



# Proposed Variation to Telstra's Migration Plan – December 2021

ACCC decision

February 2022



Australian Competition and Consumer Commission

© Commonwealth of Australia 2022

This work is copyright. In addition to any use permitted under the Copyright Act 1968, all material contained within this work is provided under a Creative Commons Attribution 3.0 Australia licence, with the exception of:

- the Commonwealth Coat of Arms
- the ACCC and AER logo
- any illustration, diagram, photograph or graphic over which the Australian Competition and Consumer Commission does not hold copyright, but which may be part of or contained within this publication.

The details of the relevant licence conditions are available on the Creative Commons website, as is the full legal code for the CC BY 3.0 AU licence.

Requests and inquiries concerning reproduction and rights should be addressed to the Director, Corporate Communications, ACCC, GPO Box 3131, Canberra ACT 2601, or [publishing.unit@accc.gov.au](mailto:publishing.unit@accc.gov.au)

[www.accc.gov.au](http://www.accc.gov.au)

Executive Summary .....	3
1. Introduction .....	5
1.1. Legislative framework .....	5
1.2. Telstra’s proposed variation (including subsequent amendment).....	6
1.2.1. Initial consultation .....	6
1.2.2. Amendment to the proposal .....	7
1.2.3. Further consultation .....	7
2. Proposed Migration Plan variation.....	8
2.1. Disconnection of services to multi-dwelling unit common areas and fire and lift telephones .....	8
Initial consultation.....	9
Revised variation proposal .....	9
Further consultation.....	10
Assessment against the Migration Plan Principles.....	10
2.2. Disconnection of premises not NBN-serviceable.....	12
Assessment against the Migration Plan Principles.....	12
2.3. Private payphones services .....	14
Assessment against the Migration Plan Principles.....	14
2.4. Authority to approve reconnections of legacy copper and HFC services .....	15
Assessment against the Migration Plan Principles.....	15
2.5. Minor amendments .....	16
3. ACCC Decision .....	17

## Executive Summary

The Migration Plan sets out the steps that Telstra will take to progressively migrate voice and broadband services from its copper and hybrid fibre coaxial networks to the NBN. The first Migration Plan was approved by the ACCC in 2012. The ACCC has since considered and approved a number of variations.

On 13 August 2021 Telstra submitted to the ACCC a proposed variation to the Migration Plan as agreed with NBN Co covering:

- amendments to the disconnection arrangements for services to multi-dwelling unit common areas (MDUCA) and fire and lift telephones
- extension of the timeframe for disconnection of premises that are not NBN-serviceable
- amendments to allow for public and private payphone services to be differentiated in the Migration Plan, to enable Telstra to exit the provision of private payphone services
- amendments to expand the authority within Telstra for the reconnection of copper and hybrid fibre coaxial services in accordance with the Migration Plan.

On 22 September 2021 the ACCC published the proposal and supporting documents seeking submissions by 21 October 2021. Three submissions were received.

Submissions from Telstra Retail and Macquarie Telecom expressed concern about the proposed disconnection of MDUCA and fire and lift telephone services from 18 March 2022. Due to the impacts of COVID-19, equipment shortages, difficulty in obtaining technical support and the December-January holiday period, this was seen as insufficient time to migrate users of these services—particularly without an in-train order (ITO) process.<sup>1</sup>

Telstra wrote to the ACCC on 20 December 2021 withdrawing the MDUCA and fire and lift telephone services variation and provided an amended proposal. It included an ITO arrangement for MDUCA and fire and lift telephone services, incorporating an ITO arrangement for fire and lift telephone services where customers are migrating these services to a non-NBN technology. The ITO arrangement only applies to services for which the Rollout Region Disconnection Date (RRDD) occurs before 18 March 2022. All other services would remain under standard disconnection arrangements commencing on their RRDD. Telstra advised that NBN Co agreed to the amended proposal.

On 20 December 2021 the ACCC published the varied proposal and supporting documents seeking submissions by 28 January 2022. The ACCC received one submission from Macquarie Telecom on the varied proposal, which did not object. The other three variations in the original proposal were not the subject of any submissions during either consultation.

