



NBN Co submission in response to the ACCC Consultation on a proposed variation to the Migration Plan

12 October 2018

NBN Co's submission to the proposed variation of Telstra's Migration Plan

On 10 September 2018, Telstra submitted a proposed variation to the Migration Plan to incorporate a number of amendments to support the timely and smooth migration of customers from Telstra's legacy networks to the **nbn™** access network and to support the structural separation of Telstra (**Proposed Variation**). NBN Co welcomes the opportunity to provide comment on the Proposed Variation.

NBN Co strongly supports the Proposed Variation as submitted to the ACCC. NBN Co considers that the amendments set out in the Proposed Variation are appropriate and necessary to continue to ensure the successful and timely migration of end users to the **nbn™** access network as well as to provide for service continuity.

The Proposed Variation details four sets of amendments each addressing a separate matter. In this submission, NBN Co details why each of the proposed sets of amendments is appropriate and therefore why the Proposed Variation as submitted to the ACCC should be approved.

1. Proposed amendments relating to HFC Pause

The Proposed Variation includes amendments to Telstra's obligations relating to HFC services in order to promote service continuity for customers impacted by NBN Co's temporary pause on accepting new orders for premises that are intending to migrate to the **nbn™** access network on HFC (**HFC Pause**).

As the ACCC is aware, NBN Co announced the HFC Pause on 27 November 2017. Following this announcement, Telstra obtained interim forbearance from the ACCC in respect of a number of obligations under the Migration Plan. Interim forbearance was granted on the basis that Telstra would subsequently submit a formal variation to the Migration Plan reflecting the revised arrangements. This Proposed Variation provides this formal variation request. The changes include:

- temporary lifting of cease sale for premises impacted by the HFC Pause;
- additional time to migrate for serviceable premises impacted by the HFC Pause facing disconnection during the first six months of the HFC Pause; and
- temporary suspension of disconnection communications to premises impacted by the HFC Pause.

NBN Co supports the set of amendments relating to the HFC Pause especially as the HFC Pause has allowed NBN Co the time to modernise the HFC network to ensure quality of service for end users and these amendments provide end users with the appropriate time to migrate to the **nbn™** access network post the HFC Pause.

2. Temporary disconnection extension for Premises with registered fire alarm and lift phones

The next set of amendments provide for a modified approach to the disconnection of registered fire alarms and lift phones. This modified approach was agreed between Telstra and NBN Co in response to a request from the Department of Communications and the Arts and has already been implemented and communicated to industry, including Wholesale Customers with the consent of the ACCC.

NBN Co supports the set of amendments relating to the disconnection of registered fire alarms and lift phones.



3. Extension of the existing In-Train Order (ITO) disconnection arrangements

The Proposed Variation will extend the operation of the existing Phase One and Phase Two ITO arrangements beyond the current expiry date of 30 June 2018 until 30 June 2022.

The current ITO arrangements have worked well and are well understood by industry and “the extension of these arrangements will assist to minimise the risk of any disruption to end user services where migration orders have been registered with NBN Co within the required timeframes to qualify as ITO Premises”.¹ Accordingly, NBN Co supports the extension of these current arrangements.

4. Proposed variations relating to Special Services

The Proposed Variation also includes two set of amendments relating to the migration of Special Services:

1. amendments to defer the commencement of disconnection of Special Services; and
2. amendments to establish an ITO for Special Services migrating to the **nbn**TM access network.

Amendments to defer the commencement of disconnection of Special Services

The Proposed Variation if approved by the ACCC will defer commencement of disconnection of Ethernet-Lite and Wholesale BDSL Special Services. Specifically, Telstra has proposed to amend Required Measure 5(A) so that:

- service disconnection will commence from 52 business days after the Special Services Disconnection Date and complete 61 business days after the Special Services Disconnection Date; and
- permanent disconnection will complete 87 business days after the Special Services Disconnection Date.

As detailed in Telstra’s supporting submission to the Proposed Variation, the effect of the proposed amendments will be that the commencement of disconnection activity for Special Services will be deferred to 29 January 2019 (after the Christmas, New Year and Australia Day public holidays). This will minimise the potentially disruptive impacts of disconnections activity over the holiday period.

This deferral of Telstra’s disconnection obligations is consistent with what has previously occurred for residential services where the disconnection date has occurred during holiday periods. Accordingly, NBN Co support this deferral.

Amendments to establish an ITO for Special Services migrating to the nbnTM access network

The seamless and effective migration of Special Services from legacy networks to the **nbn**TM access network is critical to the business market. Accordingly, NBN Co and Telstra have agreed to establish an ITO regime for Special Services migrating to the **nbn**TM access network. This process establishes appropriate safeguards to defer Telstra’s disconnection obligations under the Migration Plan and the Required Measures if the end user customer has placed an order for a service over the **nbn**TM access network shortly before the Special Services Disconnection Date.

NBN Co supports the ITO for Special Services migrating to the **nbn**TM access network as set out in the Proposed Variation for the following reasons:

¹ Telstra submission, page 6.



- it is consistent with Telstra's commitment and obligation to structurally separate in line with Government Policy and via the Definitive Agreements as the **nbn**TM access network is rolled out;
- it is pro-competitive as it does not restrict infrastructure competition in any way as any retail service provider that wishes to connect a customer to a non-**nbn**TM access network is free to do so; and
- it is consistent with the Definitive Agreements.

NBN Co urges the ACCC to approve these arrangements in a timely manner.

Telstra Consultation on Replacement Required Measures 5(A) and 5(C)-5(E)

NBN Co notes that there is a separate consultation currently being conducted by Telstra which is canvassing views on whether the Required Measures should be amended to expand the proposed ITO for Special Services so as to include premises migrating to non-**nbn**TM access networks.

NBN Co does not support Telstra's proposed expanded ITO process for Special Services on the basis that it is:

- inconsistent with the wider migration arrangements previously approved by the ACCC;
- inconsistent with the Australian Government's policy of structural separation;
- inconsistent with commercial agreements previously agreed with NBN Co and Telstra;
- inconsistent with the Migration Plan Principles;²
- not required by industry for a successful migration of Special Services; and
- not supported by a number of retail service providers.³

NBN Co would be more than happy to discuss any aspect of this submission with Telstra or any other industry participants. Please reach out to Sarah Alderson (Sarahalderson@nbnco.com.au) to discuss.

² As outlined in the *Telecommunications (Migration Plan Principles) Determination 2015*.

³ Including Aussie Broadband and Launtel (Comms Day 20 September 2018), Superloop and Macquarie Telecom (Comms Day 25 September 2018) and Vocus (Comms Day 4 October 2018).