a forum for industry stakeholders to

develop processes and solutions that can be efficiently implemented to better support consumers and competition during the migration process.

Telstra's revised Plan, and the Principles, allow for Telstra to disconnect services by following industry processes and arrangements, including any that are developed under the auspices of the MAP processes. Telstra is obliged under the revised Plan to consider whether the MAP policy statement expected to be issued by the Minister for Communications requires a variation to the Plan to provide for consistency in relation to Telstra's role and responsibilities associated with the migration process.

Further information concerning the MAP process is available at:

[www.communications.gov.au/consultation\\_and\\_submissions/implementation\\_of\\_the\\_national\\_broadband\\_network\\_migration\\_assurance\\_policy\\_consultation\\_paper](http://www.communications.gov.au/consultation_and_submissions/implementation_of_the_national_broadband_network_migration_assurance_policy_consultation_paper)

## 2 The legislative framework for assessment of the revised Plan

The *Telecommunications Act 1997* (the **Telco Act**) creates the framework for the assessment of the revised Plan. The purpose of this section is to provide interested parties with a greater understanding of the framework under which Telstra has submitted its revised Plan and the ACCC must make its assessment. This section also discusses how aspects of the relevant documents have been updated to reflect the move to an MTM model NBN.

### 2.1 Legislative Framework

Part 33 of the Telco Act sets out the regulatory framework for the structural separation of Telstra. Under section 577BC(1) of the Telco Act, Telstra may have a migration plan approved by the ACCC in order to implement its chosen form of structural separation.

Subsection 577BC(2) of the Telco Act requires that a migration plan specify the action that Telstra will take to:

- cease to supply fixed-line carriage services to customers using a telecommunications network over which Telstra is in a position to exercise control; and
- commence to supply fixed-line carriage services to customers using the National Broadband Network.

The migration plan must also set out a timetable for the taking of that action, or a method for determining such a timetable.

A migration plan must be approved by the ACCC. As the Telco Act does not permit the withdrawal of the existing migration plan, Telstra has submitted the revised Plan as a variation for approval by the ACCC.<sup>7</sup>

In assessing the revised Plan, the ACCC is directed by two instruments made by the Minister: the Specified Matters Instrument and the Migration Plan Principles. If the revised Plan complies with the Principles and related instruments, the ACCC must approve the revised Plan. The provisions of the revised Plan are then incorporated into Telstra's SSU.

#### ***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. The effect of the instrument is to clarify the scope of the revised Plan to ensure that it is able to include provisions implementing the Principles. The ACCC must consider this instrument when assessing Telstra's revised Plan.

#### ***Migration Plan Principles***

When assessing the revised Plan the ACCC must consider whether it complies with any Migration Plan Principles issued by the Minister pursuant to section 577BB.<sup>8</sup>

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<sup>7</sup> Telco Act, subsection 577BF

<sup>8</sup> Telco Act, subsection 577BD(2) and subsection 577BDA(2).

The Principles define the objectives and scope of a migration plan, and prescribe the way in which the migration plan must deal with certain issues. There are three different types of principles:

- general principles, which describe the overarching principles that must be met by the migration plan. These include equivalence and continuity of service objectives.
- specific principles, which provide further specificity regarding how some of the general principles are to be given effect in the migration plan.
- procedural principles, which set out the procedural provisions that must be included in the migration plan.<sup>9</sup>

### ***Consultation and approval by the ACCC***

Before making a decision, the ACCC must publish a notice on its website setting out the variation to the existing Plan and conduct a 28 day consultation process.<sup>10</sup> If the ACCC is satisfied that the revised Plan complies with the Principles it must approve the variation. Otherwise, the ACCC must refuse to approve the variation.<sup>11</sup>

Should the ACCC refuse to approve the variation, Telstra would likely need to submit a further revised Plan to the ACCC before its contractual arrangements with NBN Co could come into effect, as approval of a varied Migration Plan that reflects the MTM model NBN is currently a condition precedent to the Definitive Agreements taking effect.

If the ACCC approves the revised Plan, its provisions will be treated as provisions of the SSU that is in force under subsection 577BE(5) of the Telco Act. This means that a breach of the revised Plan becomes enforceable as a breach of the SSU.

## **2.2 Amendments to assessment framework**

Given the significant changes stemming from the shift to the MTM model NBN (as reflected in the amended Definitive Agreements), the government has made two new regulatory instruments that set the requirements for the ACCC's approval of the revised Plan: the 2015 Migration Plan Principles<sup>12</sup> and the 2015 Specified Matters Instrument,<sup>13</sup> which are available on the Department of Communications website. The instruments incorporate extensive amendments to support the MTM model NBN rollout and accommodate learnings from the rollout of the NBN to date and the renegotiated Definitive Agreements. These amendments are discussed in further detail below.

### ***The 2015 Migration Plan Principles***

The objectives of the 2015 Migration Plan Principles have been expanded to include a third objective. This objective is to provide reasonable regulatory certainty for Telstra

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<sup>9</sup> *Telecommunications (Migration Plan Principles) Determination 2015*, s.7(1)

<sup>10</sup> Telco Act, subsection 577BF(4)(a)

<sup>11</sup> Telco Act, subsection 577BF(3)

<sup>12</sup> *Telecommunications (Migration Plan Principles) Determination 2015*

<sup>13</sup> *Telecommunications (Migration Plan – Specified Matters) Instrument 2015*

in connection with the activities it is required to undertake in the course of migration as the operator of the separating networks.<sup>14</sup>

The new Principles reflect this objective by incorporating a list of matters which fall outside Telstra's responsibilities, as well as matters for which Telstra's compliance is dependent on the actions of third parties. The provisions are not intended to limit Telstra's responsibilities outside the Plan, for example as a retail service provider on the NBN. However, the ACCC notes that the Principles operate in a manner that would preclude the ACCC from requiring Telstra to take action under Part XIC of the *Competition and Consumer Act 2010 (the CCA)* in relation to those matters listed as falling outside of Telstra's responsibilities. The CCA prevents the ACCC from taking action under Part XIC if that action would require Telstra to engage in conduct in connection with matters covered by the Plan.<sup>15</sup> This is discussed further below in section 3.3.1.

The amendments to the Principles generally fall into the following categories:

- broadening the scope of the principles, so as to accommodate the additional fixed-line technologies to be deployed under the MTM-model NBN (HFC, FTTN and FTTB technologies)
- reflecting commercial and operational changes incorporated into the amended Definitive Agreements and additional commercial agreements negotiated between Telstra and NBN Co in respect of migration matters
- addressing substantive issues identified during the initial migration period and providing mechanisms to accommodate future improvements to the migration process
- incorporating a range of substantive amendments to reflect procedural improvements
- incorporating provision to allow for the updating of Required Measures and
- incorporating provisions to deal with the disconnection of multi dwelling units (MDUs) and MDU common areas.

### ***The 2015 Specified Matters Instrument***

A number of additional matters have been specified as matters with which the Plan may deal. These include:

- the specification of matters which are not Telstra's responsibility within the scope of the revised Plan
- the specification of interdependencies between Telstra's responsibilities under the revised Plan and the actions of third parties
- the circumstances in which Telstra will be involved, if any, in the use by NBN Co of existing HFC or copper lines to pull through other types of lines forming part of the NBN

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<sup>14</sup> 2015 Migration Plan Principles, section 4(c)

<sup>15</sup> Competition and Consumer Act, subsections 152AR(4)(f), 152BCB(3A), 152BDA(3A)

- a process for Telstra to review the Plan and determine if any variations are required to reflect any parts of the Migration Assurance Policy Statement with which Telstra agrees
- a prohibition on the supply of wholesale carriage services by Telstra using any HFC network controlled by Telstra
- the disconnection, or continuation, of copper services and HFC services to common areas within MDUs
- measures to ensure the equivalent treatment of wholesale customers and retail business units under processes Telstra will use to disconnect services from a separating network and
- the incorporation of existing Required Measures 1-4, as approved by the ACCC, into a form of the Plan comprising MTM variations.

Section 6 of the 2015 Specified Matters Instrument includes a new addition that the Plan must not deal with any design, construction and maintenance agreements entered into between NBN Co and Telstra for the MTM model NBN. In this regard, the Minister for Communications has stated that:

“Competition concerns about Telstra's role in planning, design and construction activities for the MTM NBN are not able to be addressed through the Migration Plan, which deals only with migration. The ACCC will have the opportunity to assess the planning, design and construction contracts that may be negotiated between Telstra and NBN Co under its usual competition practices.”<sup>16</sup>

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<sup>16</sup> [http://www.minister.communications.gov.au/malcolm\\_turnbull/news/regulatory\\_instruments\\_for\\_nbn\\_migration\\_plan\\_finalised#.VRJUZdS4aUk](http://www.minister.communications.gov.au/malcolm_turnbull/news/regulatory_instruments_for_nbn_migration_plan_finalised#.VRJUZdS4aUk)

## 3 The Migration Plan Principles

The ACCC can only, and must, approve revisions to Telstra's Plan if they comply with the Principles. This section of the paper briefly summarises selected principles. Readers should refer directly to the Principles for a more comprehensive understanding.

