



Proposed Migration Plan Variation: Facilitating Fibre to the Curb (FTTC) and Other Amendments

Final Decision

March 2018

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Executive Summary

The Australian Competition and Consumer Commission (ACCC) has approved Telstra's proposed variation to the Migration Plan to facilitate the rollout of Fibre to the Curb (FTTC), together with other proposed variations to the Plan. The ACCC is satisfied that the varied Migration Plan complies with the specific legislative requirements.

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 (HFC) networks to the NBN as it is rolled out across Australia.

On 6 October 2017 Telstra submitted a proposed variation to the Migration Plan (**the proposed variation**) to the ACCC. The proposed variation included measures to:

- facilitate the rollout of FTTC as an access technology for the NBN
- amend the duration of the Order Stability Period,¹ and
- clarify the application of the Cease Sale restrictions² applicable to Multi Dwelling Unit Common Area sub locations.³

The ACCC must approve the proposed variation if the varied Migration Plan is consistent with the Migration Plan Principles, and must refuse approval if it is not consistent.⁴

On 1 December 2017, the ACCC published a discussion paper requesting feedback from stakeholders on the proposed variation. In particular, comment was sought on whether:

- the proposed disconnection arrangements for the rollout of FTTC provide adequate mechanisms to ensure consumers are not unintentionally disconnected and left without a service
- the proposed processes for the rollout of FTTC will promote service continuity and minimise disruption.

The ACCC received four submissions. The issues raised mainly focussed on the managed disconnection process, particularly for cases where disconnection was to be decided by a time period (10 to 20 calendar days from the order date), as opposed to confirmation of a working FTTC service prior to disconnection of the legacy service.

- The Australian Communications Consumer Action Network (ACCAN) noted that due to the involvement of the end user in the connection process, and

¹ The Order Stability Period is the period immediately prior to and after (subject to some exceptions) the disconnection date for an NBN rollout region in which Telstra will not process any orders that relate to the supply of copper and HFC services other than orders specified in the Migration Plan.

² The Cease Sale restrictions require Telstra to not supply (subject to some exceptions) any new copper service to a retail customer or wholesale customer, and any new HFC service, after the Cease Sale Commencement Date.

³ These sub locations include areas such as foyers, elevators and utilities rooms within multi dwelling buildings.

⁴ *Telecommunications Act 1997* (Cth) s 577BF(3).

potential complexities that may arise, there was potential for the migration to be unsuccessful within the allotted timeframe. This could result in the unintended disconnection of legacy services.

- Optus argued that the timeframe was inadequate, and put undue pressure on the Wholesale Customer to ensure disconnection does not occur prematurely. Optus also had concerns that the proposed variation to the Migration Plan would not allow Wholesale Customers to retain autonomy and control over the timing of the disconnection of legacy services.

Following the close of submissions, NBN Co amended its proposed ordering processes so that it will only notify a FTTC service as being active on its network where it has positively detected end-user traffic. As notifying a FTTC service as being active triggers the disconnection of a legacy copper service at the premises, this change provides an important and valuable safeguard against consumers being disconnected before they have access to a working NBN service.

As occurs with other NBN access technologies, early in the migration window NBN Co will notify by mail homes and businesses that are to be FTTC-connected that they have up to 18 months to switch their existing landline phone and internet services to the NBN service before the existing legacy services are disconnected. Premises that have their FTTC order cancelled because no data traffic is detected, as described above, will be subject to these standard disconnection processes at the end of the 18 month period.⁵

The ACCC considers the amended connection/disconnection arrangements for the FTTC rollout effectively manages the risks of inappropriate disconnections. Further, the ACCC considers Telstra's proposed variation promotes the efficient and timely disconnection of carriage services from Telstra's legacy networks and seeks to minimise disruption to the supply of services to the extent that it is within Telstra's control.

The ACCC is satisfied that the varied Migration Plan is consistent with the Migration Plan Principles. The ACCC has approved Telstra's proposed variation to the Migration Plan pursuant to section 577BF(3) of the Telecommunications Act 1997 (Cth) (the Act). The varied Migration Plan replaces the current version of the Migration Plan and all interim arrangements.

⁵ That is, if a subsequent NBN connection order for a FTTC service has not been placed for the premises.

