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Submission to
ACCC
Discussion
Paper

Migration Plan Required Measures relating to the pull through connection process

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1 Introduction

This submission is provided by NBN Co in response to the ACCC's December 2012 Discussion Paper – 'Migration plan required measures relating to the pull through connection process.' This submission is provided on a public basis, noting that certain information has been redacted as it relates to information that is confidential to NBN Co. This information is marked **[CIC]**.

NBN Co acknowledges that the completion of pull through activities [at an end user premises is a multi-stage process that may be used for the efficient and timely migration of end-user customers to the NBN. In this regard, a pull through should be viewed by industry as part of NBN Co's connection process and not as part of Telstra's disconnection process. That said, a pull through may in some circumstances (i.e. when there has been a "complete migration event") result in a disconnection of copper services being provided over a line.

The pull through processes to be implemented by NBN Co and Telstra are governed by the Definitive Agreements which have been jointly agreed by Telstra and NBN Co. **[CIC]**. Telstra's important role is reflected in clause 10 of Telstra's Migration Plan, as well as clause 24 of the Migration Plan Principles. Telstra has committed (as part of its Migration Plan) to submit for approval by the ACCC a Required Measure outlining specific processes relating to:

- Telstra's process for obtaining pull through consents and releases from Telstra Wholesale customers; and
- Telstra's processes for notifying Telstra Wholesale customers of pull through exception events.

The ACCC's consultation process seeks comment on Telstra's proposed Required Measure 1(a) and 1(b) and not on NBN Co's role in pull through activities. This is appropriate given that the ACCC must assess the extent to which the Required Measure complies with the Migration Plan Principles, which sets out the mandatory elements of Telstra's Migration Plan. NBN Co's proposed pull through processes are not within the scope of this process.

However, NBN Co understands that an assessment of Telstra's Required Measures 1(a) and 1(b) is informed by an understanding of NBN Co's proposed pull through processes. For this reason, NBN Co has already provided significant detail to the ACCC about our intended pull through processes (to the extent possible given that these processes are still being developed), which is reflected in the ACCC's Discussion Paper.

In addition to providing information to the ACCC, NBN Co is committed to consulting with industry, as may be required for NBN Co's pull through processes, at the appropriate time. NBN Co notes a number of comments from industry participants seeking further information about NBN Co's processes. It should be noted, however, at this time, NBN Co is not conducting pull throughs when connecting end-user premises to the NBN fibre network.

This submission to the ACCC:

- sets out the many industry wide factors and specific arrangements between Telstra and NBN Co in the Definitive Agreements that impact NBN Co's ability to perform a pull through at an end-user premises. These factors highlight the importance of ongoing support from both Telstra and other service providers;
- provides clarification of the operational processes NBN Co intends to apply – subject to industry consultation and further development - where a pull through is to be completed at a premises;
- answers specific questions raised by the ACCC in its Discussion Paper; and
- responds to relevant comments and concerns expressed by interested parties in submissions responding to the ACCC Discussion Paper.

[CIC].

Migration Plan Required Measures relating to the pull through connection process
Pull through activities must accommodate the industry landscape

2 Pull through activities must accommodate the industry landscape

Pull through activities may be an important part of NBN Co's connection processes to the NBN fibre network. Pull throughs allow NBN Co to install its fibre cable in existing Telstra infrastructure in circumstances where NBN Co is unable to push its fibre cable through the existing lead-in conduit (LIC) at a premises. This minimises the requirement for NBN Co to install alternative infrastructure (for example, a new, separate LIC) at a premises in order to complete an installation. The use of pull throughs will support the efficient and timely migration of end-users to the NBN.