**Attachment A** maps the provisions of the revised Plan against the Principles.

### 3.1 Different types of principles

The Principles set out three types of principle against which the revised Plan must be considered: general, specific and procedural.<sup>17</sup>

Where a specific or procedural principle relates to a matter, the revised Plan will now be taken to comply with the Principles (including the general principles) in respect of that matter if it complies with that specific or procedural principle.<sup>18</sup> However, if the revised Plan 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, then the revised Plan's approach to that matter is to be considered in light of all the principles, including the general principles.

The general principles are referenced in several of the specific principles.

### 3.2 General principles for the disconnection of carriage services

#### 3.2.1 General principles for the disconnection of services

Clause 10(1) of the Principles consists of general principles for how fixed-line carriage services are disconnected. These are summarised as:

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

The principles provide for a wholesale customer to have autonomy over decisions about the timing of disconnection. The wholesale customer will also have autonomy over decisions relating to the sequencing of disconnection (from Telstra's network) and connection (to the NBN) of services if the new service is not provided over the same network infrastructure as the existing service. If the same infrastructure is to be used, the wholesale customer will only be able to make decisions about minimising disruption, and then only if they are the retail service provider of the service over the NBN.

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<sup>17</sup> Principles, Part 2

<sup>18</sup> Principles, Clause 8(2)

### **3.2.2 General principle for equivalence between retail and wholesale customers**

Clause 25 of the Principles sets out the general principle that Telstra must provide for the equivalent treatment of wholesale customers and retail business units in the implementation of the processes for disconnecting wholesale and corresponding services supplied by Telstra to itself. This is to ensure that Telstra cannot favour its retail business units over wholesale customers.

### **3.2.3 General principle for use of adequate processes**

Clause 27(1) of the Principles sets out the general principle that the Plan must require Telstra to work in good faith with other industry participants to ensure that the processes for disconnecting services and local number portability facilitate migration in a way that is consistent with the general principles at clause 10 and 25 of the Principles.

In this regard, the Plan must require Telstra to use existing processes for implementing and managing disconnection, unless the ACCC or the Independent Telecommunications Adjudicator (ITA) determine otherwise.

## **3.3 Specific principles for disconnection of carriage services**

### **3.3.1 Specific principles to limit Telstra's responsibilities under the Plan**

Clause 10 of the Principles now includes a number of provisions that will limit Telstra's responsibilities under the Plan.

Clause 10(3) of the Principles requires the Plan to specify that the matters in Schedule 2 of the Principles are not the responsibility of Telstra under the Plan. The Plan must also specify that the matters in Schedule 3 of the Principles are those for which Telstra's compliance under the Plan is dependent on the actions of other parties. The matters listed in Schedules 2 and 3 are discussed in sections 3.4.19 and 3.4.20 of this paper.

The Principles clarify that the matters covered by clause 10(3) remain matters covered by the Plan for the purposes of Part XIC of the CCA.<sup>19</sup> This has relevance because, as discussed above, the CCA prevents the ACCC from taking certain actions under Part XIC if that action would require Telstra to engage in conduct in connection with matters covered by the Plan.<sup>20</sup> In other words, the ACCC would be precluded from imposing standard access obligations and making either an access determination or binding rule of conduct in relation to matters listed in Schedules 2 and 3.

This would have relevance, for example, where the ACCC sought to require Telstra under the Plan and/or pursuant to Part XIC of the CCA to notify wholesale customers of any service outages associated with the construction of the NBN, as the matters listed in Schedule 2 include Telstra notifying service providers of the date and likely duration of and the completion of any work associated with the NBN fixed line network which could interrupt copper services. In this regard, the ACCC notes that under the revised Definitive Agreements, where it is reasonably practicable to do so, NBN must notify Telstra of the likely duration of any planned or unplanned outages that interrupt the provision of services over the copper network. Consequently, the ACCC would see benefit in Telstra providing these notifications on to affected

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<sup>19</sup> Principles, clause 10(5)

<sup>20</sup> Competition and Consumer Act, subsections 152AR(4)(f), 152BCB(3A), 152BDA(3A)

wholesale customers, even though it is not required to commit to do so under the revised Plan.

Clause 10(5) of the Principles requires the Plan to specify that Telstra cannot be directed to take action in relation to the matters specified in Schedule 2, unless this action is explicitly provided for in the Plan. This would have relevance, for example, where the ACCC or ITA sought to issue a determination that required Telstra to adopt a change to an existing process in order to comply with the Plan.<sup>21</sup>

The ability of the ACCC or ITA to direct Telstra to take action under the Plan is further governed by clause 10(8)(d). The ACCC or ITA must consider the extent to which the outcome sought could be appropriately or more efficiently achieved by another party.

The Principles also require the Plan to specify that Telstra does not contravene the Plan if it is attributable to an Excluded Event or Force Majeure Event.<sup>22</sup> An Excluded Event refers to matters specified in the Principles as being outside of Telstra's control or dependent on the actions of another party. Telstra will be required to take all reasonably available steps to overcome a Force Majeure Event, but not an Excluded Event.

### **3.3.2 Alignment of the Migration Plan with the Migration Assurance Policy statement**

As noted above in section 1.3, the government is expected to release a final Migration Assurance Policy statement shortly.

Clause 11 of the Principles requires the Plan to specify that Telstra has the discretion to decide whether it will vary the Plan to provide consistency with the Migration Assurance Policy statement. Telstra would submit a variation of the Plan to the ACCC in the normal way.

### **3.3.3 Disconnection of carriage services using copper or HFC networks**

The principles regarding disconnection of carriage services using copper and HFC networks are almost identical. Any notable differences are set out below.

Clauses 12 and 13 of the Principles require the Plan to set out the processes that Telstra will use to disconnect carriage services using copper and HFC services respectively, following the Ready For Service dates for those regions.

The Plan must require Telstra to disconnect by the Designated Day all premises that are passed by the NBN from a copper or HFC network, unless the Plan specifies that alternative circumstances apply.<sup>23</sup>

Any processes in the Plan regarding disconnection of carriage services using copper or HFC networks must not be inconsistent with anything set out in the Definitive Agreements.<sup>24</sup> Telstra and NBN Co have agreed upon a revised set of Disconnection Protocols, which set out the process which Telstra must follow for disconnection of premises from its copper and HFC networks. At the ACCC's request, the parties have prepared a public version of the Disconnection Protocols (redacted to remove certain

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<sup>21</sup> Principles, clause 27(2)

<sup>22</sup> Principles, clauses 10(11) – 10(15)

<sup>23</sup> Principles, clauses 12(13) and 13(10)

<sup>24</sup> Principles, clauses 12(8), 12(12) and 13(6) and 13(9)

commercially sensitive information) to provide transparency in relation to the disconnection provisions that have been commercially agreed upon. A copy of the Disconnection Protocols, with any commercial-in-confidence information redacted, is expected to be made available on the ACCC's website.

*No-order disconnection premises*

A premises which has reached the Disconnection Date without Telstra having received an order from its retail or wholesale customer to disconnect any remaining services before the Disconnection Date is a no-order disconnection premises.

The Principles require that the Plan set out the circumstances in which Telstra will disconnect no-order disconnection premises from a copper or HFC network on or after the Disconnection Date for that rollout region.<sup>25</sup> In setting out these circumstances, the Plan must specify which copper or HFC services supplied at a no-order disconnection premises will be disconnected and the circumstances in which those services will be disconnected. The Plan must also take into account any notification received from NBN Co about whether a no-order disconnection premises is an in-train order premises, and provide for the treatment of in-train order premises.

In addition, in the case of copper services the Plan must provide for Telstra to inform its wholesale customers of any circumstances in which services may be disconnected at no-order premises.<sup>26</sup>

The Plan must specify that the periods, commencing from the Disconnection Date, within which copper and HFC services must be disconnected from no-order disconnection premises:

- in the case of in-train order premises—as soon as reasonably practicable following 120 business days
- in the case of any other no-order disconnection premises of a type specified in the Plan—the maximum period specified in the Plan for that type of no-order disconnection premises
- in the case of MDU common area services and any premises at which Telstra is prohibited by law from disconnecting—as otherwise specified in accordance with the Principles<sup>27</sup> and
- in all other cases—45 business days.<sup>28</sup>

In the case of copper services, Telstra may disconnect a no-order disconnection premises after the Disconnection Date where Telstra is aware that the premises is not otherwise an in-train order and has been informed by the retail or wholesale customer that they (or the end user) do not intend to migrate.<sup>29</sup>

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<sup>25</sup> Principles, clauses 12(4) and 13(2)

<sup>26</sup> Principles, clause 12(5)(e)

<sup>27</sup> See clause 14 for requirements for disconnection of MDU common area services

<sup>28</sup> Principles, clauses 12(6) and 13(4)

<sup>29</sup> Principles, clause 12(9)

### **3.3.4 MDU common areas and related copper services and HFC services**

The Principles provide for specific arrangements to apply in relation to the disconnection of MDU common areas and MDU common area services.<sup>30</sup>

The Principles state that the Plan must include an exception to the disconnection process for copper and HFC services<sup>31</sup> where those services are supplied to an MDU common area. The Plan must include the process and timeframes under clause 14(3) of the Principles for disconnection of these services that are supplied to an MDU common area.