Pursuant to subsection 577BF(3) of the *Telecommunications Act 1997* the ACCC must approve the variation if it is satisfied that the final Migration Plan as varied complies with the Migration Plan Principles,<sup>2</sup> or otherwise refuse to approve the variation.

The ACCC has considered both the specific and general principles of the Migration Plan Principles that are relevant to the proposed variation. We consider that Telstra's proposal complies with the specific Migration Plan Principles, where relevant. Further, we consider that the proposed variation strikes an appropriate balance between the general Migration

---

<sup>1</sup> An ITO is a process that allows disconnection of a service to be delayed for a set period if an order to migrate has been made but not yet connected.

<sup>2</sup> [https://www.infrastructure.gov.au/sites/default/files/Telecommunications-Migration-Plan-Principles-Determination-2015\\_0.pdf](https://www.infrastructure.gov.au/sites/default/files/Telecommunications-Migration-Plan-Principles-Determination-2015_0.pdf)

Plan Principles of ensuring efficient and timely disconnection and minimising the disruption of supply. Therefore, the ACCC is satisfied that the final Migration as varied complies with the Migration Plan Principles.

As such, the ACCC has decided to **approve** the amendments to the Migration Plan as specified in Telstra's amended variation proposal dated 20 December 2021.

# 1. 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. It also includes obligations to manage information obtained by Telstra from NBN Co and a commitment to develop certain operational processes (Required Measures).

The first Migration Plan was approved by the ACCC on 7 March 2012. The ACCC has since considered and approved a number of variations, including in relation to:

- the move to a multi-technology mix rollout model adopted by NBN Co and revised Definitive Agreements between Telstra and NBN Co for the rollout
- deferral of disconnection and changes to In-Train Order arrangements
- the use of Fibre-to-the-Curb as an access technology for the NBN
- changed arrangements for the migration of Special Services and Hybrid Fibre Coaxial Services.

The existing Migration Plan was approved by the ACCC on 6 February 2020 (as submitted by Telstra on 18 November 2019).

## 1.1. Legislative framework

The *Telecommunications Act 1997* creates the framework for the assessment of a proposed variation to the Migration Plan. Part 33 sets out the regulatory framework for the structural separation of Telstra. Under subsection 577BC(1), Telstra may have a Migration Plan approved by the ACCC in order to implement its chosen form of structural separation and the Migration Plan must comply with the Migration Plan Principles.<sup>3</sup>

The ACCC's role in assessing a proposed variation to the Migration Plan is limited to:

- approving the proposed variation if it is satisfied that the varied Migration Plan complies with the Migration Plan Principles, or
- refusing to approve the proposed variation if it is not satisfied that the varied Migration Plan complies with the Migration Plan Principles.<sup>4</sup>

The ACCC cannot amend the proposed variation or require changes to be made. However, Telstra can amend its proposals to address any concerns raised by stakeholders during public consultation or by the ACCC.

The ACCC assesses a proposed variation to ensure that the Migration Plan, as varied, complies with the Migration Plan Principles. The Migration Plan Principles define the objectives and scope of a Migration Plan and prescribe the way in which the Migration Plan can deal with service disconnection and migration issues. There are three types of principles:

- general principles – the overarching principles that must be met by the Migration Plan, including equivalence and service continuity objectives
- specific principles – further detail about how some of the general principles are to be given effect in the Migration Plan

---

<sup>3</sup> <https://www.infrastructure.gov.au/media-centre/publications/telecommunications-migration-plan-principles-determination-2015>

<sup>4</sup> Section 577BF of the *Telecommunications Act 1997*.

- procedural principles – the procedural provisions that must be included in the Migration Plan.

Clause 8(2) of the Migration Plan Principles states that where a specific principle or a procedural principle relates to a matter, the Migration Plan will be taken to comply with the Migration Plan Principles, including the general principles, in respect of that matter if and to the extent that the migration plan complies with that specific principle or procedural principle.

The general principles include:

- the efficient and timely disconnection of carriage services from the separating network
- minimising disruption to the supply of services to the extent that it is within Telstra's control
- giving wholesale customers autonomy over decisions associated with disconnection to the greatest extent practicable
- treating disconnection for wholesale customers equivalently to Telstra's own retail services to the greatest extent practicable.