1 Introduction

On 6 October 2017 Telstra submitted a proposed variation to the Migration Plan to the ACCC. The proposed variation included changes to facilitate the rollout of FTTC as an access technology for the NBN together with changes to the Order Stability Period and Cease Sale arrangements.

On 1 December 2017 the ACCC published a discussion paper seeking feedback from interested stakeholders on the proposed changes and subsequently received submissions from ACCAN, Optus, NBN Co and Telstra.

2 Background

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 (HFC) networks to the NBN as it is rolled out across Australia.

The Migration Plan incorporates the shift to a multi-technology mix (MTM) NBN and was approved by the ACCC in June 2015. The ACCC approved a further variation to the Migration Plan in July 2016.

FTTC was announced as an NBN access technology for the MTM NBN in November 2016 and NBN Co intends to launch FTTC in March 2018. FTTC is intended to benefit the NBN rollout as existing copper lines servicing customer premises will be used where possible, avoiding the need to install new lead-in conduits to premises.

FTTC allows fibre to be connected to copper line through a Distribution Point Unit (DPU) located in a pit outside a customer's premises, which is connected to a Network Connection Device (NCD) inside a customer's premises. Unlike other access technologies, the NCD will have an integrated reverse powering feed to power the DPU from the premises via the copper lead-in.

FTTC will require retail service providers and end-users to take a more active role in the activation of an NBN service compared to some existing access technologies, for example in ensuring the NCD is connected and powered, and that the service provider's gateway modem is in place. NBN Co will provide an Activation Help Desk for support to retail service providers and end-users for FTTC connections.

3 Legislative framework

3.1 The Telecommunications Act 1997

The Act 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 section 577BC(1), Telstra may have a migration plan approved by the ACCC in order to implement its chosen structural separation.

The Act states that a Migration Plan must comply with the Migration Plan Principles and the Specified Matters Instrument. The Specified Matters Instrument defines the scope of the Migration Plan, by specifying matters that provisions in the Migration Plan 'may' and 'must not' deal with.

3.2 Migration Plan Principles

The ACCC's role in assessing a variation to the Migration Plan is 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 certain 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
- procedural principles – the procedural provisions that must be included in the Migration Plan.

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, and
- providing for wholesale services to be disconnected in an equivalent manner to retail services to the greatest extent practicable.

3.3 The ACCC's Role

The ACCC's role in assessing Telstra's proposed variation is limited to:

- approving the proposed variation if the varied Migration Plan complies with the Migration Plan Principles or
- refusing to approve the proposed variation if the varied Migration Plan does not comply with the Migration Plan Principles.

The ACCC does not have discretion to seek changes to the proposed variation merely based on a preference for a particular approach.

Where the proposed variation adopts an approach that is contained in a specific or procedural principle in respect to a matter, the proposed variation is taken to comply with all the principles in respect of that matter.

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.

4 Assessment of the proposed variation

The ACCC has assessed whether the proposed variation is consistent with the Migration Plan Principles. As a number of aspects of the proposed variation do not accord directly with a specific or procedural principle, the ACCC has assessed the proposed variation mainly with respect to the general principles.

4.1 Changes to facilitate the rollout of FTTC

Under the MTM NBN, NBN Co has the ability to determine the access technology used to supply services to particular premises. Telstra has advised the ACCC that it considers that the introduction of FTTC as an access technology requires changes to be made to the Migration Plan for the reasons discussed below.

4.1.1 Disconnection of copper services

The introduction of Fibre-to-the-Node (FTTN) and Fibre-to-the-Basement (FTTB) access technologies as part of the MTM NBN rollout required variations to the Migration Plan to reflect the requirement for the re-use of Telstra's copper infrastructure to deliver NBN services.

Telstra's proposal to vary the Migration Plan for FTTC considered that the Plan needed to be further amended to reflect NBN's use of Telstra's existing copper network to supply FTTC NBN services. As with other access technologies, once NBN notifies Telstra that an FTTC order is complete the disconnection of Telstra legacy services would follow.

Telstra advised that the proposed changes to the Migration Plan provided clarity for industry regarding the processes that will be used for disconnecting legacy services at FTTC-connected premises. Telstra considered these changes will apply equivalently across retail and wholesale services. Telstra advised that its proposed changes would not have a material or adverse commercial effect on wholesale customers.