Despite these benefits, pull through activities are a multi-stage process which must accommodate existing commercial relationships, market structures and relevant legislative frameworks. In other words, the context for the completion of pull through activities by NBN Co is shaped by the following industry factors:

- **[CIC].**
- **Telstra's ownership and control of the copper network:** The copper network over which fixed line services (including Priority Assistance and medical alarm services) are currently provided is owned and operated by Telstra. NBN Co has limited knowledge and information about Telstra's copper network and the services delivered over it. The Definitive Agreements work to ensure that NBN Co has sufficient knowledge and information about Telstra's network infrastructure to facilitate the efficient and timely rollout of the NBN. NBN Co will use (in part) information provided by Telstra to help work out which cables are (or are not) suitable for a pull through at a premises. This information includes whether a cable is a non-removable cable or whether the line is being used by a Telstra Wholesale customer.
- **Existing Telstra Wholesale arrangements:** NBN Co has no visibility – other than through Telstra - of whether a copper line is being used by a Telstra Wholesale customer, or for what purpose. While, in most circumstances, the end-user will be able to provide details of their current RSP, end-users may not always be able to provide details of all services being provided over all copper lines connected to their premises.

Where services are provided to a premises by a Telstra Wholesale customer, Telstra will also be required to communicate to NBN Co whether that customer has provided consent to the use of that line for a pull through. This information must flow from the wholesale customer through Telstra to NBN Co because Telstra (and not NBN Co) has the relationship with the wholesale customer in respect of each copper line.

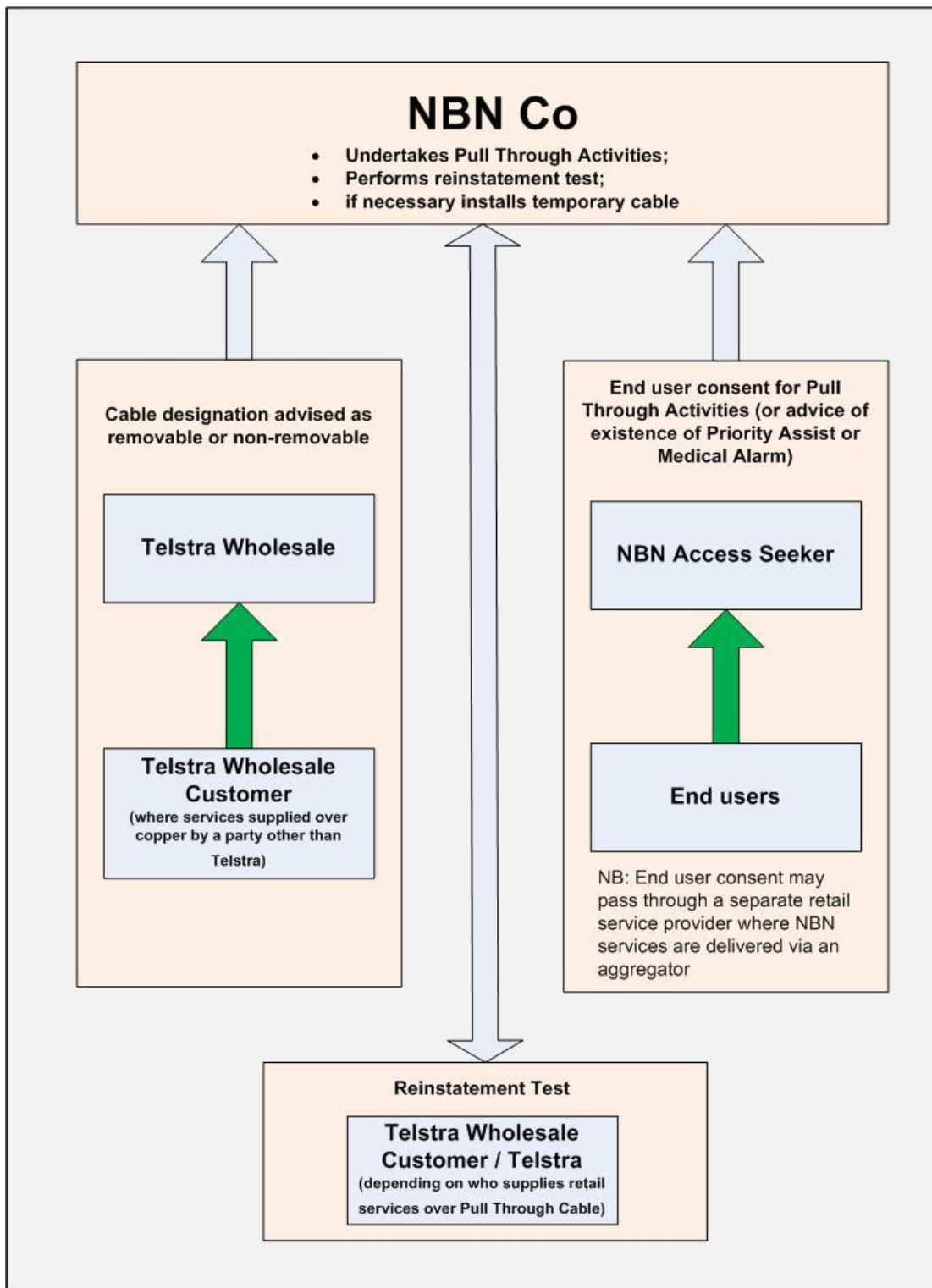
- **The end-user relationship is with the RSP:** RSPs, by definition, have the relationships with the end-users. By contrast, NBN Co has a legislative mandate to provide wholesale layer 2 bitstream services to downstream service providers. Similarly, Telstra Wholesale provides wholesale services to service providers as well as to Telstra retail business units subject to ongoing equivalence and transparency obligations. Accordingly, NBN Co believes it is appropriate for RSPs to have an ongoing role in liaising with end-users about whether they consent to a pull through, as well as to provide information about end-user consents and retail services to NBN Co (such as Priority Assistance and medical alarm services) to support pull through activities. This, in turn, will support the efficient and timely migration of end-users to the NBN.
- **NBN Co's scope of activities:** NBN Co has been established to construct and operate the NBN as well as to provide wholesale layer 2 bitstream services to carriage and content service providers. The legislative framework and the Statements of Expectations (SoE), which together sets out NBN Co's mandate, do not contemplate a role for NBN Co in dealing directly with end-users directly (except in very limited circumstances, such as the Public Information Migration (PIM) Campaign).