The Plan must also specify the circumstances in which Telstra may continue to accept new orders for, and will continue to supply, special services and special service inputs at MDU common areas.<sup>32</sup>

### **3.3.5 Restrictions on the supply of carriage services prior to and after the Disconnection Date**

The Principles require the Plan to specify the process by which Telstra develops and notifies wholesale customers of any reasonable circumstances in which Telstra restricts the processing of transactions for the supply of services immediately prior to the Disconnection Date. These restrictions are known as an order stability period.

Any restrictions imposed under an order stability period must comply with the general principles under clauses 10 and 25.

The restrictions must also:

- apply to the greatest extent practicable to wholesale and retail orders in the same way and
- be imposed for the shortest period reasonably required.<sup>33</sup>

### **3.3.6 Special services**

The Principles require the Plan to set out when Telstra intends to disconnect special services and special service inputs from a separating network.<sup>34</sup>

The Plan must establish a process to allow a wholesale customer of Telstra to nominate wholesale services used by that customer as a special service.<sup>35</sup> On the request of either the ACCC or the Commonwealth, Telstra must notify that party of any special service inputs identified as a result of the process.

The Plan must also provide that Telstra will have a process for building a copper path at a premises which had previously been permanently disconnected, in order to supply a special service or special service input.<sup>36</sup> The Plan must also provide that Telstra will

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<sup>30</sup> Principles, clause 14

<sup>31</sup> Principles, clauses 12 and 13

<sup>32</sup> Principles, clause 14(4)

<sup>33</sup> Principles, clause 17(2)

<sup>34</sup> Principles, clause 18

<sup>35</sup> Principles, clause 18(3)

<sup>36</sup> Principles, clause 18(5)

develop processes to manage and implement disconnection of each class of special services and special service inputs.<sup>37</sup> These processes will need to receive the ACCC approval under the assessment process discussed in section 3.3.12 of this discussion paper.

### **3.3.7 Applying a soft dial tone service**

A soft dial tone is a service which allows end users to only call Telstra's customer service and fault centre numbers and to make emergency calls once their service has been disconnected.

The Principles set out the requirements and timeframes for Telstra to apply a soft dial tone service to certain premises within the final fixed footprint list.<sup>38</sup>

The Plan must require that Telstra will apply a soft dial tone to each active wholesale or retail line rental at a premises within the final fixed footprint list within 15 business days after the Disconnection Date for that rollout region, except where:

- the premises is an in-train order premises
- the premises is an Affected Premises or
- the premises is an MDU common area.

The Plan must set out the timeframes for Telstra to remove any soft dial tone service supplied to a premise within the final fixed footprint list after the Disconnection Date for that rollout region.

The Plan must also specify that Telstra is not required to apply a soft dial tone service to a premise within the fixed footprint list at the region Ready For Service date if that premises does not have an active copper service supplied to it at that date.

### **3.3.8 Restoration of carriage services**

The Principles require the Plan to set out the circumstances in which, and when, Telstra may restore fixed-line carriage services to premises in a rollout region.<sup>39</sup>

The Plan must specify that Telstra is permitted to restore fixed-line carriage services where such services were originally not required to be disconnected under the Plan. The requirement must be applied on an equivalent basis as between wholesale and retail customers in the same circumstances, and must not be inconsistent with any contractual obligations set out in the Definitive Agreements. As stated previously, the ACCC considers that making the Disconnection Protocols public would assist in promoting transparency around equivalence of the disconnection process.

### **3.3.9 Timetable for disconnecting fixed-line carriage services**

The Principles include provision for the Plan to set out a timetable for the disconnection of services.<sup>40</sup>

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<sup>37</sup> Principles, clause 18(6)

<sup>38</sup> Principles, clause 19

<sup>39</sup> Principles, clause 20

<sup>40</sup> Principles, clause 22

Where NBN Co has notified Telstra of a region's Ready For Service date, the Plan must provide for Telstra to publish a schedule that sets out for each service continuity region and each rollout region:

- the forecast Ready For Service date and region Ready For Service date as applicable
- the date from which Telstra will cease accepting new orders for the supply of fixed-line carriage services
- the date of commencement of any order stability period and
- the Disconnection Date.

The Plan must set out that Telstra will cease accepting new orders for services after the cease sale commencement date where the order is for a premise that is NBN Serviceable or a Frustrated Premise.<sup>41</sup> The Plan must also set out a list of circumstances in which Telstra will not apply these restrictions.

The Principles state that the cease sale restrictions will not apply to a service supplied by Telstra to a wholesale customer using a voice-only copper sub-loop where a copper line used for an unconditioned local loop service (ULLS) service is disconnected because of jumpering by NBN Co.<sup>42</sup> The Principles state that Telstra's supply of continued access to the voice band must be on the same terms and conditions as applied to the supply of the ULLS to the wholesale customer immediately prior to NBN Co undertaking the jumpering.

### **3.3.10 Control of disconnection timing and processes**

The Principles require the Plan to set out the reasonable steps that a wholesale customer may take in order to control the timing of the disconnection by Telstra of wholesale services after the Ready For Service date but before the Disconnection Date.<sup>43</sup> The Plan must also set out any known circumstances where a wholesale customer may not be able to take those steps.

### **3.3.11 Provision of information regarding disconnection**

The Principles require the Plan to include obligations on Telstra to notify its wholesale and retail customers of the Disconnection Date and impending disconnection of services in a rollout region.<sup>44</sup> This must be done in accordance with the general principles at clauses 10 and 25.

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<sup>41</sup> Frustrated Premise means a premise where NBN Co has determined that the NBN Co connection is not reasonably practicable in accordance with its published operational document. By preventing Telstra from accepting new orders from Frustrated Premises, the Principles encourage an owner of a premise to cooperate with NBN Co during the network build and give NBN Co access for out of the ordinary planning and construction purposes. The need for this additional planning will almost always be limited to multi dwelling units.

<sup>42</sup> Principles, clause 22(6)

<sup>43</sup> Principles, clause 23

<sup>44</sup> Principles, clause 24

### 3.3.12 Required Measures and replacement Schedules

The existing Plan includes commitments for Telstra to develop certain processes after the date on which the Plan was approved by the ACCC. Telstra has since had four of the six Required Measures approved by the ACCC.

The Principles require the new Plan to incorporate the four approved Required Measures.<sup>45</sup> They also require the Plan to establish a process by which Telstra can both vary these approved Required Measures as well as implement the outstanding Required Measure 5.<sup>46</sup> In the Plan currently in force, Required Measure 5 refers to the need for Telstra to develop a process which Telstra will use to manage the disconnection of each class of Special Services and Special Service Inputs. Required Measure 5 will be developed once the first Disconnection Dates for a class of special services has been set.

The other outstanding Required Measure 6 is addressed separately under clause 33 of the Principles. The ACCC has been working with Telstra to make improvements to Required Measure 6, which relates to how Telstra will protect FTTP-related information provided to it by NBN Co under the migration arrangements.<sup>47</sup>

The process for incorporating new Required Measures or varying existing ones requires Telstra to provide the ACCC with prior notice and an opportunity to disallow the new or varied measures. This process varies from the previous Required Measures process because the default position (i.e. where the ACCC does not object) is for the proposed measures to be adopted and incorporated into the Plan.

The Principles provide timeframes by which Telstra must have completed certain tasks:

- Telstra must amend the previously approved Required Measures to reflect the shift to a MTM model within seven months of the revised Plan coming into force.<sup>48</sup>
- Telstra must develop the measures associated with the disconnection of Special Services (previously known as Required Measure 5) as soon as practicable after NBN Co publishes a white paper for those services.<sup>49</sup>

The Plan should specify that Telstra must consult for at least 20 business days on the development of any new or replacement schedule. Telstra must also provide the ACCC with at least 15 business days by which it could object to the new or replacement schedule. If the ACCC objects, Telstra would need to take the concerns into account and resubmit the new or replacement schedule within 20 business days.

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<sup>45</sup> Principles, clause 28(1)

<sup>46</sup> Principles, clause 28(2)

<sup>47</sup> Clause 24.3(c) of Telstra's current Migration Plan places restrictions on how Telstra can use NBN Co migration information in the period until the ACCC has approved an information security plan.

<sup>48</sup> Principles, clause 28(3)(a)

<sup>49</sup> Ibid. The Definitive Agreements provide for NBN Co to publish a white paper when it releases additional product functionality relevant to a Special Service. The white paper will outline how the NBN can be used to provide the Special Service equivalent service.

### **3.3.13 Specification of disconnection processes**

The Principles require the Plan to set out the processes that will be required for a wholesale customer to lodge, and for Telstra to accept, process and execute, an order for disconnection of wholesale services.<sup>50</sup>

Clause 29(2) of the Principles also requires that the Plan specify which processes will be used by Telstra to disconnect wholesale services in regards to the various types of disconnection scenarios that may arise. These disconnection scenarios include:

- the disconnection of services over a copper line used by more than one service provider
- the disconnection of services over a copper line over which only a standard telephone service is provided and
- the disconnection of services arising from jumpering activities by or on behalf of NBN Co associated with a copper line or copper sub-loop used to supply those services.

