

TELSTRA CORPORATION LIMITED

Variation to Telstra's Migration Plan

Submission in Support

18 November 2019



Executive Summary

On 26 October 2018, the Australian Competition and Consumer Commission (**ACCC**) approved Telstra's Varied Migration Plan (**Plan**) to reflect various changes to the migration process that were needed to ensure an efficient and effective migration of premises to the nbn.

This proposal to vary the Plan (**varied Plan**) covers three areas, for which Telstra has previously received regulatory forbearance from the ACCC, designed to improve service continuity for impacted end-users:

- Amendments to extend the timeframes Telstra is required to Managed Disconnect premises which continue to remain not nbn-serviceable, despite NBN Co having initially moved these premises into Service Continuity Regions (**SCRs**);
- Amendments to extend the timeframes Telstra is required to disconnect certain DDS Fastway and Megalink Special Services (**SS**) / Special Service Inputs (**SSI**) at premises utilising the atomic clock feature where an end-user's operations support critical infrastructure; and
- Amendments to extend the classification of an In-Train Order (**ITO**) Premise at a Rollout Region (**RR**) Disconnection Date (**DD**) to include instances where NBN Co has received an order under an existing agreement or entered into a new agreement, to change the Access Technology (**AT**) by which a premise is nbn-serviceable to Fibre to the Premises (**FTTP**).

The purpose of this submission is to explain the variations Telstra proposes be made to the Plan and the reasons why they should be approved by the ACCC. Telstra submits the varied Plan complies with the *Telecommunications (Migration Plan Principles) Determination of 2015 (MPPs)* and promotes the objectives of minimising disruption to end users and promoting service continuity, to the extent this is in Telstra's control.

1. Amendments to cater for Managed Disconnection arrangements for premises in SCRs continuing to remain not nbn-serviceable

Existing Managed Disconnections arrangements have been developed on the assumption that NBN Co will have made in-scope premises nbn-serviceable prior to the applicable DD. Contingency arrangements are therefore required in circumstances where premises continue to remain not nbn-serviceable in close proximity to an impending DD, in support of the service continuity objective by avoiding Managed Disconnections requirements being triggered before a premise has been provided sufficient opportunity to migrate services at in-scope premises to the nbn, if the end-user so desires.

The varied Plan contains two specific proposals relating to extending Telstra's Managed Disconnection arrangements to accommodate ongoing challenges experienced by NBN Co in making premises nbn-serviceable on its network. Telstra and NBN Co have on three¹ separate occasions, formally agreed arrangements to provide additional time as a result of nbn-serviceability issues to mitigate the risks related to Managed Disconnection, with each arrangement providing for an extension of approximately 6 months.

The first extension occurred with the introduction of SCR arrangements in the Migration Plan Variation of 2016, originally intended to accommodate instances where premises are not made nbn-serviceable during the standard 18 month migration window prior to the RR DD. NBN Co has since identified and advised that certain impacted premises are typically more difficult to be able to arrange an nbn connection for (and be made nbn-serviceable), despite having utilised SCR arrangements. Accordingly, as these challenges continued, we have been party to the more recent implementation of

¹ The interim arrangements contained at clause 15.7 of the Plan that were in operation for SCRs with DDs occurring between 1 February 2016 and 31 October 2016 have not been separately counted, given they are similar in nature to the arrangements proposed at section 1.1



the Extended SCR Premise arrangements as per section 1.1 and ETP Plus Premise arrangements (being additional extensions for certain Extended SCR Premises) as per section 1.2 (and have obtained forbearance from the ACCC).

1.1 Disconnection extensions for premises classified as Extended SCR Premise

Telstra is proposing to formally document in the Plan the following measure which is already subject to regulatory forbearance granted by the ACCC on 30 May 2018.