Migration Plan Required Measures relating to the pull through connection process
Pull through activities must accommodate the industry landscape

NBN Co's mandate as a wholesale-only entity is reflected in its current Wholesale Broadband Agreement (WBA). It has also shaped NBN Co's construction processes and the design and implementation of its operational processes and supporting infrastructure, such as NBN Co's Billing and IT systems. For this reason, NBN Co does not have the operational capacity to store data and information directly from end-users in relation to existing services being provided over Telstra's copper network. Any requirement to do so would require substantial capital expenditure by NBN Co on IT systems and would delay the migration of end-users to the NBN.

Given the above factors, NBN Co believes strongly that pull through activities require the support of not only Telstra, but also other service providers. In particular, as illustrated in the following diagram, the successful completion of a pull through requires Telstra Wholesale to provide NBN Co with information about whether there is a removable cable available to perform a pull through. It also requires that NBN Co receives information about whether the end user has consented to a pull through (which is provided via the NBN RSP).

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Pull through activities must accommodate the industry landscape



3 Clarification of NBN Co's operational processes for pull through activities

NBN Co considers that the ACCC's Discussion Paper broadly reflects the nature of NBN Co's role where pull through activities are to be completed at an end user premises. However, NBN Co wishes to make the following clarifications:

- Where NBN Co is considering undertaking a pull through at a premises, it will use a combination of both of the following sources to determine whether an existing cable in the lead-in conduit can be used for the pull through:
 - advice from Telstra as to whether a specific cable is non-removable and therefore cannot be used for a pull through (for example, where a Telstra Wholesale customer has not provided the necessary consent for a pull through to occur);¹
 - information NBN Co may already have available at the time of installation which indicates a cable in the LIC cannot be used for pull through.
- NBN Co will not conduct a pull through using a cable which it has been advised is being used to support the provision of a Priority Assistance or medical alarm service.
- NBN Co is presently developing revised end user consent provisions for inclusion in each Customer's WBA. These provisions will address matters such as:
 - obtaining end user consent to enable NBN Co to conduct a pull through where required; and
 - a consent and acknowledgement that a pull through has the potential to disrupt the supply of their existing telecommunication services whilst it is being performed.²

These provisions will require NBN Co's customers to use reasonable endeavours to obtain end-user consent to enable NBN Co to conduct a pull through. **[CIC]**

