



10 March 2021

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Dear Mr Riordan,

Notification of Telstra's performance under the Migration Plan being materially affected by an Excluded Event

Telstra is writing to notify the ACCC that we consider that the impacts of nbn co's recent decision regarding their restricted ability to accept new nbn orders for HFC services and associated rollback of impacted nbn HFC premises to not nbn-serviceable status, amounts to an Excluded Event under our Migration Plan (the **Plan**). Telstra's obligations under the Plan are built around premises within the Fixed Footprint List as notified by nbn co. Telstra considers that this Excluded Event is likely to materially affect our performance under the Plan with regards to the amended managed disconnection arrangements that have needed to be implemented and the upstream impacts to related obligations. In this letter, Telstra wishes to notify the ACCC under clause 4.5 of the Plan of:

- our intention to utilise an Excluded Event as a mechanism to establish the necessary flexibility under the Plan, to amend arrangements as appropriate, to better respond in a timely (and equivalent) basis to significant service continuity challenges with nbn HFC Premises;
- the impact of nbn co's decisions regarding nbn HFC premises, on the Fixed Footprint List in impacted Rollout Regions and its consequential impact on Telstra's disconnection and related obligations under the Plan; and
- the steps nbn co and Telstra have in-principally agreed to date, to respond to this issue. The purpose of these steps is to ensure that Wholesale and Retail Customers are not disadvantaged with regard to nbn HFC Premises, and impacted end-users have sufficient time to migrate their services to nbn before their legacy services are disconnected.

We have provided further detail regarding each of these points below.

Nature and scale of impact of the HFC Pause

On 1 February 2021, nbn co advised RSPs they will not be taking new nbn orders for HFC services at unconnected locations from 7pm (AEDT) Tuesday 2 February 2021 (the **HFC Pause**). Further, nbn co would facilitate this step by making impacted unconnected HFC locations (Service Class 21, 22, 23) not nbn-serviceable (Service Class 20), unless there was an in-place nbn order for the location (**HFC Pause Premises**). On 2 February 2021, nbn co issued an Operations Bulletin, advising of some exemption group scenarios where they will continue to accept orders for nbn HFC locations.



Telstra understands that there is in the order of a few hundred thousand HFC Pause Premises (i.e. classification rolled back by nbn co to Service Class 20). In the section below ‘Summary of revised disconnection arrangements agreed with NBN Co to date in response to the nbn HFC Pause’ (page 4), we outline the specific DDs where amended arrangements have been agreed with nbn co ahead of providing the ACCC with this notice. Amended arrangements in response to the HFC Pause have been agreed up to and including Wave 83 (DD 9 April 2021), with approximately 80K premises impacted. There are further HFC Pause Premises (i.e. within Wave 84 and beyond) for whom revised disconnection arrangements have not been assessed at this stage.

In response to nbn co’s HFC Pause announcement, RSPs raised concerns with Telstra regarding risks to the customer experience and to service continuity. A key concern is ensuring adequate time will exist for end-users at HFC Pause Premises to place orders for nbn services and for RSPs to perform the required communication / marketing, connection and activation activities to provide working nbn services ahead of Telstra’s managed disconnection activities commencing under the Plan.

As the ACCC understands, the Plan requires Telstra to undertake its disconnection obligations in a manner that seeks to minimise disruption to the supply of services and, to the greatest extent practicable, provides Wholesale Customers with autonomy over decisions about the timing of disconnection. Telstra was concerned, without any intervention to the disconnection arrangements, that the scale of the HFC Pause and its proximity to DDs would not allow Telstra to meet these objectives of the Plan. For example, if we disconnect HFC Pause Premises in the Fixed Footprint List either in accordance with originally scheduled (previous) DDs or in accordance with standard disconnection milestones post-DD. These concerns will continue to exist until nbn co remove the in-place HFC Pause, including resumption of timely appointments in association with connection and activation activities. We note nbn co, in its most recent operational update to its RSPs on 26 February 2021, advised that it had agreed a draft supply plan with its suppliers that based on ‘current forecasts’ is designed to enable **nbn co** to ‘recommence taking new connection orders for HFC targeting from the end of May to early June 2021’. nbn co also advised within this update that provided **it** is in a position to do so, they anticipate being able to advise the ‘confirmed commencement date at the end of April’.