The Plan must also set out how a wholesale customer of Telstra may propose a modification to disconnection processes and measures developed under clauses 27 and 29, and requires Telstra to consult in good faith with the wholesale customer about the proposal.<sup>51</sup>

### **3.3.14 Using standard Telstra operating systems, interfaces and processes**

The Principles require the Plan to specify that Telstra must, to the extent that is reasonable and practicable to do so, use standard Telstra operating systems, interfaces and processes to receive and process orders received by Telstra from a wholesale customer for the purpose of disconnecting from a copper network.<sup>52</sup> However, the ACCC or ITA may issue a direction to Telstra if they determine that the use of a standard operating system, interface or process is inconsistent with the general principles at clauses 10 and 25, and it is reasonable and practicable for Telstra to amend the operating system, interface or process.

### **3.3.15 NBN Co migration information and NBN Co confidential information**

The Principles require the Plan to specify that Telstra will ensure that NBN Co migration information is not used by Telstra to gain an unfair commercial advantage over Telstra's wholesale customers.<sup>53</sup>

Schedule 4 of the Principles states that migration information is information that is disclosed by NBN Co to Telstra in accordance with a Definitive Agreement and for the purposes of:

- the connection and commencement of supply of NBN Co services to a premises with FTTP technology or

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<sup>50</sup> Principles, clause 28

<sup>51</sup> Principles, clause 30

<sup>52</sup> Principles, clause 31

<sup>53</sup> Principles, clause 33

- the disconnection of services from a Telstra network at a premises that will be receiving or already has a FTTP connection.

This means the Principles do not require Telstra to manage the use or disclosure of NBN Co migration information internally within Telstra (such as preventing access or use by a Telstra retail business unit) if that information relates to premises in areas receiving FTTN, HFC or FTTB technology.

Clause 33 of the Principles states that the Plan must set out effective measures to ensure compliance with clause 33(1). This is to be done through an NBN information security plan. The Principles require Telstra to submit a draft information security plan to the ACCC within 60 business days of the revised Plan taking effect. The ACCC will then have 60 business days to either approve the information security plan if it complies with the Principles, or direct Telstra to resubmit taking into account the concerns raised by the ACCC. If the ACCC refuses to approve the draft information security plan, Telstra must resubmit an amended draft information security plan to the ACCC within 40 business days of receiving notice of the refusal.

However, the Principles do not prescribe the content of the information security plan beyond the overall objective in clause 33(1). This is emphasised by clause 33(4), which states that prior to the approval of an information security plan, Telstra should adhere to the principles set out in schedule 6 of the existing Migration Plan.

The Principles require the Plan to specify that Telstra must write to both NBN Co and the Minister if it wishes to disclose information in order to comply with the Plan where doing so may breach Telstra's confidentiality obligations to NBN Co. Clause 33(9) permits Telstra to disclose the information if the Minister does not object.

### **3.3.16 Wholesale customer information**

Clause 34 of the Principles sets out arrangements for the security of migration information Telstra obtains with respect to a wholesale customer.

The Principles also limit the wholesale customer information security arrangements to information related to premises receiving FTTP. This means the Plan does not need to provide for the protection of wholesale customer information where it relates to FTTN, HFC or FTTB technology.

Clause 34(1) states that revised Plan must provide that Telstra will use and disclose the wholesale customer information in relation to FTTP-connected premises in accordance with the information security provisions in Part D and schedule 2 of the SSU. The SSU provides security for wholesale customer information that relates to the supply of regulated services by Telstra to that wholesale customer. It states that Telstra will not use this information in a manner that would be likely to enable a Telstra retail business unit to obtain an unfair commercial advantage over that wholesale customer. This includes not disclosing FTTP-related information to a Telstra retail business unit.

Clause 34(2) requires the Plan to provide that Telstra will comply with any confidentiality obligations that apply between a wholesale customer and Telstra (under either an access agreement or a final access determination) so as to ensure that Telstra does not use or disclose the information to obtain an unfair competitive advantage over any wholesale customer.

### **3.3.17 No wholesale carriage services over the HFC network**

Clause 36 of the Principles requires the Plan to specify that Telstra is not required to supply wholesale services using an HFC network. The inclusion of such a provision in the revised Plan would mean that Telstra could not be required to supply another service provider with access to its HFC network even if the ACCC were to declare a HFC access service under Part XIC of the CCA.

### **3.3.18 Carriage services over the HFC network**

The Principles provide for some restrictions on how Telstra may use the HFC network that it will be transferring to NBN Co.

Clause 37(1) of the Principles requires that Telstra must not provide services over the Telstra HFC network to premises located outside the Telstra HFC network footprint. This means that Telstra will not be able to obtain an unfair advantage from any investment by NBN Co in expansion of the HFC network footprint in advance of the network becoming part of the NBN and therefore available to all retail service providers. However, this provision does not apply to new HFC lead-ins built by NBN Co *within* the existing Telstra HFC network footprint, meaning Telstra may use ‘in-fill’ leads-ins constructed by NBN Co before the HFC network is made available to other retail service providers.

Clauses 37(2)-(4) provide some limitations on the plans that Telstra makes available for retail services provided over its HFC network. The restrictions relate to the terms and conditions that prevent a customer from changing service provider. The restrictions will cease to apply on 30 June 2015 unless Optus has been made subject to the same obligations through agreement with the government or NBN Co or where the ACCC has accepted an undertaking from Optus under section 87B of the CCA.

### **3.3.19 Matters outside of Telstra’s responsibility under the Migration Plan**

As discussed in section 3.3.2 of this paper, clause 10(3)(a) of the Principles requires the Plan to set out that various matters are outside of Telstra’s responsibility under the Plan. These matters are specified in Schedule 2 of the Principles.

These matters include:

- the provision of information or notifications about the NBN rollout, the migration process and/or its implications for end users
- the identification of services supplied by Telstra or its wholesale customers over the copper network which may need to be modified or withdrawn because they cause performance issues for the NBN
- the provision of a connection to the NBN and
- making available any interim or other replacement carriage services.

### **3.3.20 Matters for which Telstra’s compliance is dependent on the actions of other parties**

As discussed in section 3.3.2 of this paper, clause 10(3)(b) of the Principles requires the Plan to set out that various matters for which Telstra’s compliance under the Plan will be dependent on the actions of others. These matters are specified in Schedule 3 of the Principles.

Many of the specified matters are tied to the timely provision of accurate information by NBN Co. Matters of this type include:

- the publication of any schedule of Disconnection Dates
- the provision of notifications to retail and wholesale customers regarding premises to be disconnected
- the application of order restrictions or limitations and
- taking particular action based on the type of technology to be provided to a premises.

## 4 Discussion of issues

This section of the paper identifies a number of specific issues which the ACCC is interested in examining through the consultation process. As with the previous section, readers should refer directly to the revised Plan itself for a more fulsome understanding of the relevant provisions.

The 2015 Principles are much more prescriptive than the previous version. For those Principles that are highly prescriptive, assessment of the revised Plan is a relatively straightforward exercise. However, where the Principles are more general in nature, assessing the revised Plan will involve matters of interpretation and degree as to whether the proposed measures meet the standard required by the Principles.

Subject to its consideration of the views raised by stakeholders, the ACCC is minded to approve Telstra's revised Plan as being consistent with the Principles.

### **ACCC questions**

1. Does the revised Plan comply with the Principles?

### 4.1 Compliance with the four key objectives of the Migration Plan Principles

The revised Plan incorporates four general principles into its objectives.<sup>54</sup> The general principles describe the overarching policy principles that must be met by the revised Plan and are reflected throughout the revised Plan. For example, the revised Plan refers to the core principle of equivalence between wholesale and retail services in provisions associated with the order stability period, rebuilding of copper paths, wholesale inputs verified as equivalent to Special Services, and the managed disconnection of copper services (Required Measure 2).

Another important general principle is that the Plan must provide for the disconnection of services in a way that, to the extent that it is in Telstra's control, minimises disruption to the supply of services. In this regard, the Principles require Telstra to provide for an extended disconnection schedule for premises that have placed an order for NBN services but are not yet connected. These premises are known as in-train order premises.

### **ACCC questions**

2. Does the revised Plan facilitate the efficient and timely disconnection of carriage services from a separating network?
3. Does the revised Plan minimise disruption to the supply of services, to the extent that it is in Telstra's control?
4. Does the revised Plan give a wholesale customer autonomy over decisions associated with the disconnection, to the extent required by the Principles?
5. Does the revised Plan provide for wholesale services to be disconnected in an equivalent manner to retail services?