- Where a pull through has been completed at an end user premises, NBN Co expects that the NBN Co installer will then attempt to reconnect the cable used for the pull through except in limited circumstances. These circumstances include where Telstra specifically advises NBN Co that all services over that cable have been migrated to the NBN and that there is a "complete migration event³".
- A pull through exception event may occur in circumstances other than when a pull through fails. For example, in the event of a 'required consent' being withdrawn or a force majeure event, NBN Co will notify Telstra that a pull through exception event has occurred at the appropriate time which may or may not be when a pull through fails. A pull through exception event may not result in the installation of a temporary cable by the NBN Co installer.

¹ In response to first point on page 8 of the ACCC's Discussion Paper

² In response to third point on page 8 of the ACCC's Discussion Paper

³ In response to first paragraph on page 6 of the ACCC's Discussion Paper

4 Response to Discussion Paper questions

The ACCC's Discussion Paper raises a number of specific questions in relation to Telstra's proposed Required Measures 1(a) and 1(b). As these Required Measures set out proposed processes between Telstra and its wholesale customers, many of the ACCC's questions are most appropriately addressed by Telstra Wholesale customers. Accordingly, NBN Co has only responded to those questions where we anticipate that our views would be of assistance to the ACCC in assessing Telstra's Required Measures.

Question 4

Would the inclusion in the required measures of a notification process to wholesale customers ahead of the use of pull through assist wholesale customers manage service continuity for their end-users?

[CIC].

Question 5

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

[CIC].

Question 6

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

Question 8

Could the required measures be amended in any way to provide additional assurance that Priority Assistance and medical alert customers will be identified to NBN Co?

[CIC].

Question 10

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

[CIC].

Question 12

Within what time period would wholesale customers need to be provided with notification of a pull through exception event in order to take steps to minimise disruption of their end-users' services?

[CIC].

5 NBN Co comments in response to industry submissions

NBN Co has reviewed each of the public submissions lodged with the ACCC in response to its Discussion Paper. In order to assist the ACCC with its assessment of Telstra's Required Measures 1(a) and 1(b), NBN Co provides comment on a number of views expressed in those submissions.

5.1 Telstra

While NBN Co agrees with much of Telstra's supporting submission, it wishes to make comment on three issues raised by Telstra.

First, and most importantly, NBN Co is concerned that Telstra has sought to downplay its ongoing role in the end-to-end pull through process. For example, on Page 2 of its submission Telstra states:

Telstra has little, if any, control over pull through timing and processes, which are the responsibility of NBN Co.

[CIC]. While it is correct that NBN Co's installers will carry out a pull through, this does not mean Telstra has no, or little, role in the end-to-end pull through process. To the contrary, for the reasons detailed in section 2 of this submission, NBN Co considers that Telstra's engagement, participation and involvement in pull through activities is fundamental.

Secondly, in section 2 of its submission, Telstra states:

the RSP should know from inquiries of NBN Co's service qualification (SQ) system when there is a possibility of pull through being used by NBN Co.

Premises classified as SQ 1 will not, by definition, require a pull through. Premises classified as SQ 1 may be connected to the NBN via the installation of either a new underground LIC or via an aerial cable. Hence, for premises classified as SQ 1 a pull through is only a possibility.

Finally, on several occasions, Telstra states that the lead time for a connection to the NBN will be "substantial". For example in section 2 of its submission Telstra states:

NBN Co will inform NBN RSPs in advance of the installation date. There will be some period after the connection order is lodged with NBN Co before the installation date when pull through would occur. This provides an NBN RSP with a significant lead time to plan with an end user and implement measures to mitigate any impact should NBN Co's field staff decide to use pull through on the arranged installation date.

Similarly, in section 6 of its submission Telstra states that:

as pull through is only ever to be used in response to an NBN connection order, the NBN RSP will have a substantial lead time to discuss with the end user and manage any service interruption issues.

NBN Co does not necessarily agree that in all cases lead times will be "substantial". The lead time for any appointment to be connected to the NBN will depend on the preference of the NBN Co Customer and end-users as well as the availability of appointment times in NBN Co's appointment calendar. NBN Co's service levels will also be relevant. Depending on these factors, the lead-time for a connection to the NBN may not be significant.