This proposed variation aligns the disconnection timeframe for those premises already residing in SCRs that continue to remain not nbn-serviceable at any point from the date that is 3 months before the SCR DD until the SCR DD, with the disconnection of ITO Premises under the current Phase 2 ITO arrangements. That is, affected Premises would not be subject to managed disconnection prior to 150 business days (**BDs**) after the SCR DD.

We consider it appropriate to support NBN Co in facilitating service continuity and mitigating end-user migration experience by providing an extension of time prior to disconnection, where NBN Co has encountered challenges in remediating the nbn-serviceability status of impacted premises. This proposal is therefore designed to enable additional time for:

- NBN Co to make Premises nbn-serviceable on its network;
- RSPs to work with their end-users to place nbn orders; and
- migration to the nbn to be successfully completed prior to managed disconnection arrangements being triggered.

These arrangements have been applied to Premises that are classified as '**Extended SCR Premises**' (as agreed between Telstra and NBN Co), where Telstra has been notified by NBN Co.

For clarification, premises already subject to extended disconnection arrangements in association with Premises affected by NBN Co's HFC stop sell (per clause 15.8 of the Plan) are specifically excluded from these Extended SCR Premises arrangements.

As at early September 2019, there were approximately 17350 premises utilising these Extended SCR Premise forbearance arrangements (inclusive of the 7650 premises referenced in section 1.2 below).

The proposed variation to the Plan reflects the operational arrangements that have already been implemented and communicated to Wholesale Customers and Telstra's Retail Business Unit. The relevant sections of the Plan proposed to be varied are summarised as follows:

Relevant Section of the Plan	Proposed amendment
Clause 14.1(b) Managed Disconnection to commence on the Disconnection Date	Additional sub-clause inserted to exclude Extended SCR Premises from standard RR DD Managed Disconnection arrangements.
Clause 15.9(a) and (c) Disconnection of Extended SCR Premises	New clause inserted outlining the basis for NBN Co to classify and notify Telstra as to the existence of an Extended SCR Premise in respect of an SCR DD and the associated extended Managed Disconnection arrangements Telstra is required to apply.

For ease of review, the changes in the table above (for section 1.1 of this Submission in Support) have been highlighted in **tea** outline within the marked-up version of the varied Plan.



Consistency with the MPPs:

Telstra considers this proposed variation supports the disconnection of fixed-line carriage services occurring in a way that promotes the MPPs – particularly general principle 10 and specific principles 12 and 13.

General principle 10(1)(b) requires that, to the extent it is in Telstra's control, disconnection occurs in 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 provides industry with continued confidence that there will be appropriate time to migrate customers in a way which continues to promote service continuity for end users (particularly for Premises that are connected after the applicable RR DD) and minimises disruption to end-user services by continuing to provide a greater number of Premises more time before managed disconnection.

1.2 Further disconnection extensions for affected Extended SCR Premises in certain Disconnection Waves

Telstra is proposing to formally document in the Plan the following measure which is already subject to regulatory forbearance granted by the ACCC on 12 April 2019 in respect of impacted premises in Disconnection Waves number 51 and 52, on 26 June 2019 in respect of Disconnection Wave number 54 and on 20 September 2019 in respect of Disconnection Waves number 55, 56 and 58.

The associated RR DD for the impacted Disconnection Waves number are as follows:

- 51 occurred on 10 August 2018;
- 52 occurred on 14 September 2018;
- 54 occurred on 9 November 2019;
- 55 occurred on 18 January 2019;
- 56 occurred on 8 February 2019; and
- 58 occurred on 8 March 2019.

This proposed variation further extends disconnection timeframes afforded to certain Extended SCR Premises who continued to remain not nbn-serviceable in the lead-up to pre-existing disconnection milestones, by an additional 150 BDs. Similarly, these arrangements rely on NBN Co notifying Telstra which particular premises are impacted, whereby for identification purposes, the list of Extended SCR Premises for the applicable Disconnection Wave/s are referenced as being '**ETP Plus Premises**'.