The ACCC in its discussion paper identified that the FTTC implementation if not carefully managed has some potential for unintended disconnections. The reason for this is that FTTC will require householders or their retail service provider to activate a reverse power NCD in order to establish the NBN service.

4.1.2 Submissions received

ACCAN

ACCAN identified a number of concerns about the process for consumers switching to FTTC. ACCAN's main concern stems from consumers being responsible for initiating the NCD and the number of complexities that may arise in doing this, and the lack of confirmation that the migration has resulted in a working FTTC service. According to ACCAN ultimately this may leave some consumers disconnected.

ACCAN identified two particular features that may prevent consumers successfully switching to FTCC. According to ACCAN devices such as alarms or analogue phones connected inside the house may prevent the NCD from operating. Inappropriate wiring in the house may also require additional work by the consumer which may lead to delays.

ACCAN was also concerned that if the consumer switches retail providers during migration, the losing retail service provider (RSP) will have no access or confirmation that the FTTC service is working. Therefore the consumer could be left in a position where the legacy service could be fully disconnected and/or the local number ported, without a working FTTC service.

According to ACCAN these issues may be addressed in part by a proposed Service Provider Rule for RSP line-testing, which the Australian Communications and Media Authority (ACMA) will be introducing in 2018.

Optus

Optus also identified a number of issues with the disconnection arrangements for the rollout of FTTC. Optus submitted that a premises could be deemed FTTC-connected 10 calendar days after an order is accepted by NBN Co even if there is no detection of data on the line. According to Optus the disconnection of legacy services should not automatically occur 10 calendar days after an order is accepted by NBN Co. Optus had concerns that the proposal to allow Wholesale Customers to extend the completion by another 10 calendar days may be difficult to manage and would still place the onus on the end user and RSP to ensure the legacy service should not be disconnected. Optus noted that if a legacy service is prematurely disconnected, it can often take weeks to reinstate the service.

Optus also had concerns that the proposed variation to the Migration Plan would not allow RSPs to retain autonomy and control over the timing of the disconnection of legacy services. Optus submitted that for other NBN Co access technologies that rely on RSP managed self-install processes (e.g. FTTN/FTTB and HFC), the migration to the NBN network is determined by a customer requirement date which is agreed between the end user and the RSP. Optus suggested that to allow the best possible experience for the end user, the timeframe should be extended to at least 30 calendar days from the acceptance of the order or when data is detected on the FTTC service. Furthermore the ability to extend by another 30 calendar days should also be provided. According to Optus a longer period of time would enable all service types (including special services) to migrate in a timeframe to cover most circumstances.

NBN Co

NBN Co supported the proposed changes to the Migration Plan noting that it reflected its proposed approach to the introduction of FTTC.

NBN Co also noted that the proposed daily migration process for FTTC is the same as for FTTN/FTTB and that it did not consider the process would introduce any new concerns from a service continuity perspective.

NBN Co also stated that it would continue to work with Telstra and the industry to ensure continual improvement in the migration process for FTTC and all NBN technologies.

Telstra

Telstra noted the importance of achieving a positive end-user experience regarding the FTTC rollout.

Telstra also noted there was further work being undertaken by NBN Co and industry to minimise potential impediments to positive end-user experiences related to FTTC activations. For example, regarding NBN Co's proposed time period for an FTTC order to automatically complete, and also in respect of NBN Co's proposed connection/disconnection protocols. This is discussed further below.

4.1.3 ACCC views

The ACCC in its discussion paper identified the need to ensure that the rollout of FTTC provided adequate mechanisms to ensure that consumers were not unintentionally disconnected and left without a service.

As raised in the discussion paper, under the proposed connection/disconnection arrangements between NBN Co and Telstra in respect of FTTC, the existing Telstra legacy services would be disconnected 10 to 20 days after NBN Co has connected the FTTC service. This would occur irrespective of whether or not there was confirmation of a working FTTC service.