5.2 Independent Telecommunications Adjudicator (ITA)

While NBN Co concurs with the ITA's view that Telstra's Required Measures may be a source of dispute between Telstra and its wholesale customers, we assume that the ITA is referring to disputes relating to Telstra's conduct in respect of matters set out in Telstra's Migration Plan and the Required Measures and not to disputes in respect of NBN Co's pull through processes. The ITA has been established by reference to Schedule 5 of Telstra's Structural Separation Undertaking (SSU) to resolve equivalence complaints between Telstra and its wholesale customers and has no role or jurisdiction in respect of NBN Co's pull through processes.

In its submission the ITA argues that NBN Co installers need to be properly incentivised so that pull throughs are only conducted when necessary. In this regard the ITA raises a concern that NBN Co installers are more likely to perform a pull through on Friday afternoons and Saturday mornings.

NBN Co does not share the ITA's concerns. This is because pull throughs will only be conducted where an NBN Co installer has been unable to 'push-through' the fibre cable through the Telstra LIC. Where this is not possible, NBN Co installers will be guided by installation guidelines and work practices to determine whether a pull through is appropriate and to carry out the pull through. These guidelines and work-practices will focus on whether it is appropriate to conduct a pull through given the physical condition of the LIC, whether there is a removable cable available (as advised by Telstra and based on information NBN Co has on-hand) and whether there are any Priority Assistance or medical alarm services being provided over the copper line (as advised by the NBN RSP). These guidelines and work practices will be followed by NBN Co installers regardless of the time of day, or day of the week, that the installation is being completed.

NBN Co believes that it is important that the ITA has a good understanding of NBN Co's pull through processes. Accordingly NBN Co invites the ITA to discuss with us its concerns regarding the pull through process as described by the ACCC in its Discussion Paper.

5.3 Telstra Wholesale customers

Three Telstra Wholesale customers have provided submissions in response to the ACCC's Discussion Paper. While each of these submissions deals primarily with Telstra's proposed Required Measures, each contains a number of statements or recommendations relating to NBN Co's proposed pull through processes. The following table sets out NBN Co's views on these statements.

Migration Plan Required Measures relating to the pull through connection process
NBN Co comments in response to industry submissions

Concern / Comment	Source	NBN Co Response
AAPT		
<p>AAPT considers that some detail about the pull through activities (for example at a similar high level detail as provided by the ACCC in the Discussion Paper) needs to be incorporated into Required Measure 1(a), and into the Deed Poll by way of reference to the final Required Measure 1(a) approved by the ACCC. The result of this would in effect limit the definition of “pull through activities”, and consequently the scope of the consent and indemnification provided under the Deed Poll, to pull through activities reviewed and approved by the ACCC.</p>	<p>AAPT submission, paragraph 9, page 4</p>	<p>The nature and scope of Telstra’s Migration Plan relates solely to Telstra’s processes for disconnecting copper and HFC services as the NBN fibre is deployed. Hence, it would not be appropriate for the Migration Plan (including Required Measures 1(a) and 1(b)) to impose obligations on any other parties – including NBN Co - in relation to pull through activities.</p> <p>NBN Co intends to seek any necessary industry feedback in relation to our processes for completing pull throughs at an appropriate time.</p>
<p>AAPT notes that there are a number of circumstances set out in the ACCC’s discussion paper in which NBN Co does not intend to conduct pull through and these should be reflected in Required Measure 1(a) and the Deed Poll so that these specific exceptions or carve outs are expressly excluded from the scope of the consent and indemnification provided under the Deed Poll.</p>	<p>AAPT submission, paragraph 10, page 4</p>	<p>As per the previous response, Telstra’s Required Measures 1(a) and 1(b) are not an appropriate vehicle to capture any aspects of NBN Co’s processes in relation to pull through activities.</p>
<p>Telstra’s wholesale customers should be informed of NBN Co’s belief that pull through can be used at a premises at the same time</p>	<p>AAPT submission,</p>	<p>During the build drop process, NBN Co’s installers will only assess whether the LIC at each premises (where one exists) is suitable for the fibre cable to be ‘pushed</p>