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<sup>54</sup> Revised Plan, clause 2.1

## 4.2 Continued access to the voice band provided on the same terms and conditions as the ULLS

An end user can decide to migrate all of their voice and broadband services provided on a copper line to an FTTB-based or FTTN-based NBN service at the point at which NBN Co undertakes the jumpering work to connect the NBN service. Alternatively, if an end user wishes to (temporarily) retain their existing legacy telephony service, NBN Co will split the copper spectrum so that the NBN broadband service is provided through the higher band and the existing legacy telephony service can continue to be provided through the lower band. The legacy telephony service will be disconnected at the end of the migration period if not cancelled earlier during the migration window.

As discussed in section 3.3.9, where Telstra was previously supplying a wholesale customer with ULLS, the Principles state that Telstra must offer to continue to provide access to the voice band to supply carriage services to the premises after the copper wire has been connected to NBN Co's FTTN/FTTB node. Telstra's revised Plan adopts these requirements in clause 17.3, including the requirement for Telstra to supply the service on the same terms and conditions as applied to the supply of the ULLS immediately prior to the jumpering by NBN Co.

The ACCC is interested to understand whether wholesale customers are likely to seek access to the voice band and whether the requirement to pay the same charge as a ULLS is a material factor in this decision.

### **ACCC questions**

6. Is the potential to retain a legacy telephone service after migrating to the NBN until the end of the switchover period likely to be of value to all consumers or just certain classes of consumers? Which consumers would be likely to value this option?
7. For industry respondents, would you intend to take advantage of the arrangements in clause 17.3 of the revised Plan to acquire access to the voice band following disconnection of the ULLS in FTTN/FTTB areas? How often would this access be sought? Is it significant to this decision that Telstra will be charging the same price for the supply of the voice band as it was for the ULLS?

## 4.3 Process for disconnecting premises in FTTB and FTTN areas, and HFC areas

In FTTN and FTTB areas, NBN services will typically be provisioned over cables that form part of an in-use copper path. This will likely pose challenges in migrating services in addition to those that would be expected where NBN Co is using new cabling to connect premises.

Some of the measures to effectively migrate these services will need to be developed outside the scope of the revised Plan. For instance, the timeliness of NBN Co notifications to its access seekers that it has connected a customer premise, and how promptly NBN retail service providers can then activate a retail service to the premise, will be important to minimising the period in which consumers in these areas may be without a service.

On the other hand, Telstra's actions as the operator of the legacy copper network will also have an important bearing on other outcomes for consumers. For instance, Telstra's actions will potentially influence whether consumers can readily have services restored where the underlying copper path was disconnected in error, whether consumers can bring their phone numbers to the NBN and how promptly consumers cease to be billed for the services they have migrated to the NBN.

To assist in managing these issues, Telstra and NBN Co are developing an integrated migration process to apply where an in-use copper cable is used to make the NBN connection.<sup>55</sup> The Standard Industry Processes for disconnection will continue to be available where the copper cable is not in-use.

A key feature of this integrated process (as it relates to the disconnection of copper services) is that Telstra will cancel a copper service in its operational systems upon receiving notification from NBN Co that a relevant copper line has been cut over to the NBN. This is specified for retail services at clause 9.1(a)(vi) of the draft Migration Plan and clause 9.3(c) for wholesale services.

A potential benefit of this approach is that end users that choose to migrate to the NBN with a new (gaining) service provider will be able to arrange, through that service provider, for their existing services to be disconnected on the activation of their NBN service and transfer of their phone number. In the absence of this integrated process, some of the consumers that choose to change service provider when migrating to the NBN would need to separately manage the disconnection of services.

That said, this represents a significant departure from existing industry practice, where services are generally cancelled only on a request that a consumer makes to the relevant network operator via their retail service provider.

Further, additional details of the steps Telstra will take to cancel a copper service under the integrated migration process are not specified in the revised Plan.<sup>56</sup>

These further details are to be developed in consultation with members of a Communications Alliance working group. The detailed migration process will deal with important matters such as how hand-back/service restoration should operate and how NBN transfers will interact with existing number portability processes.<sup>57</sup>

Telstra and NBN Co have indicated that they intend to implement the integrated migration process as soon as practicable in FTTB areas, and consequently Telstra has stated that it will follow this integrated migration process when making copper disconnections in FTTB areas on an interim basis until the Communications Alliance working group has completed its review.<sup>58</sup>

Telstra has also proposed to suspend the "cease sale obligations" in FTTB and FTTN areas for a short period of time. This suspension would allow Telstra and NBN Co to

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<sup>55</sup> Telstra supporting submission, page 9

<sup>56</sup> Unlike other disconnection processes that relate to customer transfers, the revised Plan does not require ACCC approval of the integrated migration process before Telstra cancels copper services in accordance with it. See Revised Plan, clause 6.3(e) and clause 6.3(f)(ii).

<sup>57</sup> Telstra's supporting submission, page 9

<sup>58</sup> See the explanatory note to the revised Plan, under clause 9.3(c). It is anticipated that the Communications Alliance working group will finalise its consideration of this process before FTTN migration commences, so interim arrangements are only required in FTTB areas.

further develop an integrated migration process that would support a change of service provider.

This initiative reflects that another pathway by which a consumer could migrate services with a new service provider, without having to separately manage the disconnection of services with a losing service provider, would be for the end user to first transfer their existing services to that gaining service provider and for the new service provider to migrate them to the NBN. This is because industry has previously developed a number of customer transfer processes that could be used in that scenario.

The ACCC considers that there would likely be benefits in industry implementing an integrated migration process in FTTN and FTTB areas, and for cease sale to be deferred as Telstra has proposed to provide additional flexibility to industry while such a process is being developed.

However, the ACCC wishes to better understand whether the integrated migration process as it relates to copper disconnections would be likely to support good competition and consumer outcomes before it approves the revised Plan. This is because in the absence of a suitable industry process, it is unclear whether the revised Plan's approach to disconnection of copper services in FTTN and FTTB areas would be consistent with the Principles.

Consequently, the ACCC encourages interested stakeholders to participate in the Communications Alliance working group that is considering the integrated migration process, so that their views can shape the further development of this industry process.

Further, the ACCC would encourage the working group to assess, concurrent with the ACCC's current consultation on the revised Plan, whether the integrated migration process would support sound competition and consumer outcomes and can be operationalised at least on an interim basis.

***ACCC questions***

8. Do you support Telstra acting on NBN Co notifications to cancel services in FTTB and FTTN areas? Would your support for this be dependent upon the development of an operational process that industry has considered and endorsed?
9. For industry respondents, do you intend to participate in the Communications Alliance working group concerning NBN migration and customer transfer processes? Are the suspension periods for Telstra's cease sale obligations in FTTB areas (until 31 July 2015) and FTTN areas (until 30 September 2015) sufficient to allow this working group to complete its consideration of these processes?

The revised Plan provides for Telstra to disconnect retail HFC services when requested by a gaining RSP acting on behalf of a customer, provided that:

- there is a Standard Industry Process (or any generally industry arrangement) in place dealing with such notifications<sup>59</sup> and

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<sup>59</sup> Clause 9.2(a)(iii) of the revised Plan

- Optus participates in, and remains subject to, the same Standard Industry Process (or generally accepted industry arrangement) dealing with notifications by gaining RSPs in relation the migration of HFC customers on the Optus HFC network.<sup>60</sup>

The ACCC considers that a gaining service provider model can promote competition and consumer outcomes by minimising the number of parties an end-user must deal with when changing their service provider. That said, specific aspects of these models can have implications as to whether all service providers can reasonably make use of the model. Hence, the ACCC supports the revised Plan making provision for Telstra to act on disconnection requests it receives from a gaining service provider where there is a Standard Industry Process or generally accepted industry arrangement by which these notifications can be given.

#### ***ACCC questions***

10. Do you support the implementation of a gaining service provider model for customer transfer during migration to the NBN to apply to HFC (and/or other) areas?
11. Is it appropriate that Telstra's participation in any such arrangement be dependent on Optus also participating as a HFC network operator, as Telstra has proposed?
12. For industry respondents, would you support and participate in the development of a gaining service provider customer migration and transfer process to apply in HFC (and potentially other) areas?

## **4.4 In-train order premises**

The revised Plan provides for an extended disconnection schedule for in-train order premises. These are premises that are still waiting for their order for an NBN service to be filled after the Disconnection Date.

As the first 31 Fibre Serving Area Modules (FSAMs) reached their respective Disconnection Dates, it became apparent that the disconnection arrangements did not provide sufficient assurance of service continuity. Telstra developed with NBN Co (and in consultation with government) a revised approach to managed disconnections to apply to FSAM 32 and beyond.<sup>61</sup> Of particular note were the following new provisions:

- allowing services to be restored by Telstra where an order is placed with NBN Co (thereby becoming an in-train order premises) in the short period after the Disconnection Date during which a premises receives a soft dial tone<sup>62</sup> and
- permitting the continued supply of existing copper services to in-train order premises (that are still awaiting the completion of their order with NBN Co) for a maximum of 120 business days, up from 90 days in the existing Plan.

