

1 July 2016

Mr Sean Riordan
General Manager
Industry Structure and Compliance Branch
Australian Competition and Consumer Commission
Level 35, The Tower
360 Elizabeth Street
MELBOURNE VIC 3000
Email: sean.riordan@acc.gov.au

Dear Mr Riordan

Proposed amendments to long term In-Train Order arrangements and update regarding the Special Services Disconnection Date for Special Service Classes covered by the NEBS Paper

Proposed amendments to long-term In-Train Order arrangements

We refer to the ACCC's Discussion Paper on Telstra's Proposal to Vary the Migration Plan (**ACCC Discussion Paper**) and to Optus's response submission dated June 2016 (**Optus submission**).

The Optus submission raised concerns that the proposed long-term arrangements may not provide sufficient time to connect end users who require complex porting and installation activities before managed disconnection occurs. In an effort to address these concerns, Telstra and nbn co have commercially agreed to modify the proposed long-term arrangements for In-Train Orders as set out below.

There will be two test points (instead of the three initially proposed) that serve as triggers for disconnection, as follows:

- (a) A test point at 60 Business Days after the Disconnection Date. (This will pick up any In-Train Order Premises that are nbn connected between the date that is four months before the Disconnection Date and the Disconnection Date, and where all orders for an nbn wholesale service at the Premises have either been nbn connected or cancelled by DD-1 day. Any such Premises that are included on the Disconnection lists at 60 Business Days after the Disconnection Date will be disconnected as soon as reasonably practicable after that date that is 90 Business Days after the Disconnection Date.)
- (b) A test point at 120 Business Days after the Disconnection Date (after which point any remaining In-Train Order Premises will be disconnected as soon as reasonably practicable after the date that is 150 Business Days after the Disconnection Date).

These arrangements are illustrated as the 'Proposed ITO approach' in the diagram in Appendix A.

Special Services Disconnection Date for SS Classes covered by the nbn co paper 'Temporary Special Services White Paper: Ethernet Lite and Wholesale BDSL on the nbn Ethernet Bitstream Service' published on 30 September 2015 (NEBS Paper)

The Varied Migration Plan provides that if the ACCC approves the variation to the Migration Plan by 23 June 2016, the NEBS Paper shall be deemed to be a White Paper and the Disconnection Date for the SS Classes covered by the NEBS Paper will be 12 November 2018. In our supporting submission we indicated that if the Varied Migration Plan was not approved within that timeframe, Telstra and nbn co would commence

commercial discussions, and advise industry of the outcomes of those discussions, including the status of the NEBS Paper and whether any Special Services Disconnection Date applies to Special Services and Special Service Inputs that are of a SS Class covered by the NEBS Paper.

We confirm that Telstra and nbn co have agreed to extend the timeframe in which the ACCC may approve the variation while retaining the 12 November 2018 Disconnection Date. Accordingly, if the ACCC approves the Varied Migration Plan by 22 July 2016, the NEBS Paper shall be deemed to be a White Paper and the Disconnection Date for the SS Classes covered by the NEBS Paper will be 12 November 2018.

Specific comments on Optus's concerns regarding the proposed Special Services arrangements

The Optus submission raised concerns regarding the introduction of additional complexity into the migration process by splitting up each type of Special Service depending on the access technology nbn co proposes to use to connect a particular Premises to the nbn. In particular, Optus appears concerned with nbn co's ability to progress the withdrawal of Special Services over FTTP, FTTN and FTTB before developing the product functionality to enable Special Services to be supported over HFC.

As we have previously noted, this additional requirement of the relevant underlying access technology (e.g. FTTN, FTTB, etc) being used to determine whether a Special Service / Special Service Input will proceed to disconnection largely reflects the new MTM approach to the rollout of the nbn and is unrelated to our proposed amendments to the Special Services regime in the Migration Plan.

In responding to Question 7 of the ACCC's Discussion Paper (which sought feedback on whether an additional 12 months provides RSPs with sufficient time to develop substitute products and establish processes), the Optus submission indicated a 12 month extension would be sufficient where the access technology is available and tested in the market, but may not be sufficient where an access technology is new and untested in the market, for example, FTTDP.

For a disconnection obligation to be triggered for Special Services where an access technology is new and untested, nbn co would need to issue a White Paper that covered the relevant SS Classes proposed to be connected using that access technology and either Telstra does not contest that paper or, if it does, an independent assessor finds in favour of nbn co. Using the FTTDP example, the following steps would be necessary:

- new access technology would need to be incorporated in tables 1 and 2 of Schedule 4 to the Migration Plan (per new clause 22.16);
- nbn co would then need to issue a White Paper covering the relevant SS Classes (e.g. Wholesale Business DSL (W-BDSL) for FTTDP)
- the disconnection timeframe of 36 months would commence after the White Paper is issued (if Telstra accepts that the product functionality enables Telstra to support services on the NBN which are equivalent to the SS Class on the Copper Network). A disconnection timeframe of either 35 or 34 months would apply if Telstra contests the White Paper and an independent assessor finds in favour of nbn co (in accordance with new clause 22.4(a)).

Regardless of whether the White Paper is disputed, this timeframe will be longer from the date the White Paper is issued than the 24 months referred to in the Optus submission.

Approximate numbers of Special Services and Special Service Inputs Telstra supplies to Wholesale Customers

The ACCC has requested the numbers of Direct Special Services and Special Service Inputs Telstra supplies to its Wholesale Customers. We are able to provide approximate numbers of affected services only, but estimate this to be in the order of [c-i-c] services.

While Christine Williams and Jane van Beelen are on leave, please do not hesitate to contact me on (03) 8649 2056 if you have any questions in relation to this matter.

Yours sincerely,



Jennifer Sirca
Acting Director of Equivalence
Corporate Affairs
jennifer.sirca@team.telstra.com

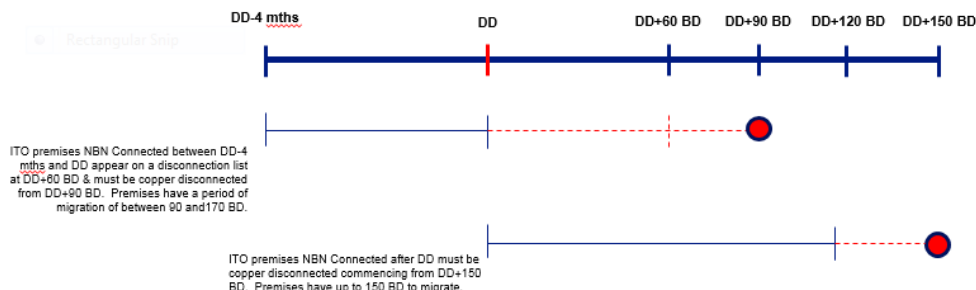
Appendix A – Proposed In-Train Order arrangements

Proposed in-train order (ITO) rules

Proposed ITO approach

Description

- Two managed disconnection events (+90BD and +150BD)



Varied Migration Plan ITO approach

Description

- Three managed disconnection events (+90BD, +120BD and +150BD)

