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Proposed Variation to Telstra's Migration Plan – Early Connection of Premises to the NBN in Specified Rollout Regions

Regulatory Affairs

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Contents

1	Introduction	4
2	Expansion of NBN Co's Early Access Program	4
3	NBN Co's Early Access program in Initial Release Rollout Regions	5
4	Expansion of NBN Co's Early Access program	5
5	Expansion of the Early Access program will benefit industry	5
6	Telstra's proposed variation will facilitate the expansion of NBN Co's Early Access program	6
7	The ACCC should approve the proposed variations	7
	Appendix A: Agreed Specified Rollout Regions	8

1 Introduction

On 23 August 2011, Telstra provided to the Australian Competition and Consumer Commission (the **ACCC**) a Migration Plan pursuant to section 577BDA of the *Telecommunications Act 1997 (Cth)* (the **Migration Plan**). The ACCC approved the Migration Plan on 27 February 2012.

Where a final Migration Plan is in force, as now, section 577BF of the *Telecommunications Act 1997 (Cth)* allows Telstra to seek a variation of that Migration Plan, which will take effect if it is approved by the ACCC. If the ACCC is satisfied that the Migration Plan as varied complies with the *Telecommunications (Migration Plan Principles) Determination 2011* (the Migration Plan Principles) then the ACCC must approve the variation.

NBN Co understands that Telstra is seeking a variation of the Migration Plan to reflect NBN Co's intentions to extend its Early Access program. NBN Co's Early Access Program refers to the practice of offering NBN services in a Fibre Service Access Module (FSAM) before the FSAM is declared Ready For Service (RFS). This variation is being sought by Telstra at the request of NBN Co.

The variation sought by Telstra is required to enable NBN Co to expand its Early Access Program by offering NBN services in up to an additional 82 FSAMs before they are declared RFS. As a practical matter, the variation should not affect the timing for the actual Disconnection Date for these additional FSAMs that are released early, and it will not affect the amount of notice that Telstra wholesale customers, Telstra retail customers, and the industry in general will receive with respect to the Disconnection Date for those regions. However, the variation will facilitate earlier migration of end-user customers to the National Broadband Network.

This submission is provided to the ACCC in support of Telstra's request to vary the Migration Plan as detailed in its letter to the ACCC, dated 4 April 2013. In this submission NBN Co explains why the proposed variation facilitates expansion of NBN Co's Early Access Program and why it should be accepted by the ACCC.

As detailed below, NBN Co considers that the Migration Plan as varied complies with the Migration Plan Principles and that the proposed variation is minor in nature and does not change Telstra's obligations to its wholesale customers in any way. NBN Co therefore believes that the ACCC may accept this variation without public consultation.

2 Expansion of NBN Co's Early Access Program

Currently, NBN Co is providing service providers with early access to premises in 65 selected FSAMs. This program is referred to as the Early Access Program. While early release of these 65 FSAMs is contemplated by, and consistent, with the Migration Plan, expansion of this program was not contemplated by NBN Co at the time that Telstra was developing its Migration Plan and therefore requires the variation proposed by Telstra in its letter to the ACCC, dated 4 April 2013.

3 NBN Co's Early Access program in Initial Release Rollout Regions

NBN Co's Early Access program is currently limited to FSAMs which for the purpose of the Migration Plan are considered Initial Release Rollout Regions (IRRRs). An IRRR is currently defined in the Migration Plan as a geographic region within which the rollout of the NBN had commenced prior to the commencement of the Definitive Agreements between Telstra and NBN Co.

Clause 7.2 of the Migration Plan provides that Telstra will disconnect premises in IRRRs 18 months after the Disconnection Commencement Date (DCD) for the rollout region. Importantly, the DCD is not defined by reference to the date on which NBN Co commences to supply services in that rollout region – the DCD is a date determined by NBN Co and notified by NBN Co to Telstra. Accordingly, NBN Co offering services in FSAMs which are IRRRs, before the FSAM is complete, does not trigger the 18 month countdown to the disconnection date which is the date on which Telstra must disconnect premises in the rollout region from a separating network.