Similar to the scenario outlined in section 1.1 above, these arrangements have been applied to impacted premises in the above Disconnection Waves, to minimise the short-term risks to service continuity faced by end-users at premises that remain not nbn-serviceable and are in scope for Managed Disconnection. These arrangements are designed to allow NBN Co more time to make impacted premises nbn-serviceable, and also allow NBN Co, RSPs and their customers with more time in which to arrange the successful connection of end-users' services to the nbn, before Managed Disconnection occurs.

There are approximately 7650 premises within the above Disconnection Waves where we have applied this additional forbearance.

The proposed variation to the Plan reflects the operational arrangements that have already been implemented and communicated to Wholesale Customers with impacted end-user premises and to Telstra's Retail Business Unit. The relevant sections of the Plan proposed to be varied are summarised as follows:



Relevant Section of the Plan	Proposed amendment
Clause 15.9(b) Disconnection of Extended SCR Premises	New clause inserted outlining the basis for NBN Co to notify Telstra as to the existence of an Extended SCR Premise continuing to remain not nbn-serviceable and the associated further extension to Managed Disconnection arrangements Telstra is required to apply.

For ease of review, the changes in the table above (for section 1.2 of this Submission in Support) have been highlighted in yellow outline within the marked-up version of the varied Plan.

Consistency with the MPPs:

Telstra considers that this proposed variation supports the disconnection of fixed-line carriage services occurring in a way that promotes the MPPs – particularly general principle 10 and specific principles 12 and 13. Accordingly Telstra's believes the same rationale applies in relation to these general and specific principles, as set out in section 1.1 above.

Telstra also notes that these arrangements are being applied on a temporary basis, to affected premises in limited Disconnection Waves only.

1.3 Ongoing challenges with nbn-serviceability leading into the future

Due to the culmination in extension arrangements that have been agreed and implemented between the parties, some of these premises are now being provided up to 36 months in which to be made nbn-serviceable prior to Managed Disconnection coming into effect. Whilst these extensions are ultimately necessary, they likely will have also created some confusion and concern amongst RSPs and their end-users.

Telstra notes that we have been advised by NBN Co there will likely be an ongoing requirement for ETP Plus Premises arrangements to be applied to future disconnection waves (not currently listed in section 1.2 above). As a result, the parties are now considering whether alternative disconnection arrangements can be developed to apply for premises in SCRs that remain not nbn-serviceable, in place of both the current Extended SCR Premises and ETP Plus Premises arrangements². A key consideration is whether new arrangements can deliver improved outcomes for impacted end-users and their RSPs, compared to the current Extended SCR Premises and ETP Plus Premises arrangements. Telstra understands the potential arrangements under consideration will provide extensions beyond the timeframes afforded by the ETP Plus Premises arrangements. Ultimately, the accountability for making premises within the Fixed Line Footprint nbn-serviceable, including the associated timing, resides with NBN Co and is not within Telstra's direct control.

We note, in association with a separate ACCC consultation, Telstra has recently highlighted some concerns with NBN Co's recent performance in relation to nbn-serviceability and included some proposals for consideration to help address this, including the imposition of obligations on NBN Co³.

² On 30 August 2019 in association with the release of its NBN Co Corporate Plan 2020-23 on, NBN Co stated that the achievement of its commitment to complete the network build as forecast to occur in June 2020, "excludes approximately 100,000 premises defined as 'complex installations', which includes properties that are difficult to access and some culturally significant areas and heritage sites" (<https://www.nbnco.com.au/corporate-information/media-centre/media-statements/nbn-co-on-track-for-network-completion>). Telstra is unclear whether the full 100,000 premises referenced by NBN Co are expected rely upon Extended SCR Premises and / or ETP Plus Premises arrangements, or the potential replacement arrangements under consideration, we have assumed that at least a certain proportion of these premises are included in this forecast volume.