The general principles are relevant if the proposed variation 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. If this is the case, the ACCC must consider the matter in light of all the principles, including the general principles, and decide whether those provisions of the proposed variation should be accepted.

## 1.2. Telstra's proposed variation (including subsequent amendment)

On 13 August 2021 Telstra submitted to the ACCC a proposed variation covering:

- amendments to the disconnection arrangements for services to multi-dwelling unit common areas (MDUCA) and fire and lift telephones
- extension of the timeframe for disconnection of premises that are not NBN-serviceable
- amendments to allow for public and private payphone services to be differentiated in the Migration Plan, to enable Telstra to exit the provision of private payphone services
- amendments to expand the authority within Telstra for the reconnection of copper and hybrid fibre coaxial services in accordance with the Migration Plan.

The proposal was accompanied by a supporting document and marked-up version of the varied Migration Plan as proposed.<sup>5</sup> Other more minor and technical changes were included and were also set out in the supporting document under the heading 'Other matters'.

### 1.2.1. Initial consultation

Submissions from Telstra Retail and Macquarie Telecom expressed concern about the proposed disconnection of MDUCA and fire and lift telephone services from 18 March 2022. Due to the impacts of COVID-19, equipment shortages, difficulty in obtaining technical support and the December-January holiday period, this was seen as insufficient time to migrate users of these services—particularly without an ITO process.

---

<sup>5</sup> <https://www.accc.gov.au/regulated-infrastructure/communications/industry-reform/telstras-migration-plan/variation-request-submitted-0>

### **1.2.2. Amendment to the proposal**

Telstra wrote to the ACCC on 24 November 2021 advising that it would provide a revised variation proposal as a result of submissions received.

Telstra wrote to the ACCC on 20 December 2021 withdrawing the MDUCA and fire and lift telephone services related variation and provided an amended proposal. It included an ITO arrangement for MDUCA and fire and lift telephone services, incorporating an ITO arrangement for fire and lift telephone services where customers are migrating these services to a non-NBN technology.<sup>6</sup>

The variations relating to the other three issues were unchanged.

### **1.2.3. Further consultation**

On 20 December 2021 the ACCC published the varied proposal and supporting documents seeking submissions by 28 January 2022. The ACCC received one submission on the varied proposal which did not object. Macquarie Telecom submitted that the ITO proposal addressed the issues it had raised in its earlier submission.

The other three variations in the original proposal were not the subject of any submissions during consultation.

---

<sup>6</sup> <https://www.accc.gov.au/regulated-infrastructure/communications/industry-reform/telstras-migration-plan/replacement-variation-request-submitted>



## 2. Proposed Migration Plan variation

The following discusses the amendments to the Migration Plan proposed by Telstra and provides the ACCC's assessment against the Migration Plan Principles.

### 2.1. Disconnection of services to multi-dwelling unit common areas and fire and lift telephones

Under the Existing Plan, copper services to MDUCAs have been subject to an ongoing deferral from managed disconnections due to a dependency upon the End of Rollout Date, which is yet to be notified to Telstra by NBN Co. Under the Existing Plan, the managed disconnection of services to MDUCAs is required to occur on or before 24 months after the End of Rollout Date. This is a date that NBN Co will notify Telstra of based on certain conditions being met in the future. At this time the date is unknown.

In its 13 August 2021 variation proposal supporting document, Telstra stated:

*Telstra entered into an agreement with nbn co under the Definitive Agreements to amend those arrangements in December 2020, in recognition that:*

- *nbn co has completed the initial build of its fixed line network and nbn co will continue to increase the proportion of premises inside the Fixed Line Footprint that are nbn-serviceable.*
- *Telstra would not be able to provide its Wholesale or Retail Customers with certainty on the actual timeframes for the managed disconnection of MDU Common Areas until nbn co had notified Telstra of the End of Rollout Date.*
- *There is no compelling reason to continue to have a managed disconnection dependency on the End of Rollout Date.*

Under Telstra's 13 August 2021 variation proposal, managed disconnection would have occurred from 18 March 2022 for services to MDUCAs that had a Rollout Region Disconnection Date before that date, or the relevant Rollout Region Disconnection Date if later. We have not set out details of this aspect of the proposal here as it was replaced by the 20 December 2021 proposal.