Notification of an Excluded Event

Under clause 4.5 of the Plan, Telstra will not be liable for any delay or failure to perform obligations to the extent that the delay or failure is caused by an Excluded Event. An Excluded Event is defined in the Plan by reference to those matters described in clauses 2.2 and 2.3 of the Plan as falling outside Telstra’s responsibilities or constituting a dependency on nbn co or a third party.

Telstra considers that the following matters have been directly impacted as a result of the HFC Pause and are not within our responsibility to manage:

Relevant extract per clause 2.2(b) of the Plan:	Impact identified:
(vii) <i>‘achieving NBN Serviceability at Premises within the Fixed Line Footprint in a Rollout Region’</i>	nbn co has performed a service classification rollback of HFC Pause Premises. This includes premises: <ul style="list-style-type: none"> • that are already beyond their DD; or • have an impending DD (i.e. including Rollout Regions whose previous DDs were previously scheduled between February to April 2021, that have now deferred to July 2021)
(ix) <i>‘providing an NBN Connection at Premises within the Fixed Line Footprint in a Rollout Region,’</i>	nbn co communicated to its RSPs on 2 February 2021 that only nbn HFC Premises that fall within



<p><i>including dealing with the relevant RSP and/or NBN Co in respect of any delay in providing an NBN Connection'</i></p>	<p>defined exemption group scenarios will be capable of raising nbn-connection orders whilst the HFC Pause is in place.</p>
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Telstra also considers that the following obligations under the Plan for whom interdependencies exist with another party (i.e. nbn co), have been directly impacted by this HFC Pause:

Relevant extract per clause 2.3 of the Plan:	Identified obligation impacted:
<p>(a) <i>'Telstra's publication of the Disconnection Schedule in clause 7 is subject to Telstra being provided with subscriber address information by NBN Co... in accordance with the terms of the Definitive Agreements'</i></p>	<p>Our Disconnection Schedule per clause 7.1 has already needed to be amended in response to the HFC Pause to reflect certain Rollout Regions containing nbn HFC Premises, have been assigned a revised DD.</p>
<p>(b) <i>'Telstra's notifications to Retail Customers and Wholesale Customers in a Rollout Region of impending disconnection are based on Premises which NBN Co includes in the Proposed Fixed Footprint... made available to Telstra prior to Telstra giving the relevant notice'</i></p>	<p>Telstra's customer notification arrangements are set out in clauses 8.1 and 8.2 (and Required Measure 2) of the Plan:</p> <ul style="list-style-type: none"> • we have already provided customer notifications at the required milestones, in respect of the originally scheduled (previous) DDs. We now need to provide customers further communications in respect of the revised DD (i.e. 9 Jul'21). • we will also need to manage the provision of information to customers where an extension of managed disconnection milestones post-DD has occurred.
<p>(c) <i>'...Telstra's obligations under this Plan, including in relation to disconnection and related matters (such as cessation of supply of Copper Services) apply to Premises in a Rollout Region, the relevant premises will be determined based on Premises which NBN Co includes in the Proposed Fixed Footprint List... made available to Telstra'</i></p>	<p>Telstra's managed disconnection obligations have already been impacted as a result of needing to implement revised arrangements in the interests of end-users impacted by the HFC Pause:</p> <ul style="list-style-type: none"> • setting of revised DDs that extend beyond the maximum timeframes provided for per clause 7.2. • extension of disconnection milestones that apply post-DD arrangements beyond the arrangements per clause 14 and Required Measures (RM) 2 and 3. <p>Separately, whilst changes are not yet been proposed for our service restriction obligations under clauses 17 (cease sale), 13 (Order Stability Period (OSP)) and 19.1 (temporary reconnections), we will continue to monitor the effectiveness of their operation during the HFC Pause, and potentially amend as required, in the interests of supporting the service continuity objective.</p>



	In any event, the operation of both Cease Sale and the OSP are respectively impacted from the perspective of having an extended duration and deferred commencement, in association with the setting of the revised DD.
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Telstra therefore considers that the serviceability status and timing of HFC Pause Premises are matters which fall outside Telstra’s responsibilities under the Plan. Further, this has resulted in a need to modify DDs for impacted Rollout Regions and / or managed disconnection arrangements post Rollout Region DD, that will materially and adversely affect our performance with the obligations of the Plan.