³ Telstra's 'Submission to ACCC Consultation on NBN Service Standards Inquiry Draft Decision' lodged on 8 November 2019



2. Disconnection extensions for certain DDS Fastway and Megalink Special Services

Telstra is proposing to formally document in the Plan the following measure which is already subject to regulatory forbearance granted by the ACCC on 16 May 2019.

In the fourth quarter of the 2018 calendar year, following consultation with both the Minister for Communications and the Arts and NBN Co, Telstra provided communications to Wholesale Customers highlighting the importance of ensuring service continuity in migrating and disconnecting SS / SSI that are of a safety critical or critical infrastructure nature. This includes updates to our Disconnection Handbook made available to assist Wholesale Customers.

In early 2019 calendar year, Telstra identified and alerted NBN Co to the existence of a small number of Telstra Retail customers who rely on the Atomic Clock signal inherent in their DDS Fastway and Megalink SS, to support critical infrastructure services. Suitable migration solutions for these end-users' SS were not scheduled to be in place prior to the SS DD on 31 May 2019, or subsequent RR DDs arising throughout the 2019 and 2020 calendar years. NBN Co agreed to Telstra's request for these critical infrastructure services to be protected from the standard disconnection arrangements and an extension is required to provide adequate time for these end-users to successfully migrate to alternative solutions.

It should be noted that NBN Co's IP based product set does not utilise an Atomic Clock function, meaning end-users who rely upon this feature within their existing internal network and infrastructure arrangements, need to migrate to alternative solutions.

These arrangements have been specifically applied to those DDS Fastway and Megalink SS that are:

- used to support critical infrastructure; and
- dependent upon the Atomic Clock feature provided by Telstra legacy product to operate properly.

These arrangements have been made available to Wholesale Customers on an equivalent basis.

Eligible services that qualify for this protection, referred to as **Relevant Atomic Services at Critical Infrastructure Premises**, will be protected from the standard disconnection arrangements that otherwise would apply, until 31 December 2020, being the Critical Infrastructure **(CI)** Extension Date **(ED)**. The service disconnection step for these protected services will complete within 20 BDs following the CI ED (i.e. by 1 February 2021). The permanent disconnection step will then complete by 55 BDs following the CI ED.

The proposed variation to the Plan reflects the operational arrangements that have already been implemented and communicated to Wholesale Customers and Telstra's Retail Business Unit. The relevant sections of the Plan proposed to be varied are summarised as follows:



Relevant Section of the Plan	Proposed amendment
Clause 22.1(a)(vi) Direct Special Services will continue to be supplied up to the Disconnection Date for each SS Class	New sub-clause highlighting Telstra will continue to accept new orders and continue to supply Relevant Atomic Services at Critical Infrastructure Premises in accordance with the SS Disconnection Process in RM 5(D)
Clause 22.5(d) Disconnection processes for each SS Class	New sub-clause highlighting Relevant Atomic Services at Critical Infrastructure Premises will be provided extended disconnection timeframes
Clause 22.8(a) and (b) Disconnection of Direct Special Services	Consequential amendment to highlight that Relevant Atomic Services at Critical Infrastructure Premises are an exception to the standard disconnection process for Direct SS and SSIs
Clause 22.9(a) and (b) Disconnection of Special Service Inputs	Consequential amendment to highlight that Relevant Atomic Services at Critical Infrastructure Premises are an exception to the standard disconnection process for SSIs
Required Measure 5(D) Clause 2.2(a)(i) Exceptions to this Required Measure 5(D)	Consequential amendment relating to treatment of Double-Ended SS where RM 5(D) cl.10.7 applies
Required Measure 5(D) Clause 3.1(b) and cl.3.1(e) Disconnection Dates for each Covered SS Class of Direct Special Service	Consequential amendment to clarify that Relevant Atomic Service supplied to a Critical Infrastructure Premises will be disconnected in accordance with RM 5(D) cl.10.7
Required Measure 5(D) Clause 7.1.(c)(v) SS Final Disconnection List	New sub-clause inserted to clarify treatment of Relevant Atomic Services at Critical Infrastructure Premises in association with the SS Final Disconnection List
Required Measure 5(D) Clause 7A.1 Application of Clause 7A	Consequential amendment to clarify this clause does not apply to Critical Infrastructure Premises in respect of Relevant Atomic Services
Required Measure 5(D) Clause 10.1(a) Disconnection of Direct Special Services and Special Service Inputs in a Covered SS Class after the relevant Special Services Disconnection Date and before a Final Sunset Exit	Consequential amendment to confirm Relevant Atomic Services at Critical Infrastructure Premises will not be subject to disconnection following SSDD
Required Measure 5(D) Clause 10.2(a)(vi) Types of Premises removed from the SS Updated Final Disconnection List	Consequential amendment relating to treatment of Relevant Atomic Services at Critical Infrastructure Premises in association with the SS Updated Final Disconnection List
Required Measure 5(D) clause 10.7 Disconnection of Relevant Atomic Services at Critical Infrastructure Premises	New clause outlining the disconnection arrangements and timeframes applicable to Relevant Atomic Services at Critical Infrastructure Premises whereby service disconnection will complete from 20BDs following the CI ED passing on 31 December 2020. Permanent disconnection will then complete within 55 BDs following the CI ED.
Schedule 10 – Dictionary	New defined terms being Critical Infrastructure Premise and Relevant Atomic Service