<sup>60</sup> Clause 9.2(b)

<sup>61</sup> ACCC, Proposed disconnection process for FSAM32+, [www.accc.gov.au/regulated-infrastructure/communications/industry-reform/telstras-migration-plan/proposed-disconnection-process-for-fsam32](http://www.accc.gov.au/regulated-infrastructure/communications/industry-reform/telstras-migration-plan/proposed-disconnection-process-for-fsam32)

<sup>62</sup> Revised Plan, clause 21.1(b)(i)

On 30 January 2015, following public consultation, the ACCC consented to these new arrangements without a formal variation to the Plan because they would provide a greater level of service continuity to premises facing a Disconnection Date as early as 20 February 2015. The ACCC's consent was also based on the expectation that Telstra would shortly submit a formal variation to the Plan.

Since this time, Telstra and NBN Co have identified further scenarios in which the in-train order arrangements in the existing Migration Plan have not been fully effective, with some end users losing their copper or HFC service prematurely. Scenarios in which this has occurred include where a premises:

- has an outstanding order for an NBN service, but is not treated as an in-train order premises because it has already had at least one NBN order fulfilled and
- has been connected to the NBN, but the RSP has not had time to activate voice and broadband services over that connection (this is particularly relevant for more complex business customers).

Telstra's revised Plan includes amendments to the in-train order arrangements which are intended to address these problems. In particular, clause 15.1(b)(iv) broadens the reach of the in-train order arrangements by capturing premises that are NBN connected at the Disconnection Date but are still waiting for one or more additional NBN services to be supplied by NBN Co.

In addition, the revised Plan sets out some transitional provisions that Telstra proposes will only apply in respect of premises in rollout regions with a Disconnection Date during the 2015 calendar year. These include the following changes:

- treating as an in-train order premises any premises that is connected to the NBN within three months before the Disconnection Date, rather than the standard one month and
- after the Disconnection Date, Telstra will no longer disconnect in-train order premises within 30 business days of Telstra being notified that the premises has received all of its NBN connections (rather, disconnection will occur 120 business days after the Disconnection Date).

Telstra said these changes for 2015 have been included to enable a transition period for RSPs to adjust their processes from the first 31 FSAM arrangements, which did not specify a deadline for the disconnection of in-train orders, to the permanent arrangements, which do.<sup>63</sup> It has also stated that it would appreciate feedback on the operation of these interim arrangements during 2015, so an assessment can be made as to whether the industry is able to revert to the permanent arrangements from 1 January 2016.

Overall, the ACCC considers that the new disconnection arrangements are likely to provide greater service continuity assurance for consumers in the migration process. However, the ACCC is concerned that the Principles oblige Telstra to disconnect in-train order premises as soon as reasonably practicable after the date which is 120 business days after the Disconnection Date, notwithstanding that a consumer may not yet have had their NBN service connected.<sup>64</sup>

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<sup>63</sup> Telstra's supporting submission, p.13

<sup>64</sup> Principles, clause 12(6)(a) and clause 13(4)(a)

Consequently, the effectiveness of the revised Plan in meeting the service continuity objective will depend on NBN Co connecting premises within the timeframes that have been specified in the Principles for disconnection of services. The ACCC is interested in stakeholder views as to whether there is sufficient transparency in relation to NBN Co's performance in fulfilling in-train orders after the Disconnection Date to allow any systemic issues to be identified at an early stage.

**ACCC questions**

13. To what extent have the provisions relating to in-train order premises in the existing Migration Plan been ineffective in protecting end users from prematurely losing their services on Telstra's networks?
14. Telstra is proposing to treat any premise that connects to the NBN within three months before the Disconnection Date as an in-train order premise. Is three months a sufficient period to ensure that RSPs and ASPs can activate all services at an NBN-connected premises?
15. Telstra has proposed some changes to the arrangements for in-train order premises that will expire at the end of 2015. Will the expiry of these arrangements lead to a re-emergence of the problems that Telstra is currently seeking to address?
16. Would additional transparency in relation to NBN Co's performance in fulfilling in-train orders assist in achieving the Plan's service continuity objectives?

## 4.5 Required Measures and Replacement Schedules

The existing Plan contains obligations on Telstra to develop processes after the Plan had been approved by the ACCC. Four of these Required Measures have now been approved by the ACCC. The Principles require the Plan to incorporate these four sets of processes.<sup>65</sup>

Clause 28 of the Principles specifies a number of elements that must be included in a process for modifying or replacing these four Required Measures and one further Required Measure that has not yet been developed.<sup>66</sup> This last process—based on the previous Required Measure 5—relates to the disconnection of Special Services and Special Service Inputs. The proposed process for modifying or replacing the Required Measures is a more streamlined process than requiring Telstra to submit a formal variation to the Plan.

The Principles are quite specific in this regard and Telstra's revised Plan has replicated the provisions reasonably closely. However, there is one aspect of the revised Plan that requires some interpretation.

Clause 5.2(g) of the revised Plan states that the ACCC may not object to a proposed new, replacement or varied schedule where it is required by a Standard Industry Process or 'applicable generally accepted industry arrangements'. The Principles'

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<sup>65</sup> Principles, clause 28(1)

<sup>66</sup> This means that Clause 28 of the Principles addresses five out of the original six Required Measures in Telstra's current Migration Plan. The requirement for Telstra to develop an information security plan—the yet-to-be-approved Required Measure 6—is addressed separately under clause 33 of the Principles.

specifications for the streamlined process do not include any limitation on the ACCC's ability to object. However, clause 41 of the Principles does provide some limitation on the directions that the ACCC can give Telstra under the Plan. In particular, the ACCC cannot require Telstra to take action, or refrain from taking action, that would be inconsistent with any obligations of Telstra under any Industry Migration Arrangements<sup>67</sup> or Standard Industry Process.<sup>68</sup>

The ACCC will need to consider whether the proposed limitation in clause 5.2(g) regarding the streamlined process simply reflects this broader restriction on the ACCC's powers. The ACCC notes that the broader restrictions do not refer to 'generally accepted industry arrangements'.

#### **ACCC questions**

17. Does clause 5 of the revised Plan provide for the inclusion and potential variation of the specified Required Measures in a manner that is consistent with the Principles?
18. Do the Principles support the proposed limitation on the ACCC from objecting to a proposed schedule under clause 5.2(g) if the schedule is required by a Standard Industry Process or 'applicable generally accepted industry arrangements'?

## **4.6 Protection of migration and wholesale customer information**

The revised Plan states that Telstra will ensure that any NBN Co migration information is not used or disclosed by Telstra to gain or exploit an unfair advantage over Telstra's wholesale customers.<sup>69</sup> It will do this by establishing and complying with an Information Security Plan, which must be approved by the ACCC. The revised Plan also provides that should Telstra obtain any confidential information about wholesale customers, it will use and disclose that information in accordance with the information security provisions of the SSU.<sup>70</sup>

Both of these sets of information security protections are limited to information in relation to the FTTP rollout, as prescribed by the Principles.<sup>71</sup> This means they do not apply to information in relation to FTTN, FTTB or HFC connections.

The government has decided that information security for these other MTM technologies will not be covered in the Migration Plan, but addressed through other means, including:

- the continuation of restrictions on the use of information by Telstra under the SSU

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<sup>67</sup> Industry Migration Arrangements are arrangements used to facilitate the migration of services to the NBN under the government's Migration Assurance Policy Statement.

<sup>68</sup> Principles, clause 41(i)

<sup>69</sup> Revised Plan, clause 25.2(a)

<sup>70</sup> Revised Plan, clause 25.7

<sup>71</sup> Principles, clauses 33 and 34

- contractual provisions in the Definitive Agreements which restrict Telstra’s misuse of information and
- the proposed imposition of a carrier licence condition on NBN Co.<sup>72</sup>

The proposed carrier licence condition will require NBN Co to share certain information with all access seekers on an equitable basis.<sup>73</sup> The Minister has stated that this will ensure that information that may provide a competitive advantage to Telstra under the amended Definitive Agreements is shared with access seekers at the same time.

The Department of Communications has asked the ACCC to consult with industry as part of developing the new carrier licence condition for NBN Co. The Department has stated that the overarching object of the licence condition is to ensure symmetry between Telstra and all other retail service providers in respect of relevant NBN-rollout and related information. This will ensure that Telstra does not have any actual or perceived information advantage by virtue of its role as the owner of the copper and HFC networks being acquired by NBN Co. The ACCC released a discussion paper on 24 March 2015 asking industry for feedback on the information that NBN Co should disclose about the rollout of its network.<sup>74</sup>

The ACCC notes that both the Principles<sup>75</sup> and revised Plan<sup>76</sup> provide for Telstra to extend the reach of its information security arrangements beyond the scope of FTTP migration information should it wish. The ACCC is interested to hear stakeholder views as to whether there is any specific information relating to FTTN, FTTB or HFC connections to which Telstra should agree to apply the existing information security rules.

**ACCC questions**

19. Is there any specific information relating to FTTN, FTTB or HFC connections to which Telstra should agree to apply the existing information security rules?

#### **4.7 Potential consumer or competition issues that cannot be addressed through the Migration Plan**

In their consideration of Telstra’s revised Plan—and the broader commercial agreement between Telstra, NBN Co and the government—stakeholders are encouraged to identify any further competition or consumer issues that could arise during the migration of services to the NBN in addition to those that they have identified in responding to the specific questions contained in this discussion paper.

