



24 August 2020

Mr Sean Riordan
General Manager, Communications Markets and Advocacy
Australian Competition and Consumer Commission
Level 17, Casselden Place
2 Lonsdale Street
Melbourne Vic 3000
Email: sean.riordan@accc.gov.au

Copy To:

Mr Darren Kearney
Email: darren.kearney@accc.gov.au

Mr Rod Middleton
Email: rodney.middleton@accc.gov.au

Ms Ifa Rushdi
Email: ifa.rushdi@accc.gov.au

Dear Mr Riordan,

Notification of Telstra's performance being affected by a Force Majeure Event under Telstra's Migration Plan

On 11 August 2020, following agreement with nbn co, Telstra advised Wholesale Customers of further changes to planned management disconnections in response to the COVID-19 pandemic. This decision followed the ongoing developments in the state of Victoria, given its potential effect on the service continuity objective, and the risks to the health and safety of end-users, our front-line employees and the front-line employees of nbn co and other RSPs.

In the circumstances outlined below, Telstra considers the current impacts of the COVID-19 pandemic constitutes a Force Majeure Event which could prevent or delay Telstra from performing its obligations under the Migration Plan with respect to affected premises, until such time as its impacts are sufficiently mitigated (and it is appropriate for our Migration Plan obligations to recommence). This letter therefore provides you with notification under clause 4.5(c)(i) of the Migration Plan.

Under clause 4.5 of the Migration Plan, Telstra will not contravene the Migration Plan, or be liable for any delay or failure to perform obligations, to the extent that the delay or failure is caused by a Force Majeure Event. The full set of Force Majeure Events is set out in the Migration Plan and includes any act or omission (including laws, regulations) of any government or government agency and also for labour disturbances (that are not confined to employees of Telstra or nbn co).

The changes we are now proposing reflect concerns raised to us by RSPs in respect of recent developments with the COVID-19 situation in Victoria (i.e. State of Disaster declaration), and the implications for their currently scheduled disconnection arrangements.

The details of the amended arrangements we are seeking to put in place, with nbn co's consent, are as follows:



Premises in Victoria included within the disconnection cohort previously granted a migration window of 80 BDs from 1 July 2020

We are proposing to defer the scheduled disconnection arrangements for premises (as previously advised) in the state of Victoria with remaining active services as follows:

Table 1				
Cohort of Premises in Victoria impacted:	Status	Lead time from 1 July 2020 until Service Disconnection step completes:	Service Disconnection commences from:	Service Disconnection step completes:
1. All Waves up to and including Wave 67 i.e. DD's up to 17-Jan-2020.	Existing	80 BDs	16-Oct-2020	22-Oct-2020
2. Changed Technology SS Premise with an Extension Date up to 30-Jun-2020.				
3. Frame Relay and ISDN SS In-Train Order Premises subject to the 30-Sep-19 SS DD (i.e. FTTP, FTTB and FTTN).	Proposed	120 BDs	14-Dec-2020	18 Dec-2020

These proposed arrangements will align the disconnection milestones and timings for all waves up to wave 67, with the existing scheduled arrangements currently in place for waves 68, 69 and 70 (as previously advised in our letter dated 3 July 2020).

Details of these revised disconnection arrangements as they apply to specific services will be communicated to Wholesale Customers via their Service Profile available on our Wholesale Customer Portal.

Premises within registered Nursing Homes and Aged Care facilities

We are particularly concerned for the health and wellbeing of end-customers within registered Nursing Homes and Aged Care facilities either in Victoria or in other states and territories where lock-down or site restrictions are being enforced. From the perspective of arranging migrations to the nbn, we are aware that field technicians may be prevented from gaining access to these sites to undertake the necessary work to successfully connect. We are also aware that residents, their families and staff at these facilities have more urgent priorities at this time.

We are currently seeking to identify all impacted end-customer premises scheduled for upcoming disconnection arrangements during the 2020 calendar year (i.e. up to and including Wave 78 (DD 13-Nov-2020)). To assist us with this task, we have requested Wholesale Customers notify us of any remaining active copper or HFC based services associated with their end-customers who they understand are located within a registered Nursing Home or Aged Care facility in:



1. Victoria; and
2. other states and territories within Australia where access to the site is either currently locked-down or restricted (either Government of facility management enforced).

We will proceed to protect identified premises from managed disconnection activity for the foreseeable future until formalised arrangements can be developed together with nbn co. We will keep Wholesale Customers and the ACCC informed and provide sufficient notice of when managed disconnections will recommence.

Clarification of the status of arrangements for other premises subject to upcoming Disconnection Dates

At this current time, with an exception for those premises within registered Nursing Homes and Aged Care facilities described above, there is no change proposed to the arrangements for the upcoming Disconnection Dates (i.e. from 11-Sep-2020 and beyond). nbn connection orders can still be submitted for these premises so they will receive the protection afforded by the In-Train Order Period, being up to 150 BDs post Disconnection Date.

We have however requested that our Wholesale Customers and Retail BU advise us of any vulnerable customers or exceptional circumstances, which we will initially seek to manage together with nbn co and the requesting RSP via the existing escalation process.

Migration Plan Obligations impacted

As we have not developed a proposal together with nbn co as to how to recommence managed disconnections for premises within registered Nursing Homes and Aged Care facilities at this current time, we are not yet able to advise all the obligations under the Migration Plan likely to be impacted.

The obligations we expect will be impacted are already impacted by the arrangements we advised to you in our letter on 3 July 2020. This includes our standard managed disconnection obligations as per clauses 14 and 15, together with Required Measures 2 and 3. Other supporting obligations will likely include the provisioning of notifications to Wholesale Customers and Retail customers, as per clause 8 and Required Measure 2 and also the requirement per clause 21 to apply Soft Dial Tone after Disconnection Date where practicable. Obligations relating to the disconnection of Special Services under the Required Measure 5s together with clause 22 will also likely be impacted (to the extent services currently remain active under these rules).

Separate to our obligations in the Migration Plan, we note there will likely be a slow-down in Telstra Retail Customer nbn migration activity in Victoria during the period of heightened restrictions. This will not affect Retail Customers who do not require works at their premise and are capable of self-installing their nbn related equipment. Where a professional installation is required, we are now scheduling this activity with our Retail Customers until after the heightened restrictions are currently scheduled to ease.

Next Steps

Our response to managed disconnection activity in the face of the uncertainty and risk created by the COVID-19 situation continues to evolve. We will continue to provide you with updates of any material 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(c)(ii) of the Migration Plan, Telstra will notify the ACCC in the event that it becomes aware that the Force Majeure Event has ceased to affect its obligations under the Migration Plan.

Should you have any queries about this matter please contact me or Peter Walsh on (03) 8694 3854.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Iain Little'.

Iain Little
Director of Equivalence
Sustainability, External Affairs & Legal
iain.little@team.telstra.com