For ease of review, the changes in the table above (for section 2 of this Submission in Support) have been highlighted in **green** outline within the marked-up version of the varied Plan.

Consistency with the MPPs:

Telstra considers these proposed variations to the Plan are broadly consistent with the MPPs. In particular, Telstra considers that the variations are consistent with the following principles in the MPPs:



- Specific principle 18, requiring Telstra to disconnect SS in accordance with general principle 10 to ensure disconnection occurs in way that minimises disruption to the supply of fixed-line carriage services; and
- Specific principle 28 for Required Measures and replacement schedules setting out a process, and associated timetable, under which Telstra will provide the ACCC with prior written notice of, and an opportunity for the ACCC to disallow, a replacement schedule to incorporate processes associated with the disconnection of SS, developed in accordance with specific principle 18.

3. Extension of the In-Train Order Premise classification

Telstra is proposing to formally document in the Plan the following measure which is already subject to regulatory forbearance granted by the ACCC on 9 August 2019.

Telstra and NBN Co previously agreed to extend the classification of ITO Premises to include instances where NBN Co has received an order under an existing agreement or entered into a new agreement to change the AT by which a premise is nbn-serviceable to FTTP (referred to as an AT FTTP agreement).

The arrangement reflects that some end-users, especially businesses, in conjunction with their Access Seeker, have identified their needs on the nbn will be better satisfied through FTTP AT and that NBN Co has a commercial offering available to end-users and their Access Seekers to facilitate this. Accordingly, the arrangements facilitate service continuity by extending the classification of an ITO Premise where an end-user has taken action to attempt to migrate to the nbn. Further they improve the end-user migration experience through eliminating the need for end-users to raise, and subsequently cancel, nbn connection orders on the existing non-FTTP AT at the premise in order to guarantee the recognition of the ITO status, followed by the raising of an nbn connection order on FTTP.

This arrangement has been applied to Premises that are classified as having raised an AT FTTP Order (as agreed between Telstra and NBN Co) commencing with premises in RRs subject to the RR DD from 12 July 2019. A Premise having raised an AT FTTP Order is a Premises that is not nbn-serviceable using FTTP as at the applicable RR DD or becomes (and remains) nbn-serviceable using FTTP within 4 months prior to the RR DD, and:

- NBN Co has entered into an agreement to change the AT to be used to make that Premises nbn-serviceable to FTTP;
- where the nbn service will be used for business (whether for profit or not), government, health or educational purposes; and
- NBN Co reasonably expects to be able to complete construction and ensure the premises is nbn connected before the date that Telstra would be required to disconnect that premises in accordance with the ITO arrangements per clause 15.1(c) and Schedule 3 of the varied Plan.