<sup>72</sup> M Turnbull (Minister for Communications), Regulatory instruments for NBN Migration Plan finalised, media release, 27 January 2014

<sup>73</sup> M Turnbull (Minister for Communications), Regulatory arrangements to support Definitive Agreements, media release, 16 December 2014

<sup>74</sup> Available on the ACCC’s website at <http://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network/information-disclosure-by-nbn-co>

<sup>75</sup> Principles, Schedule 4, clause (b)

<sup>76</sup> Revised Plan, clause 25.1(b)

As discussed previously, the ACCC's ability to address any such issues as part of its assessment of Telstra's revised Plan may be limited. The ACCC can only approve or refuse to approve the revised Plan, a decision based solely on the detailed Principles (and Specified Matters Instrument) made by the Minister. The scope of this role is further limited by the matters that cannot be addressed in the revised Plan, such as in respect of NBN design, construction or maintenance arrangements.<sup>77</sup>

That said, being aware of the full range of issues of potential concern will potentially assist the ACCC in performing its more general functions in regulating the communications sector.

In addition, views advanced in the consultation process may also assist industry participants and other stakeholders in developing measures that promote competition and consumer outcomes. The ACCC recognises that Telstra is only one of a number of key stakeholders in the migration process. It is a whole-of-industry process, involving a number of industry participants, not simply Telstra and NBN Co. For instance, Section 1.3 of this discussion paper notes that the government is expected to release a MAP statement shortly, which will include assurance principles and high-level guidance regarding individual stakeholder roles.

**ACCC questions**

20. Are there likely to be any other competition or consumer issues arising from the migration process that you have not identified in your responses to the previous questions?

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<sup>77</sup> Principles, clause 10(3)

# ATTACHMENT A - Mapping of Telstra's revised Plan against the Principles

Part 3 General principles and Specific Principles	
Division 1	General principle and Specific principles – disconnection of carriage services
10 General and Specific principles	<p>Clause 2 – Objective and scope of this Plan</p> <p>Clause 6 – Telstra to use existing processes</p> <p>Clause 8 – Provision by Telstra of information about disconnection and Disconnection Dates</p> <p>Clause 9 – Disconnection of Copper Services and HFC Services during the Migration Window</p> <p>Clause 12 – Telstra activities in the lead up to the Disconnection Date for each Rollout Region</p> <p>Clause 13 – Order Stability Period prior to the Disconnection Date</p> <p>Clause 22 – Special Services</p> <p>Clause 23 – Removal of Wholesale Customer equipment from Telstra facilities</p> <p>Clause 33 – Functions and powers of ACCC under this plan</p> <p>Schedule 1 – Telstra existing standard processes for disconnection of copper services (other than Special Services)</p> <p>Schedule 2 – Telstra existing standard processes for disconnection of HFC services</p> <p>Schedule 4 – Special Services</p>
11 Specific principle – Alignment of migration plan with Migration Assurance Policy Statement	As above
12 Specific principle – disconnection of carriage services using copper networks	<p>Clause 6 – Telstra will use existing processes</p> <p>Clause 9 – Disconnection of Copper Services and HFC Services during the Migration Window</p> <p>Clause 14 – Managed disconnection commencing at the Disconnection Date (NB – Required Measure under Schedule 7)</p> <p>Clause 15 – Types of premises and related disconnection windows (in-train orders and premises prevented by law from disconnection)</p> <p>Clause 16 – Disconnection of all Premises to be completed by the Designated Day</p> <p>Clause 17 – No supply of new Copper Services and HFC services after a Premises becomes NBN Serviceable</p> <p>Clause 18 – HFC Services</p> <p>Clause 20 – Telstra's commencing to provide services using NBN</p> <p>Schedule 1 – Telstra existing standard processes for</p>

	<p>disconnection of copper services (other than Special Services)</p> <p>Schedule 3 – Principles for managed Disconnection immediately following the Disconnection Date (for use in development of the relevant Required Measure)</p> <p>Schedule 5 – Technical Conditions constituting permanent disconnection</p>
12 Specific principle – disconnection of carriage services using copper networks	<p>Clause 6 – Telstra will use existing processes</p> <p>Clause 9 – Disconnection of Copper Services and HFC Services during the Migration Window</p> <p>Clause 14 – Managed disconnection commencing at the Disconnection Date (NB – Required Measure under Schedule 7)</p> <p>Clause 15 – Types of premises and related disconnection windows (in-train orders and premises prevented by law from disconnection)</p> <p>Clause 16 – Disconnection of all Premises to be completed by the Designated Day</p> <p>Clause 17 – No supply of new Copper Services and HFC services after a Premises becomes NBN Serviceable</p> <p>Clause 18 – HFC Services</p> <p>Clause 20 – Telstra’s commencing to provide services using NBN</p> <p>Schedule 1 – Telstra existing standard processes for disconnection of copper services (other than Special Services)</p> <p>Schedule 3 – Principles for managed Disconnection immediately following the Disconnection Date (for use in development of the relevant Required Measure)</p> <p>Schedule 5 – Technical Conditions constituting permanent disconnection</p>
13 Specific principle – disconnection of carriage services using hybrid fibre-coaxial networks	<p>As above</p> <p>Schedule 2 – Telstra existing standard processes for disconnection of HFC services</p>
14 Specific principle – MDU common areas and related copper services and hybrid-fibre coaxial services	<p>As above</p>
15 Specific principle – coordination of connection and disconnection	<p>Clause 6.4 – Telstra not responsible for management or coordination of the connection process</p> <p>Clause 7 – Telstra’s timetable for disconnection of Premises will be determined by reference to NBN Co’s Rollout schedule</p> <p>Clause 8 – Provision by Telstra of information about disconnection and Disconnection Dates</p> <p>Clause 9 – Disconnection of Copper Services and HFC Services during the Migration Window</p> <p>Clause 12 – Telstra activities in the lead up to the Disconnection Date for each Rollout Region (notifications regarding automatic disconnection)</p> <p>Clause 26 – Reporting framework</p>

	Schedule 1 – Telstra existing standard process for disconnection of Copper Services (other than Special Services)
16 Specific principle – coordination and disconnection for all premises	As above
17 Specific principle – restrictions on the supply of carriage services prior to and after the Disconnection Date	<p>Clause 4.4 – Telstra’s existing non-Migration related activities and rights are unaffected by the Plan</p> <p>Clause 13 – Order Stability Period prior to the Disconnection Date</p> <p>Clause 17 – No supply of new Copper Services after a Premises becomes NBN Serviceable</p> <p>Clause 19 – Temporary Reconnection</p> <p>Clause 32 - Dispute resolution process</p>
18 Specific principle – special services	<p>Clause 4.4 – Telstra’s existing non-Migration related activities and rights are unaffected by the Plan</p> <p>Clause 21 – Special Services</p> <p>Schedule 4 – Special Services</p> <p>Schedule 7 – Required Measures</p>
19 Specific principle – applying a soft dial tone service	Clause 20 – Soft Dial Tone
20 Specific principle – restoration of carriage services	<p>Clause 17 – No supply of new Copper Services and HFC Services after a Premises becomes NBN Serviceable</p> <p>Clause 19 – Temporary Reconnection</p>
21 Specific principle – equipment of wholesale customers	Clause 23 – Removal of Wholesale Customer equipment from Telstra facilities
<b>Division 2      Specific principles – timetable for disconnecting fixed-line carriage services</b>	
22 Specific principle	<p>Clause 7 – Telstra’s timetable for disconnection of Premises will be determined by reference to NBN Co’s rollout schedule</p> <p>Clause 8 – Provision by Telstra of information about disconnection and Disconnection Dates</p> <p>Clause 22 – Special Services</p>
23 Specific principle – timing of disconnection	<p>Clause 6 – Telstra to use Existing Processes</p> <p>Clause 7 – Telstra’s timetable for disconnection of Premises will be determined by reference to NBN Co’s rollout schedule (including clause 7.4 – First and last date on which orders for disconnection can be lodged)</p> <p>Clause 8 – Provision by Telstra of information about disconnection and Disconnection Dates</p> <p>Clause 9.3 – Wholesale customers to retain autonomy over disconnection decisions, including control over the timing of disconnection</p>