4 Expansion of NBN Co's Early Access program

On 19 February 2013 NBN Co issued an account bulletin to its customers advising that NBN Co was considering an expansion of its Early Access program. In particular, NBN Co identified a further 82 FSAMs that could be included in a second phase of the Early Access program.

Since February, NBN Co has agreed with Telstra the list of 82 FSAMs which NBN Co wishes to include in a second phase of the Early Access Program. This updated list is provided in Annexure A of this supporting submission.

For the purposes of the Migration Plan, the additional 82 FSAMs identified by NBN Co are not IRRRs but are instead regular rollout regions.

5 Expansion of the Early Access program will benefit industry

The expansion of the Early Access program will allow NBN Co to bring forward the migration of end-users to the NBN fibre network. This will promote the efficient use of NBN Co's fibre network and will also benefit service providers and end-users.

An expansion of NBN Co's Early Access program is likely to benefit service providers in two ways. First, offering NBN services in an FSAM before it is declared RFS will bring forward the opportunity for service providers to market their NBN service offerings to end-users in that FSAM. Secondly, because service providers will have additional time to migrate end-users to the NBN they will have greater flexibility to differentiate their service offerings on the basis of timing the end-user's migration to the NBN.

An expansion of NBN Co's Early Access program will also benefit end-users. This is because more end-users will have the ability to connect to the NBN sooner and take advantage of its superior speed and functionality.

6 Telstra's proposed variation will facilitate the expansion of NBN Co's Early Access program

To facilitate the expansion of NBN Co's Early Access Program, NBN Co has requested Telstra to vary its Migration Plan. Telstra has agreed to do so and is seeking ACCC approval for this variation.

The variation agreed between Telstra and NBN Co will allow NBN Co to expand its Early Access program on a once off a basis by amending the definition of Initial Release Rollout Region (IRRR) in the Migration Plan. The definition of an Initial Release Rollout Region will be expanded to include Specified Rollout Regions as follows:

Initial Release Rollout Region means:

- (a) a geographic region determined by NBN Co and notified to Telstra within which the Rollout has commenced prior to the commencement of the Definitive Agreements; and
- (b) each Specified Rollout Region.

A Specified Rollout Region will be defined as follows:

Specified Rollout Region means an FSA Module agreed between Telstra and NBN Co as set out in Schedule 10.

Telstra has proposed to include the term *Specified Rollout Region* in the Dictionary of the Migration Plan as well as to add a new schedule 10 to the Migration Plan. Schedule 10 will list the agreed 82 Specified Rollout Regions.

The sum effect of the proposed changes will be to allow NBN Co to offer NBN services in up to an additional 82 FSAMs before those FSAMs are declared RFS by NBN Co. The offering of NBN services in these additional FSAMs will, subject to NBN Co's obligations under the Definitive Agreements, be at the sole discretion of NBN Co and will be notified to service providers as per NBN Co's current processes.

7 The ACCC should approve the proposed variations

Section 577BF of the *Telecommunications Act 1997 (Cth)* requires that the ACCC approve a variation of the Migration Plan if it is satisfied that the Migration Plan as varied complies with the Migration Plan Principles.

The key objectives of the Migration Plan Principles are to ensure that the Migration Plan provides for the efficient and timely disconnection of wholesale and retail carriage services by Telstra as part of the migration process, and equivalence in the disconnection processes that Telstra will implement for its wholesale and retail customers.

NBN Co submits that Telstra's varied Migration Plan would continue to comply with the Migration Plan Principles. The proposed changes:

- Will not change the practical timing of the Disconnection Date and therefore Telstra's disconnection obligations for the specified 82 FSAMs. That is because the 18 month disconnection period in the specified 82 FSAMs will be triggered by the DCD in those regions (rather than the date on which NBN commences providing services in the region).
- Do not change any of the actions that Telstra will take to cease supply of fixed line carriage services to customers using a separating network or to migrate customers to the NBN.
- Will not impact the operation of clause 17 of the Migration Plan in relation to the specified 82 FSAMs. This is because the cease sale provisions in clause 17 of the Migration Plan will only apply to the specified 82 FSAMs after the "Ready for Service Date" (as defined in the Migration Plan) for those regions. If the Migration Plan is varied as proposed, the "Ready for Service Date" for those 82 FSAMs will still be the DCD (ie the date determined by NBN Co) and not the date on which NBN Co commences providing services in the region.
- Are consistent with Telstra ensuring the efficient and timely disconnection of services from a separating network by facilitating earlier migration of customers to the NBN.
- Are consistent with the requirement that Telstra provide for the equivalent treatment of wholesale customers and retail business units in the implementation of disconnecting carriage services from a separating network. The proposed change to the definition of Initial Release Rollout Region will apply in respect of wholesale customers and Telstra retail business units equally.