NBN Co subsequently advised the ACCC that it had changed these proposed arrangements. The amended arrangements now include revised procedures for data testing of FTTC connections and provide that if no data traffic is detected from an FTTC-connected premises after 30 calendar days, NBN Co will cancel the FTTC order. Where an FTTC order is cancelled, the premises will not be included on the daily migration file sent to Telstra that triggers legacy service disconnection. If required, service providers will also have the ability to request an additional 30 days to complete the FTTC order.

As currently occurs with other NBN access technologies, at the start of the migration window NBN Co will notify by mail homes and businesses that are to be FTTC-connected, that they have up to 18 months to switch their existing landline phone and internet services to the NBN service before existing legacy services are disconnected. Premises that have their FTTC order cancelled because no data traffic is detected, as described above, will have their legacy service disconnected at the end of this 18 month period (i.e. if a subsequent NBN connection order for a FTTC service has not been placed for the premises).

The ACCC notes that NBN Co's connection/disconnection protocols now include data testing to ensure that an FTTC connection is operable prior to the disconnection of legacy services. Therefore, during the 18-month migration window, legacy services are no longer proposed to be disconnected after a premises is FTTC-connected without confirmation of a working FTTC service. The ACCC considers the amended connection/disconnection arrangements for the FTTC rollout effectively manages the risks of inappropriate disconnections.

The ACCC considers Telstra's proposed variation promotes the efficient and timely disconnection of carriage services from Telstra's legacy networks and seeks to minimise disruption to the supply of services to the extent that it is within Telstra's control.

The proposed new ACMA requirements on telecommunication businesses that ACCAN refers to in its submission provide further reassurance to the ACCC that the risks of inappropriate disconnection identified in the ACCC's discussion paper and stakeholder submissions will be actively managed. Under these proposed arrangements a new Service Provider Rule is expected to be in place by 1 July 2018

under which RSPs will be required to undertake post-connection line-testing to proactively identify faults and ensure services are working after installation.⁶

4.1.4 Update Special Services Classes

The concept of a Special Service Class within the Migration Plan is defined by the access technology to be utilised to provide the service. To accommodate the introduction of FTTC-connected premises, Telstra proposed to update the Special Service Class lists for Direct Special Services for retail and wholesale customers to recognise FTTC as an access technology.

4.1.5 Submissions received

The submissions received did not raise any concerns about these proposed changes.

4.1.6 ACCC views

The ACCC is satisfied that the varied Migration Plan is consistent with the Migration Plan Principles in relation to Special Service Class arrangements.

The ACCC considers that Telstra's proposed variation accords with Migration Plan Principle 18. This Principle sets out specific principles for disconnection of Special Services from a separating network.

4.1.7 Update other related obligations

Telstra also proposed a number of minor amendments to existing obligations, clarifications and definitions within the Migration Plan to support the rollout of FTTC. Telstra advised that these changes are practical and would provide further clarity for the introduction of FTTC as an access technology on the NBN.

4.1.8 Submissions received

The submissions received did not raise any concerns about these proposed changes.

4.1.9 ACCC views

The ACCC is satisfied that these changes are consistent with the Migration Plan Principles and provide further clarity about the introduction of FTCC as an access technology for the NBN.

4.2 Changes to the Order Stability Period

The Order Stability Period (OSP) is a period to allow Telstra time to clear any pending orders (or modifications) before the managed disconnection process

⁶ ACMA intends to have a number of new rules in place by 1 July 2018 to improve consumer experience in moving to the NBN. <https://www.acma.gov.au/Industry/Telco/Infrastructure/The-NBN-and-industry/protecting-consumers-on-the-nbn>

commences. Telstra proposed that the maximum duration of OSP should be the same for all In-Train Order Premises.⁷

Clause 13.1 of the Migration Plan required Telstra to conclude OSP no later than 120 business days after the disconnection date. Clause 15 of the Migration Plan required ‘Phase 2’ In-Train Order Premises to be permanently disconnected 155 Business Days after the disconnection date.

Telstra proposed that the Clause 13.1 OSP be amended to align with the timeline specified in clause 15 (i.e. the maximum duration of the OSP for all In-Train Order Premises could be increased to 155 days after the disconnection date). Telstra advised that its proposal would also minimise disruption to the supply of copper and HFC services.

4.2.1 Submissions received

Optus suggested that that the In-Train Order arrangements under Clause 15.1A should extend beyond 30 June 2018 and remain for the period of the Migration Plan.