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<p>as NBN Co advises an end user that connection was not possible, and that the premises will instead be connected after the end user places an order with its RSP.</p>	<p>paragraph 16, pages 6-7.</p>	<p>through' the conduit for connection to a premises connection device (PCD).</p> <p>If the LIC is not considered suitable for this purpose, the installer will conduct a preliminary test to ascertain whether the LIC may be suitable for completing a pull through. If that test indicates that the LIC would not be suitable for a pull through, then the NBN Co installer will install alternate infrastructure at the premises at the time of the build drop.</p> <p>It is not feasible for NBN Co to advise the Telstra Wholesale customer that a pull through can be used at the time an end user is advised their premises could not be connected to the NBN during the build drop process. Furthermore, at the time of the build drop NBN Co will not know the identity of the Telstra Wholesale customer(s), since this information is only held by Telstra.</p> <p>NBN Co will only be able to definitively ascertain whether a pull through is possible when the installer returns after an order for an NBN service has been placed by an end user at the premises. It is at this time that NBN Co will liaise with Telstra to determine whether there are any removable cables in the LIC that can be used to complete a pull through.</p>
<p>AAPT considers that it is more efficient, timely and convenient for the customer and NBN Co to conduct Reinstatement or Remote Tests. AAPT presumes the test involves the end user checking that they can make a phone call on the copper service after pull through. Therefore, there is no need to complicate the process by getting a wholesale customer (e.g. AAPT) to contact its customer to get that customer to check they can make calls.</p>	<p>AAPT submission, page 10.</p>	<p>NBN Co notes AAPT's comments. However, as detailed in section 2 of this submission, a pull through, including the processes associated with reinstating services that are supplied over a pull through cable, require the involvement of a range of relevant parties.</p> <p>NBN Co can complete certain limited on-site tests to determine that a cable used for a pull through is active without the involvement of the Telstra Wholesale customer. However, it is preferable that the customer be involved in the reinstatement process as this enables a more comprehensive series of tests to be performed to ensure the end-user has a working service.</p>

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Migration Plan Required Measures relating to the pull through connection process
NBN Co comments in response to industry submissions

Optus		
<p>Optus asserts in its submission that the global consent for pull through activities from Telstra Wholesale customers should be set out in the form of a tri-partite agreement between Telstra, NBN Co and the Telstra Wholesale customer (as opposed to a Deed Poll). Optus further suggest this agreement should capture the respective responsibilities of each party with respect to pull through activities, including with respect to liability for any losses or claims by the end user.</p>	<p>Optus submission, paragraph 2.3 – 2.4, page 4</p>	<p>NBN Co notes that the scope of the Required Measures can only affect the manner in which Telstra engages in agreements with its wholesale customers. The Required Measures cannot bind other parties, in respect of requiring them to enter into contractual arrangements regarding pull throughs, nor can they specify the form of contractual arrangements that parties other than Telstra should enter into.</p> <p>NBN Co questions how a tri-partite agreement would work more effectively, in practice, than the proposed Deed Poll arrangement.</p>
<p>There should be an obligation on NBN Co that the end-user will not be without a service at the end of the pull through activity i.e. before NBN Co leaves the end-user's premises there will be reinstatement of the copper line or installation of a temporary cable.</p>	<p>Optus submission, paragraph 2.5, page 5</p>	<p>NBN Co's operational processes for completing a pull through will be consistent with this principle. That is, NBN Co will either reinstate the cable used for a pull through or install a temporary cable in order to ensure that the end user has an active service (equivalent to the service that existed before the pull through was undertaken) prior to the NBN Co installer leaving the premises (unless there is a complete migration event or a pull through exception event of a nature which requires the installer to leave the premises immediately (e.g. fire or flood)).</p>
<p>Optus contends that NBN Co should obtain specific consent from the end-user once it decides to attempt pull through. In addition, the end-user consent should be stored by NBN Co and produced to the wholesale customer upon request.</p>	<p>Optus submission, paragraph 2.19, page 8</p>	<p>NBN Co's mandate is to function as a wholesale-only entity. Therefore, whilst NBN Co recognises that end-users must have the opportunity to consent to pull through activities, the process of obtaining that consent must properly lie with the NBN retail RSP since they have the direct relationship with the end user.</p> <p>Furthermore, NBN Co's IT systems have not been designed for NBN Co to obtain and manage such information.</p>