Summary of revised disconnection arrangements agreed with nbn co to date in response to the nbn HFC Pause

Telstra has agreed with nbn co to implement the following managed disconnection arrangements in respect to the HFC Pause and out of concern for HFC Pause Premises. These arrangements were communicated to Wholesale Customers (and equivalently to Telstra’s Retail BUs) on 12 February 2021. We also advised Wholesale Customers that we will continue to monitor risks to service continuity related to nbn co’s HFC Pause.

Please note that further amendments to these arrangements may be required should HFC Pause Premises remain unable to place orders for NBN Services, at or only very shortly before, the date on which Telstra is required to commence disconnection under these revised arrangements.

- **Rollout Regions containing nbn HFC premises within Waves 80 to 83**

Telstra and nbn co have in-principal agreement to extend the DDs for Rollout Regions that contain nbn HFC premises with previous DDs originally scheduled to occur between 12 February 2021 to 9 April 2021 (previously Waves 80 through 83). These Rollout Regions will now have a revised DD of 9 July 2021 (as aligns to Wave 86). This movement of the Rollout Regions to align with Wave 86, is informed by the overall volumes of nbn HFC premises currently within Waves 80 to 83, which we expect will be manageable for RSPs.

Based on experience, Telstra and nbn co are aware that where changes are required to the managed disconnections arrangements, the preferred option for RSPs is to defer the DD wherever possible, as opposed to extending key milestones beyond the DD. The deferral of DDs is simpler in that it prevents any of the managed disconnection activities / milestones being triggered in first place. Further RSPs are already familiar with the standard managed disconnections arrangements and milestones that will apply in respect of the revised DDs.

nbn HFC Rollout Region previous DD (and Wave):	nbn HFC Rollout Region revised DD (and Wave):
DD 12-Feb-2021 Wave 80	DD 9-Jul-2021 Aligned to Wave 86
DD 26-Feb-2021 Wave 81	
DD 12-Mar-2021 Wave 82	
DD 9-Apr-2021 Wave 83	



- **nbn HFC premises within Wave 79**

In respect to nbn HFC Premises within Wave 79 (DD 15 January 2021) Telstra and nbn co agreed to provide an extension from the commencement of managed disconnection, equivalent to the maximum In Train Order (ITO) Period timeframes (i.e. DD + 150 business days (BD)).

- **HFC Pause Premises within waves up to and including Wave 78**

With respect to nbn HFC premises with remaining active services in Wave 78 that are HFC Pause Premises (i.e. rolled back to Service Class 20), they will now be managed under the Complex Ready to Connect (RTC) Premises arrangements Telstra and nbn co agreed in September 2020 and subject to forbearance by the ACCC in October 2020. Complex RTC Premises therefore provide for an extended managed disconnection timeframe.

Next Steps

Our response to managed disconnection activity in association with the HFC Pause may continue to evolve depending on when nbn co is able to return HFC Pause Premises to nbn-serviceable status, together with resuming reasonable nbn-connection timeframes. We will continue to provide you with updates of any developments in our approach, as further information becomes available and decisions are reached together with nbn co. Further, we will similarly continue to notify our Wholesale Customers and Retail BU on an equivalent basis of any developments with our approach as appropriate.

Further in accordance with clause 4.5(e)(ii) of the Plan, Telstra will notify the ACCC when we become aware that the Excluded Event has been remedied or ceases to materially affect our obligations under the Plan.

Should you have any queries about this matter please contact me or Peter Walsh (on (03) 8694 3854 / peter.walsh.2@team.telstra.com).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Iain Little', is located below the 'Yours sincerely' text.

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