NBN Co supported Telstra’s proposed change to Clause 13.1 of the Migration Plan to align the OSP for all In-Train Order Premises.

4.2.2 ACCC views

The ACCC notes Optus’ comments that current In-Train Order arrangements should be extended but is not able to consider the matter at this time as it does not form part of Telstra’s proposed variation to the Migration Plan. The ACCC has raised this issue with Telstra who have indicated that they will consider the proposal separately.

The ACCC has considered Telstra’s proposed variation to align the OSP for all In-Train Order Premises and is of the view that this variation is likely to promote greater service continuity and is consistent with the Migration Plan Principles in relation to OSP and In-Train Order arrangements.

4.3 Changes to Cease Sale restrictions for Multi Dwelling Unit Common Area Sub Locations

Clause 17.1 of the Migration Plan required Telstra to not supply new copper or HFC services to premises after the Cease Sale Commencement Date for a rollout region, where those premises are in the Fixed Line Footprint and are NBN Serviceable. The Fixed Line Footprint refers to premises *that are listed* on the Fixed Footprint List (FFL).

Multi-Dwelling Unit Common Area (MDU CA) premises on the FFL have a single location ID for disconnection purposes, however the ID may not be the actual serviceable location for the legacy infrastructure within the MDU CA. The actual serviceable location may be a sub-location, for example a lift shaft, concierge desk or utilities room. These MDU CA sub-locations each have their own IDs *that are not listed* on the FFL, as they are sub locations to the main MDU CA.

⁷ ‘In-Train Order Premises’ are premises that are the subject of an outstanding NBN order but have not yet obtained an active NBN service. Under the Migration Plan, NBN Co notifies Telstra of completed In-Train Order Premises after which Telstra will permanently disconnect the service.

Telstra proposed an amendment to the Migration Plan to make it clear that the Cease Sale provisions applicable to MDU CAs also cover sub-locations within the MDU CA, despite these sub-locations not being listed on the FFL.

Telstra considered this proposed change would align the arrangements for MDU CA sub-locations with the general intent of the Cease Sale obligations. That is, to ensure that the Cease Sale obligations are applied to MDU CAs and their sub-locations in the same manner as other premises in the Rollout Region

4.3.1 Submissions received

NBN Co supported this proposed change to the Migration Plan noting that it provides a useful clarification that sub-locations in MDU CAs are subject to Cease Sale obligations.

4.3.2 ACCC views

The ACCC is satisfied that the varied Migration Plan is consistent with the Migration Plan Principles in relation to MDU CAs.

The ACCC considers that Telstra's proposed variation accords with Migration Plan Principle 14.3(a). This Principle sets out that any Cease Sale arrangements for the supply of new copper or service supplied to a MDU CA should be applied consistently for all locations in the same MDU CA.

5 The ACCC's Decision

The ACCC has approved Telstra's proposed variation to the Migration Plan pursuant to section 577BF(3) of the Act.

The ACCC has considered the proposed variation⁸ in light of submissions made in response to the discussion paper issued under section 577BF(4) of the Act and the Migration Plan Principles.

The ACCC has concluded that the varied Migration Plan complies with the Migration Plan Principles. The ACCC notes that there are some risks to service continuity with the FTTC rollout from inappropriate disconnection of legacy service. However the amended procedures that NBN Co has developed in consultation with Telstra and other stakeholders for disconnection of legacy services as part of the FTTC rollout provide reasonable safeguards to manage these risks.

Additionally the proposed ACMA requirements that are to come into effect in July 2018 requiring RSPs to undertake post-connection line-testing provide further reassurance that these risks will be actively managed.

The ACCC considers that Telstra's proposed variation promotes the efficient and timely disconnection of carriage services from Telstra's legacy networks and seeks to minimise disruption to the supply of services to the extent that it is within Telstra's control.

⁸ Optus noted a typographical error in the Telstra's originally submitted variation and Telstra has amended its proposed variation to correct this.

The varied Migration Plan replaces the current version of the Migration Plan and all interim arrangements. As the Migration Plan is part of Telstra's SSU, a breach of the Migration Plan is enforceable as a breach of the SSU.