	<p>Clause 10 – Pull Through Activities</p> <p>Clause 12 – Telstra activities in the lead up to the Disconnection Date for each Rollout Region (notification of automatic disconnections)</p> <p>Clause 22 – Special Services (including certification of Special Service Inputs) Schedule 1 Telstra existing standard process for disconnection of Copper Services (other than Special Services)</p>
24 Specific principle – provision of information regarding disconnection	<p>Clause 8 – Provision by Telstra of information about disconnection and Disconnection Dates</p> <p>Clause 12 – Telstra activities in the lead up to the Disconnection Date for each Roll out region</p> <p>Clause 14.4 – Telstra to notify wholesale customers before final decision</p>
<p>Division 3 General and specific principles – equivalence regarding disconnecting Telstra retail business units and wholesale customers using the copper network</p>	
25 General principle	<p>Clause 5 – Required measures and Replacement Schedules</p> <p>Clause 6 – Telstra to use Existing Processes</p> <p>Clause 7 – Telstra’s timetable for disconnection of Premises will be determined by reference to NBN Co’s rollout schedule</p> <p>Clause 8 – Provision by Telstra of information about disconnection and Disconnection Dates</p> <p>Clause 9 – Disconnection of Copper Services and HFC Services during the Migration Window</p> <p>Clause 12 – Telstra activities in the lead up to the Disconnection Date for each Rollout Regions</p> <p>Clause 13 – Order Stability Period prior to the Disconnection Date</p> <p>Clause 15 – Types of Premises and related Disconnection Windows</p> <p>Clause 21 – Special Services (notifications about product exits)</p> <p>Schedule 1 – Telstra existing standard processes for disconnection of Copper Services (other than special services)</p> <p>Schedule 3 – Principles for Managed Disconnection immediately following the Disconnection Date</p> <p>Schedule 7 – Required Measures</p>
26 Specific principle – prohibition of marketing activity	<p>Clause 11 – Telstra staff and contractors attending on site</p>
<p>Division 4 General and specific principles – use of adequate processes</p>	
27 General and specific principles	<p>Clause 5 – Required Measures and Replacement Schedules (for disconnection processes in relation to special services and managed disconnection)</p> <p>Clause 6 – Telstra to use Existing Processes</p> <p>Clause 9 – Disconnection of Copper Services and HFC Services during Migration Window</p>

	<p>Clause 10 – Pull-Through Activities</p> <p>Clause 29 – Variation of an existing process or development of new or modified disconnection measures</p> <p>Clause 30 – Testing of new or modified Disconnection processes</p> <p>Schedule 1 – Telstra existing standard processes for disconnection of copper services (other than Special Services)</p> <p>Schedule 2 – Telstra existing standard processes for disconnection of HFC services</p>
28 Specific principle – Required Measures and replacement Schedules	As above
29 Specific principle – specification of disconnection processes	<p>Clause 6 – Telstra to use Existing Processes</p> <p>Clause 9 – Disconnection of Copper Services and HFC Services during Migration Window</p> <p>Clause 10 – Pull Through Activities</p> <p>Clause 12.2 – Notification to Wholesale Customers when Wholesale Services are automatically disconnected</p> <p>Schedule 1 – Telstra existing standard processes for disconnection of copper services (other than Special Services)</p>
29 Specific principle – specification of disconnection processes	Clause 29 – Variation of an existing process or development of new or modified disconnection measure
30 Specific principle – modifications to existing processes and disconnection measures	<p>Clause 29 – Variation of an existing process or development of new or modified disconnection measure</p> <p>Clause 32 - Dispute resolution process</p>
Division 5 General principle – using standard Telstra operating systems, interfaces and processes	
31 General principle	<p>Clause 6 – Telstra to use Existing Processes</p> <p>Clause 9 – Disconnection of Copper Services and HFC Services during the Migration Window</p> <p>Clause 29 – Variation of an existing process or development of a new or modified disconnection measure</p> <p>Schedule 1 – Telstra existing standard processes for disconnection of copper services (other than special services)</p>
Division 6 General principle – supply of information by Telstra to NBN Co	
32 General principle	<p>Clause 24 – Information supplied to NBN Co</p> <p>Clause 25.4 – Development of NBN Information Security plan</p> <p>Schedule 8 – Information to be provided by Telstra to NBN Co under the Definitive Agreements</p>
Division 7 Specific principles – protection of information	

33 Specific principle – NBN Co migration information	Clause 5 – Required Measures and Replacement Schedules Clause 25 – Information Security Schedule 6 – Information Security principles for the development of NBN Co Migration Information security Plan Schedule 7 – Required Measures
34 Specific principle – wholesale customer information	As above
Division 8 General principle – commencing to supply fixed-line carriage services using the national broadband network	
35 General principle	Clause 20 – Telstra commencing to provide services using the NBN
Division 9 General and Specific Principle – no wholesale carriage services over the hybrid fibre-coaxial network	
36 General principle	Clause 5 – Required Measures and Replacement Schedules Clause 9 – Disconnection of Copper Services and HFC Services during the Migration Window Clause 17 – No supply of new Copper Services and HFC services after a Premises becomes NBN Serviceable Clause 18 – HFC Services
37 Specific principle – carriage services over the hybrid fibre-coaxial network	Clause 5 – Required Measures and Replacement Schedules Clause 9 – Disconnection of Copper Services and HFC Services during the Migration Window Clause 17 – No supply of new Copper Services and HFC services after a Premises becomes NBN Serviceable Clause 18 – HFC Services Clause 25 – Information security Clause 30 – Testing of new or modified Disconnection processes
Part 4 Procedural principles	
38 Procedural principle – reporting framework	Clause 26 – Reporting Framework Clause 28 – Compliance
39 Procedural principle – rectification of plan as directed by the ACCC	Clause 27 – Rectification of the Plan
40 Procedural principle – dispute resolution	Clause 32– Dispute Resolution process

41 Procedural principle – scope of modifications to processes	Clause 29 – Variation of an existing process or development of a new modified disconnection measure Clause 30 – Testing of new or modified disconnection processes
42 Procedural principle – consultation with NBN Co	Clause 31 – Telstra will consult with NBN Co about relevant matters under this Plan
43 Procedural principle – test procedure processes	Clause 29 – Testing of new or modified Disconnection Measures
44 Procedural principle – cessation of migration plan	Clause 4 - Commencement and Term Clause 17 – No supply of new Copper Services after a Premises becomes NBN Serviceable Clause 19 – Temporary reconnection Clause 25 – Information security

## ATTACHMENT B – Questions for discussion

### *Overall compliance of the Plan with the Principles*

1. Does the revised Plan comply with the Principles?

### *Compliance with the four key objectives of the Migration Plan Principles*

2. Does the revised Plan facilitate the efficient and timely disconnection of carriage services from a separating network?
3. Does the revised Plan minimise disruption to the supply of services, to the extent that it is in Telstra's control?
4. Does the revised Plan give a wholesale customer autonomy over decisions associated with the disconnection, to the extent required by the Principles?
5. Does the revised Plan provide for wholesale services to be disconnected in an equivalent manner to retail services?

### *Continued access to the voice band provided on same terms and conditions as the ULLS*

6. Is the potential to retain a legacy telephone service after migrating to the NBN until the end of the switchover period likely to be of value to all consumers or just certain classes of consumers? Which consumers would be likely to value this option?
7. For industry respondents, would you intend to take advantage of the arrangements in clause 17.3 of the revised Plan to acquire access to the voice band following disconnection of the ULLS in FTTN/FTTB areas? How often would this access be sought? Is it significant to this decision that Telstra will be charging the same price for the supply of the voice band as it was for the ULLS?

### *Process for disconnecting premises in FTTB and FTTN areas, and HFC areas*

8. Do you support Telstra acting on NBN Co notifications to cancel services in FTTB and FTTN areas? Would your support for this be dependent upon the development of an operational process that industry has considered and endorsed?
9. For industry respondents, do you intend to participate in the Communications Alliance working group concerning NBN migration and customer transfer processes? Are the suspension periods for Telstra's cease sale obligations in FTTB areas (until 31 July 2015) and FTTN areas (until 30 September 2015) sufficient to allow this working group to complete its consideration of these processes?
10. Do you support the implementation of a gaining service provider model for customer transfer during migration to the NBN to apply to HFC (and/or other) areas?
11. Is it appropriate that Telstra's participation in any such arrangement be dependent on Optus also participating as a HFC network operator, as Telstra has proposed?

12. For industry respondents, would you support and participate in the development of a gaining service provider customer migration and transfer process to apply in HFC (and potentially other) areas?

*In-train order premises*

13. To what extent have the provisions relating to in-train order premises in the existing Migration Plan been ineffective in protecting end users from prematurely losing their services on Telstra's networks?
14. Telstra is proposing to treat any premise that connects to the NBN within three months before the Disconnection Date as an in-train order premise. Is three months a sufficient period to ensure that RSPs and ASPs can activate all services at an NBN-connected premises?
15. Telstra has proposed some changes to the arrangements for in-train order premises that will expire at the end of 2015. Will the expiry of these arrangements lead to a re-emergence of the problems that Telstra is currently seeking to address?
16. Would additional transparency in relation to NBN Co's performance in fulfilling in-train orders assist in achieving the Plan's service continuity objectives?

*Required Measures and Replacement Schedules*

17. Does clause 5 of the revised Plan provide for the inclusion and potential variation of the specified Required Measures in a manner that is consistent with the Principles?
18. Do the Principles support the proposed limitation on the ACCC from objecting to a proposed schedule under clause 5.2(g) if the schedule is required by a Standard Industry Process or 'applicable generally accepted industry arrangements'?

*Protection of migration and wholesale customer information*

19. Is there any specific information relating to FTTN, FTTB or HFC connections to which Telstra should agree to apply the existing information security protections?

*Migration challenges outside the scope of the ACCC's assessment of the revised Plan*

20. Are there likely to be any other competition or consumer issues arising from the migration process that you have not identified in your responses to the previous questions?