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NBN Co comments in response to industry submissions

<p>NBN Co should obtain information from end-users on whether the end-user is a Priority Assistance service or medical alert customer. In the event that an end-user is unsure whether there is Priority Assistance or medical alert services on the existing cable, NBN Co should contact Telstra to verify this information.</p>	<p>Optus submission, paragraph 2.24, page 9</p>	<p>As previously mentioned, NBN Co does not have a direct relationship with end-users. While NBN Co does not intend to undertake a pull through over a line where we have knowledge that it is being used to support a Priority Assistance or medical alert service, we believe that this information is best obtained by those parties that have a direct relationship with the end user (i.e., the NBN RSP and the Telstra Wholesale customer).</p>
<p>Optus contend that NBN Co should enter into separate SLAs regarding pull through activities, including in relation to their duration.</p>	<p>Optus submission, paragraph 2.5, page 5 and 2.20, page 8</p>	<p>Where a pull through is required, NBN Co notes that these form part of NBN Co's connection processes which are subject to the existing service level regime in the WBA. Hence, NBN Co questions the utility of creating a separate SLA to specifically deal with a pull through.</p>
iiNet		
<p>iiNet believes that unless there is a clear incentive for NBN Co to deal with any problems in reconnecting the copper service (where required), end user services could be disrupted for a longer period than necessary. Such an outcome is contrary to section 8(b) of the Migration Principles Determination. iiNet submits that at the very least, NBN Co and Telstra should not be excused from any liability under the section 118A of the Telecommunications (Consumer Protection and Service Standards) Act 1999.</p>	<p>iiNet submission, page 7</p>	<p>NBN Co notes that, where a pull through is required at an end user premises (and appropriate consents have been provided from all relevant parties), this will form part of the process for connecting the premises to the NBN. As a result, NBN Co is subject to the service level regime in the WBA.</p> <p>It should also be noted that NBN Co has an obligation to ensure there is an active working service (equivalent to the service that existed before the pull through was undertaken) at a premises and this will only be departed from in exceptional circumstances (i.e. where a pull through exception event or complete migration event has occurred).</p>

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<p>iiNet believes that the principal responsibility to reinstate copper services (where required) and establish that they are working should rest with NBN Co. It is unclear to iiNet what precise tests would be required. iiNet submits that it may be necessary to distinguish between 'on net' services and 'off net' services as regards the particular testing that a wholesale customer may be able to undertake. iiNet believes that any obligation on wholesale customers to carry out testing should be subject to there being a clear procedure and agreement in place with NBN Co that governs what tests are to be undertaken and in what circumstances. This should also, where appropriate, include an obligation on Telstra to conduct the relevant tests (e.g. where Telstra is better able to do so, for example in the case of 'off net' services).</p>	<p>iiNet submission, pages 12-13</p>	<p>NBN Co acknowledges that there may be some variance in the nature of the reinstatement tests undertaken depending on the type of services delivered over a copper line used a pull through (including whether they are on-net or off-net services). Nevertheless, the principal objectives of these tests will at all times be to ascertain whether the line is active and has been successfully reconnected to the premises and the network of the relevant Telstra Wholesale customer.</p> <p>[CIC].</p> <p>NBN Co does not believe that it would be feasible to establish a separate agreement with each Telstra Wholesale customer to govern what tests will be undertaken and in what circumstances, since this will vary depending on what services are being supplied by the Telstra Wholesale customer at each premises and whether NBN Co has re-connected the pull through cable (this may not occur where all services have been migrated to the NBN and Telstra has advised NBN Co this is the case).</p>
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Migration Plan Required Measures relating to the pull through connection process
Appendix A [CIC]

Appendix A [CIC]

[CIC].

Migration Plan Required Measures relating to the pull through connection process
Appendix B [CIC]

Appendix B [CIC]

[CIC].