Furthermore, NBN Co submits that the proposed changes to the Migration Plan in no way alter Telstra's commitment to:

- disconnect wholesale and retail customers in an efficient and timely manner; and
- to ensure equivalence in the disconnection processes that Telstra will implement for its wholesale and retail customers.

Accordingly, NBN Co submits that the proposed variation of the Migration Plan is minor in nature and does not affect Telstra's disconnection or equivalence obligations. For this reason, the ACCC may accept this variation without public consultation.

Appendix A: Agreed Specified Rollout Regions

	FSAM ID	Name
1	9CRC-04	Crace
2	2GOS-01	Gosford
3	2GOS-03	Gosford
4	2CFS-04	Coffs Harbour
5	2LJT-03	Long Jetty
6	2LJT-01	Long Jetty
7	2SAW-02	Sawtell
8	2SAW-03	Sawtell
9	2CFS-03	Coffs Harbour
10	2SAW-04	Sawtell
11	2BLK-03	Blacktown
12	2LJT-02	Long Jetty
13	2RIV-02	Riverstone
14	2RIV-03	2RIV-03
15	2BLK-04	Blacktown
16	2CFS-06	Coffs Harbour
17	2BLK-05	Blacktown
18	2PTH-02	Penrith
19	2RCH-05	Richmond
20	2PTH-04	Penrith
21	2PTH-03	Penrith
22	2WLG-01	Wollongong
23	2DAP-02	Dapto
24	2DAP-03	Dapto
25	2RIV-04	Riverstone
26	2DAP-04	Dapto
27	2LID-02	Lidcombe
28	2LID-03	Lidcombe
29	8DRW-04	Darwin
30	8DRW-05	Darwin
31	8DRW-06	Darwin
32	8CSU-03	Casuarina
33	4APL-04	Aspley
34	4GDN-03	Goodna
35	4GDN-04	Goodna
36	4APL-03	Aspley
37	4APL-02	Aspley
38	4GUL-05	Gulliver
39	4TNS-01	Townsville
40	4TNS-02	Townsville

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41	4TNS-03	Townsville
42	4TNS-05	Townsville
	4MKY-01	Mackay
44	4MKY-02	Mackay
45	4TNS-04	Townsville
46	4GDN-05	Goodna
47	3CTN-07	Carlton
48	4GDN-06	Goodna
49	4ACO-01	Ascot
50	4ACO-02	Ascot
51	4NDG-01	Nudgee
52	5ALD-03	Aldinga
53	5ONK-01	Onkaparinga
54	5ALD-02	Aldinga
55	5SFD-04	Seaford
56	7KIN-03	Kingston
57	7HOB-04	Hobart
58	7LAU-01	Launceston
59	7STH-02	St Helens
60	7HOB-05	Hobart
61	7LAU-03	Launceston
62	7KIN-04	Kingston
63	7LAU-04	Launceston
64	7HOB-06	Hobart
65	7KIN-02	Kingston
66	7HOB-03	Hobart
67	7LAU-02	Launceston
68	7SOE-01	Somerset
69	3BAC-03	Bacchus Marsh
70	3SMR-01	South Morang
71	3BRU-03	Brunswick
72	3SMR-04	South Morang
73	3BRU-04	Brunswick
74	3BRU-06	Brunswick
75	3SMR-05	South Morang
76	3BRU-05	Brunswick
77	3CTN-04	Carlton
78	6MSP-03	Meadow Springs
79	6MDR-03	Mandurah
80	2CFS-05	Coffs Harbour
81	3SMR-06	South Morang
82	6MSP-01	Meadow Springs