The 13 August 2021 variation proposal also included other changes relating to MDUCAs. These changes are set out below and remain in place under the 20 December 2021 variation proposal:

- Where NBN Co notifies Telstra that premises have been reclassified from being MDUCAs they will become known as 'untagged' premises. In this case, the disconnection date will be either:
  - if within the 6 months before the Rollout Region Disconnection Date, then that date will be the disconnection date
  - if after 6 months prior to the Rollout Region Disconnection Date, the later of 90 business days after Telstra is notified or 150 business days after the Rollout Region Disconnection Date.
- Changes to the dates applicable to publication of certain 'Required Measures' setting out managed disconnection processes, to reflect the MDUCA disconnection date rather than the 'End of Rollout Disconnection Date', as that is no longer relevant if the MDUCA variation is accepted.
  - Telstra's 13 August 2021 supporting document also noted that Special Services (generally business-grade services) will be disconnected in

accordance with either the MDUCA Disconnection Date or the 'Final Sunset Exit Date', whichever occurs first.

## Initial consultation

During consultation the ACCC received submissions from Telstra Retail and Macquarie Telecom that raised concerns about the 18 March 2022 disconnection date for services to MDUCAs and fire and lift telephones based on:

- the impacts of COVID-19 on a range of matters
- certain equipment shortages (i.e., related to a worldwide shortage of semi-conductors)
- difficulty in obtaining technical services in the required timeframe
- the December-January holiday period and related industry shutdown.

Both submissions proposed an ITO arrangement that would provide additional time before disconnection for any service where an order for a new service had been placed but not yet connected. ITO arrangements have previously been applied under the Migration Plan for other services to promote service continuity during the migration process.

## Revised variation proposal

On the basis of these concerns, Telstra and NBN Co agreed a way to implement an ITO arrangement for services to MDUCAs and fire and lift telephones and Telstra submitted a revised Migration Plan variation proposal that reflected this change. Telstra's varied proposal contains an ITO process for certain fire and lift telephone services that will apply whether those services are in an MDUCA or not.<sup>7</sup> Many if not most fire and lift telephone services will migrate to non-NBN services and an ITO process will apply in those cases.

Telstra's supporting documents provided on 13 August 2021 and 20 December 2021 are to be read together, as the 20 December supporting document only covers the changes to include an ITO arrangement. Other amendments relating to MDUCAs remain as they did in the original variation proposal (described above).

Under the revised proposal, where an MDUCA or extended fire and lift service has a Rollout Region Disconnection Date/Extended Fire and Lift Services Disconnection Date later than 18 March 2022, standard disconnection arrangements will still apply.

If an MDUCA service does not meet the requirements for an ITO arrangement, disconnection will commence 55 days after 18 March 2022 and the service would be disconnected on or before<sup>8</sup> 8 June 2022. For extended fire and lift services that do not meet the requirements for an ITO arrangement, the timeframe is slightly longer at 75 business days after 18 March 2022 (i.e., disconnection on or before 7 July 2022).

The ITO arrangement in the revised variation proposal will be available for **MDUCAs** (except for extended fire and lift services) where:

- the Rollout Region Disconnection Date occurred prior to 18 March 2022, and
- NBN Co has received an NBN Initial Connection Order or NBN Subsequent Connection Order within 40 Business Days after 18 March 2022.

---

<sup>7</sup> The fire and lift variation would provide a disconnection timeframe and ITO process for all services on NBN Co's Fire and Lift Register, whether or not they are in an MDUCA. This could include services such as a lift in a private residence.

<sup>8</sup> Disconnection could occur before this date if requested by the Retail Service Provider on behalf of an end-user.

For **extended fire and lift services**, the ITO process will be available where:

- the Rollout Region Disconnection Date occurred prior to 18 March 2022, and
- either:
  - NBN Co has received an NBN Initial Connection Order or NBN Subsequent Connection Order, or
  - it is a registered fire or lift service (i.e., on NBN Co's Fire and Lift Register) and appears on a list of services migrating to a non-NBN network (with the process to be determined)

within 40 Business Days after 18 March 2022.