For clarification, the proposed variation applies to RR DDs, and no similar additional mechanism is required for Special Services subject to an SS DD. This is because Telstra and NBN Co have agreed that the existing provisions for SS DD relating to 'Attempted NBN Connection Orders' already allow for premises to be classified as a SS ITO Premise in the circumstances the subject of this proposed variation. Further, Telstra and NBN Co have also agreed the existing provisions of the varied Plan covering the arrangements where SS at premises are classified as 'Changed Technology SS Premises' or 'Delayed Technology SS Premises' in relation to either an RR DD or SS DD, will continue to apply in the circumstances covered by this proposed variation.

The proposed variation to the Plan reflects the operational arrangements that have already been implemented and communicated to Wholesale Customers and Telstra's Retail Business Unit. The relevant sections of the Plan proposed to be varied are summarised as follows:



Relevant Section of the Plan	Proposed amendment
Clause 15.1A(b)(v) Disconnection of In-Train Order Premises in Rollout Regions with Disconnection Dates between 1 January 2016 and 30 June 2022	New sub-clause to recognise an AT FTTP Order as giving rise to ITO Premises status and therefore being subject to the application of the disconnection arrangements and timeframes as set out within cl.15.1A regarding Phase 1 and Phase 2
Schedule 10 – Dictionary	New defined term being AT FTTP Order

For ease of review, the changes in the table above (for section 3 of this Submission in Support) have been highlighted in [blue](#) outline within the marked-up version of the varied Plan.

Consistency with the MPPs:

Telstra considers the proposed variation supports the disconnection of fixed-line carriage services to occur in a way that promotes the MPPs – particularly general principle 10 and specific principle 12.

General principles 10(1)(b) and 10(1)(c) respectively require that, to the extent it is in Telstra's control, disconnection occurs in way that minimises disruption to the supply of fixed-line carriage services and, to the greatest extent practicable, gives a wholesale customer autonomy over certain decisions, including timing of disconnection.

The proposed variation is designed to support Specific Principle 12(6)(a) by extending the classification of the existing provisions to further provide RSPs with improved opportunity to migrate their customers to the nbn whilst still allowing disconnection as soon as reasonably practicable following 120 BDs post DD (i.e. in this case disconnection commences from 150 BDs).

Also, as these are interim arrangements, the extension of the ITO definition in the MPPs is only on a temporary basis and introduced in a way that promotes service continuity for those customers wanting to migrate, which is consistent with previous interim arrangements that have been approved by the ACCC. Overall, and in line with the ACCC's prior acceptance of the ITO arrangements, the proposed variation provides industry with continued confidence that there will be appropriate time to migrate customers in a way which continues to promote service continuity for end users (particularly for complex Premises or Premises that are connected to the nbn later in the migration window) and minimises disruption to end-user services by continuing to provide a greater number of Premises more time before managed disconnection.

4. Variation to Required Measure 5(B)

Telstra previously notified the ACCC of a proposed variation to Required Measure 5(B). The ACCC confirmed on 8 January 2019 that it had no objection to this variation. Telstra subsequently published the amended Required Measure 5(B) on our Wholesale Customer Portal on 24 January 2019, whereupon the amendment to the Required Measure formed part of the Plan.

For the purposes of good order, we have simply reflected the current Required Measure 5(B) within both the marked-up version and clean version of the varied Plan.

5. Conclusion

The amendments set out in this submission introduce a number of important refinements to the Plan which reflect our ongoing operational experience with the migration process.

Telstra submits this varied Plan to the ACCC for approval under section 577BF(2) of the *Telecommunications Act*, and looks forward to industry feedback as facilitated by the ACCC.