Being subject to an ITO arrangement will provide an additional 170 business days from 18 March 2022 until managed disconnection for MDUCAs and extended fire and lift services commences (i.e., managed disconnection for these services will commence from 22 November 2022 and will complete by 29 November 2022).

Telstra did not propose a change to the 18 March 2022 date on the basis that it had provided notice of this date to wholesale customers and retail business units over 12 months ago and did not want to introduce confusion as to the date.

### **Further consultation**

On 20 December 2021 the ACCC published the varied proposal and supporting documents seeking submissions by 28 January 2022. The ACCC received one submission on the varied proposal which did not object. Macquarie Telecom, which had raised concerns at the lack of an ITO arrangement in its first submission, indicated that the proposed ITO arrangement addressed its concerns.

### **Assessment against the Migration Plan Principles**

In its revised supporting document that accompanies the revised variation, Telstra stated:

*Telstra considers its proposal to amend the disconnection arrangements for MDU Common Areas and Extended Fire or Lift Services is consistent with the MPPs, particularly general principle 10 and specific principles 12 and 14. General principle 10(1)(a) seeks to ensure disconnection processes are efficient and timely, which is why the disconnection arrangements have established a specific disconnection trigger date for Premises in a RRDD prior to 18 March 2022. Given general principle 10(1)(b) requires that, to the extent it is in Telstra's control, disconnection occurs in a way that minimises disruption to the supply of fixed-line carriage services, the Further Varied Plan includes a process for MDU Common Areas and Extended Fire or Lift Services to obtain the benefit of ITO arrangements.*

*Specific Principle 12 further requires the Migration Plan to include processes for disconnection of copper services in a Rollout Region following the RRDD. The Further Varied Plan makes clear the disconnection process for MDU Common Areas and Extended Fire or Lift Services located in a Rollout Region with a Disconnection Date before 18 March 2022. The Further Varied Plan also makes clear that all remaining MDU Common Areas and fire alarm or a lift phone services located in Rollout Regions where the Disconnection Date is on or after 18 March 2022 will be disconnected in accordance with the normal procedures.*

*Specific Principle 14 requires that services at an MDU Common Area within the Fixed Line Footprint are disconnected on or before the date that is the later of:*

- 24 months after the End of the Rollout Date; and
- 20 Business Days after the disconnection date for the relevant Rollout Region. The Further Varied Plan does not amend the disconnection date for MDU Common Areas, except for allowing MDU Common Areas to obtain the benefit of ITO arrangements. As such, we refer to our submissions for the Varied Plan with respect to this specific principle 14.

Telstra's 5 August 2021 supporting document further stated in relation to Specific Principle 14:

*The basis for assessing compliance with Specific Principle 14 is that the managed disconnection of MDU Common Areas will now commence prior to and will complete prior to the milestone that is 24 months after the End of Rollout Date. Accordingly, it is not expected these arrangements would result in an inconsistency with the second limb of Specific Principle 14, regarding disconnections of MDU Common Areas needing to occur within 20 Business Days of the RRDD, where the applicable RRDD occurs after the milestone that is 24 months after the End of Rollout Date.*

*Telstra notes that nbn co has not yet notified when the End of Rollout Date will occur under the Definitive Agreements. Practically therefore, as the End of Rollout Date milestone cannot occur earlier than August 2021, the milestone that is 24 months after the End of Rollout Date cannot occur prior to August 2023.*

The ACCC agrees with Telstra that Specific Principles 12 and 14, as well as General Principles 10(1)(a) and (b) are relevant to considering the revised variation proposal. The variation is relatively complex and covers matters not explicitly dealt with by the specific principles, so consideration of both the specific and general principles is appropriate in this case.

Specific Principle 12 requires processes to be set out for, broadly, the disconnection of services, disconnection of 'no-order' services after the Rollout Region Disconnection Date, as well as any circumstances where the premises will not be disconnected.

The MDUCA/fire and lift telephone services proposal provides processes relating to the disconnection of copper services following a Rollout Region Disconnection Date. The proposal does not appear to make amendments to the Migration Plan that would cause it not to be compliant with Specific Principle 12.

Specific Principle 14 contains a range of requirements relating to MDUCAs. Most are not affected by the variation proposal. Most relevant is the requirement that MDUCAs within the fixed line footprint be disconnected within the later of:

- 24 months after the End of Rollout Date
- 20 business days after the disconnection date for the Rollout Region.

Telstra noted that NBN Co has not yet advised of the End of Rollout Date under the Definitive Agreements. At the time of this decision the ACCC is not aware of the End of Rollout Date having been confirmed by NBN Co.

Given the timeframes involved and the issues raised in submissions, the ACCC considers the inclusion of an ITO arrangement is important for balancing the requirements of general principle 10(1)(a) and (b) to ensure efficient and timely disconnection, while minimising disruption of supply of services. Notwithstanding that many users of services to MDUCAs and fire and lift telephones have been on notice of impending disconnection for a number of years, the confirmation of a deadline of 18 March 2022 (i.e., when the proposed variation

would only have been finalised by late 2021 / early 2022) could still have been challenging for a smooth migration to alternative services.

In addition, as some of the services relate to fire and lift telephones, safety is a critical consideration for Telstra and its customers (and NBN Co) – even if not an explicit consideration in the Migration Plan Principles. Fire and lift telephone services are treated differently to MDUCA services under the revised variation proposal. Fire and lift telephone services have a longer migration period than MDUCAs before disconnection commences where an ITO is not in place (i.e., 75 business days from 18 March 2022).

Importantly, the ITO process for fire and lift telephone services will be applicable to orders to migrate both to the NBN or alternative service providers. This recognises that NBN services may not work during a power outage and so need to be either substituted for, or have a backup by, a wireless service provider. The ACCC considers that providing an ITO process for non-NBN services to fire and lift telephones is an important change from the original variation proposal. It will better address the general Migration Plan principle to minimise disruption of supply where possible – particularly given that these services have an added safety consideration.

## 2.2. Disconnection of premises not NBN-serviceable

The proposed Migration Plan variation would set the timeframes for managed disconnection of premises that have been identified by NBN Co as not NBN-serviceable. These would replace interim arrangements in the existing Migration Plan.<sup>9</sup>

In broad terms, the variation sets out two types of processes:

- timeframes for managed disconnections where premises become NBN-serviceable at particular times
- a hard disconnection date where premises are not NBN-serviceable (i.e., with disconnection processes commencing 29 April 2022).

For context, whether premises are made NBN-serviceable is outside Telstra's control and many of these premises were envisaged to be already disconnected under the original Migration Plan. However, we also note that for some premises NBN Co has had unanticipated issues progressing NBN HFC connections. In some other cases NBN Co has been unable to provide a connection for reasons outside its control (e.g., where it has been prevented from gaining access to a property by the owner or occupier) – these premises are treated as Frustrated Premises in the original Migration Plan.

The ACCC did not receive any submissions that addressed this variation during public consultation.

### ***Assessment against the Migration Plan Principles***

In its supporting documents, Telstra stated that it considers these variations promote the MPPs – citing general principle 10 and specific principles 12 and 13. It stated:

*General principle 10(1)(a) seeks to ensure disconnection processes are efficient and timely, which is why the arrangements have established a specific disconnection trigger for not nbn-serviceable premises following these premises being made nbn-serviceable.*

---

<sup>9</sup> On 15 September 2020 Telstra sought regulatory forbearance from the ACCC for Telstra to begin implementation of new Managed Disconnection arrangements for not NBN-serviceable premises in lieu of arrangements currently set out in the Migration Plan (clause 15.9). The new arrangements supported service continuity by deferring the managed disconnection of premises not capable of migrating to the NBN. On 6 October 2020 the ACCC agreed to Telstra's request for forbearance on the condition that a formal variation to the Migration Plan was submitted as soon as practical.

*General principle 10(1)(b) requires that, to the extent it is in Telstra's control, disconnection occurs in a way that minimises disruption to the supply of fixed-line carriage services.*

*Specific principles 12(7) and 13(5) state that the Plan may set out specified types of no-order disconnection premises for which specified maximum periods for disconnection apply. As required per principles 12(8) and 13(6), the revised disconnection period for these no-order disconnection premises is consistent with the arrangements specified in the Definitive Agreements.*

*Overall, the proposed variation will provide industry with confidence that there will be appropriate time to migrate customers in a way which continues to promote service continuity for end users and minimises disruption to end-user services by continuing to provide a greater number of premises more time before managed disconnection.*

Specific principles 12 and 13 relate to the disconnection of copper and HFC services, respectively. As Telstra noted, specific principles 12(7), 12(8), 13(5) and 13(6) provide generally for arrangements, where no order is in place, that are consistent with the Definitive Agreements. This appears to address situations anticipated by the variation where a previously not NBN-serviceable premises becomes NBN-serviceable, and no order for an NBN service has been placed. However, these specific principles do not specifically deal with a situation where the reason premises are 'no-order' premises is because they are, in fact, not NBN-serviceable. That is, the variation is not only in relation to premises where no order has been placed, but also premises where an order *cannot* be placed. Accordingly, it is appropriate to consider whether the variation complies with the general principles.

Telstra's supporting document drew attention to general principles 10(1)(a) and (b). Principle 10(1)(a) provides that the Migration Plan must provide for disconnection of fixed-line carriage services supplied to premises in a rollout region to occur in a way that ensures the efficient and timely disconnection of wholesale carriage services. In general terms, this can be thought of as achieving disconnection at a suitable or opportune time and with effective use of resources. Principle 10(1)(b) also provides that the disconnections are done in a way that, to the extent it is in Telstra's control, minimises disruption to the supply of fixed-line carriage services.

If a not NBN-serviceable premises were to be disconnected in accordance with this arrangement, the end-user would retain a right to be provided a voice service by Telstra under the Universal Service Obligation. NBN Co would also be required to provide a broadband service under the Statutory Infrastructure Requirements.

Telstra and NBN Co have also advised that a very small number not NBN-serviceable premises have a medical alarm, that these premises are registered with NBN Co, and that both Telstra and NBN Co have processes in place to manage these higher-risk premises to ensure no safety issues arise. These processes can be used to avoid an end-user losing service continuity through no fault of their own. Telstra can also seek regulatory forbearance from the ACCC from enforcement of the terms of the Migration Plan, where necessary, which may be particularly relevant to premises with medical alarms should compliance issues arise.

As noted above, not NBN-serviceable premises have been the subject of ongoing deferrals of disconnection as many were scheduled for disconnection some time ago. Whether this proposed variation provides a balance between the general principles of timely and efficient disconnection and minimising disruption of supply has been a key consideration for the ACCC and we consider that the proposed variation strikes an appropriate balance. We also note that while the variation sets a disconnection date for these services, if the ACCC were to reject the variation proposal, the terms of the existing Migration Plan would require Telstra

to disconnect these premises anyway, but with less certainty or transparency than provided for in the varied Migration Plan under this proposal.

### 2.3. Private payphones services

The proposed variation regarding payphone services comprises two main aspects that will:

- allow for public and private payphones to be differentiated in the Migration Plan to enable Telstra to proceed with a national product exit of remaining private payphone services without triggering a disconnection obligation under the Migration Plan for public payphones
- clarify that the 18-month required notice period for disconnections of a special service class product (i.e., in this case 'Private Payphones (ELQ) Products') relates to the original notice of disconnection date and does not reset if a disconnection date is subsequently delayed.

Private payphones are those where the payphone hardware is privately owned (or leased) and operated. They are installed and operated at the discretion of the owner of the service. A private payphone is different to a public payphone, which are often located on footpaths and other public spaces and are owned and operated by Telstra under its Universal Service Obligation (USO).

Telstra's supporting document indicates it is currently in the process of conducting a national product exit of private payphones services<sup>10</sup> and that it is seeking amendments to the Migration Plan to prevent triggering of disconnection obligations for public payphones.

The ACCC did not receive any submissions that addressed this variation during public consultation.

#### **Assessment against the Migration Plan Principles**

In its supporting documents, Telstra stated:

*Telstra considers this proposal is consistent with the MPPs.*

*The amendments within the Varied Plan relate to amendments to the SS Classes associated with specific Access Service Families, rather than seeking to amend the Access Service Families. This proposal therefore continues to comply with Table 1 (Special Services (Retail)) and Table 2 (Special Services (Wholesale)) of Schedule 1 of the MPPs which list the Access Service Families, although do not list the associated SS Class.*

*In respect of the upcoming product exit of Private Payphones (ELQ), Telstra intends to comply with the requirements of Specific Principle 28 and 18 in regard to the development of a new Required Measure to describe the processes Telstra will utilise to manage and implement the disconnection of in-scope classes of Special Services.*

The ACCC agrees that the differentiation of payphone types within the special services class does not vary the way the Migration Plan addresses specific principle 18 in the Migration Plan Principles. Rather, it provides additional detail necessary to effectively progress relevant disconnections. As such, reconsideration of the specific or general principles is not required as a result of this amendment.

---

<sup>10</sup> In May 2019 Telstra provided notice to customers using Private Payphones (ELQ) Products of a 30 June 2020 product exit and service disconnection for these products date scheduled at that time, but subsequently deferred due to COVID-19. Product exit and service disconnection of Private Payphones (ELQ) Products was rescheduled to occur from 30 November 2021, as set out in Migration Plan Required Measure 5(F).

Telstra's supporting document does not address the clarification to the notice period in relation to compliance with the Migration Plan Principles. However, provided the 18-month notice period for service disconnection has been met, we consider it to be reasonable that the notice period is not reset due to a delay in the disconnection dates. This clarification is therefore consistent with general principle 10(1) relating to efficient and timely disconnection and is not inconsistent with the general principle 10(2) relating to minimising disruption of supply.

## 2.4. Authority to approve reconnections of legacy copper and HFC services

Telstra has proposed an amendment to the Migration Plan relating to Telstra's internal authority to authorise the reconnection of copper and HFC services. While Telstra cannot generally reconnect premises that have been passed by the NBN and disconnected, exceptions can apply.<sup>11</sup>

The existing Migration Plan provides the person with authority to approve reconnections must be director level or higher and not be part of Telstra's retail arm. Telstra's proposed amendment to the Migration Plan would better align the responsibility with its internal approval processes and be within its new InfraCo entity, providing separation from its retail arm.

The ACCC did not receive any submissions that addressed this variation during public consultation.

### **Assessment against the Migration Plan Principles**

In its supporting document, Telstra stated:

*Telstra considers this proposal to include an additional role with approval responsibility, will continue to assist to promote Telstra's compliance with the MPPs, including Specific Principles 20 and 18.*

*Specific Principle 20 relates to the conditions for which Telstra is permitted to reconnect services where such services were originally not required to be disconnected. Specific Principle 18(5) relates to the process for building or reconnecting copper services at premises which had previously been permanently disconnected, in order to supply a Special Service or Special Service Input to that premises.*

*The inclusion of the additional role with approval authority reflects that the person performing this role is both a subject matter expert and has appropriate experience, in order to assess and decide whether the conditions giving rise to reconnection request under MPPs (and the Plan more broadly) are satisfied.*

The Migration Plan Principles do not go to the level of detail as to the position within Telstra needing to be held for authority to reconnect. Further, assigning the most appropriate person to make those decisions is consistent with general principle 10(1) to provide efficient and timely disconnections.

Specific principles 20(2) and (4) set out that equivalence between wholesale and Telstra retail services must be provided. Ensuring the person with responsibility is within InfraCo and not Telstra's retail arm is consistent with that principle, provided that no information is exchanged between the companies that would undermine it.

---

<sup>11</sup> For example, Telstra has noted its obligation to comply with ACMA's Service Continuity Standard.



## 2.5. Minor amendments

Telstra's amended Migration Plan also includes minor amendments to procedural matters covered in Required Measures 5(A), 5(C) and 5(D). The ACCC did not object to these Required Measures when they were proposed in 2020 and 2021.

Other minor amendments are largely to ordering of items in the Migration Plan's dictionary.

These matters do not require ACCC consideration against the Migration Plan Principles and no concerns were raised by stakeholders during public consultation.

### 3. ACCC Decision

For the reasons outlined above, the ACCC:

- considers that the amendments to the Migration Plan as specified in Telstra's amended variation proposal dated 20 December 2021 complies with the Migration Plan Principles, and
- has decided to **approve** the varied Migration Plan.