



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

Telstra's proposal to vary the Migration Plan to facilitate the rollout of Fibre to the Curb for the NBN

Discussion paper

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Australian Competition and Consumer Commission
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1. Introduction

The Australian Competition and Consumer Commission (ACCC) is seeking feedback from interested parties on Telstra's proposed variations to the Migration Plan to facilitate the rollout of Fibre to the Curb (FTTC) together with some other proposed variations to the Plan.

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. Further details on Telstra's Migration Plan can be found on the ACCC [website](#).

The current 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.

On 6 October 2017 Telstra submitted proposed variations to the Migration Plan to the ACCC incorporating changes 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 rollout of FTTC is planned to commence in 2018.

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. The NCD will have an integrated reverse powering feed to power the DPU from the premises via the copper lead-in.⁴ These FTTC connection arrangements will require retail service providers and end-users to take a more active role in the activation of an NBN service compared to existing access technologies, for example in ensuring the NCD is connected and powered.

Telstra's submission in support of its proposed variations and a marked-up copy of the variations to the Migration Plan can be found on the ACCC [website](#).

The *Telecommunications Act 1997* 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. The ACCC must consider this instrument when assessing Telstra's revised Plan. The ACCC's role in assessing a variation to the Migration Plan is to ensure also that the Migration Plan as varied complies with the Migration Plan Principles. If the ACCC is satisfied that the Migration Plan as varied complies with the Migration Plan Principles, it must approve the variations. The ACCC must refuse a variation requested by Telstra if the variation does not comply with the Migration Plan Principles.⁵

¹ The Order Stability Period is the period prior to 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 any new copper service to a retail customer or wholesale customer, and any new HFC service, after the ready for service date for an NBN rollout region.

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

⁴ Similar to FTTP and HFC, an NBN Co-supplied device will be required inside the premises. The NBN Co supplied NCD will contain a Reverse Power Feed. After an end-user order, NBN Co will complete the Access Virtual Circuit and provision the DPU port. The connection of the NCD by the end user will physically power the DPU port enabling the FTTC service.

⁵ Section 577BF of the *Telecommunications Act 1997*.

As part of its assessment, the ACCC is required to publicly consult on the proposed changes to the Migration Plan for 28 days. After considering any submissions, the ACCC will decide whether to approve or refuse to approve Telstra's proposed variations as required under the *Telecommunications Act 1997*. The ACCC will publish its decision on the ACCC website.

If the ACCC approves the varied Migration Plan its provisions will be treated as provisions of the Structural Separation Undertaking (SSU) that is in force under subsection 577BE(5) of the *Telecommunications Act 1997*. This means that a breach of the Migration Plan becomes enforceable as a breach of the SSU.

Migration Plan Principles

The Migration Plan Principles define the objectives and scope of the Migration Plan, and prescribe the way in which the Migration Plan must deal with certain issues.

In assessing Telstra's proposal, the ACCC will consider the proposed variations against its general principles and any relevant specific or procedural principles. The general principles relate to the overarching objectives of the Migration Plan and the specific principles specify how certain processes will be executed by Telstra in detail.

The Migration Plan Principles incorporate the following four general principles:

- ensuring 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 in 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.⁶

Where a specific or procedural principle relates to a matter, the ACCC must take the varied Migration Plan as complying with the Migration Plan Principles, including the general principles, in respect of that matter if and to the extent that the varied Migration Plan complies with that specific or procedural principle.

Where a variation to the Migration Plan does not accord directly with a specific or procedural principle, or where the variation is not dealt with by a specific or procedural principle, the ACCC will consider the proposed variation against all of the principles, including the general principles.⁷

2. Consultation process

The ACCC is seeking feedback from interested parties by way of written submissions on Telstra's proposed variations to the Migration Plan. Submissions may address the specific questions raised in this Discussion Paper, as well as any other relevant competition and consumer issues arising from the proposed variations.

To assist stakeholders in making a submission, this Discussion Paper outlines:

- recent variations to the Migration Plan approved by the ACCC to improve arrangements for migration of customers to the NBN
- Telstra's current proposed variations to the Migration Plan and reasons provided by Telstra as to why these variations are necessary, and

⁶ Clause 10 Migration Plan Principles.

⁷ Clause 8(2) Migration Plan Principles.

- questions to guide interested parties' submissions on Telstra's proposed variations.

Interested parties should provide submissions by no later than 5pm on 5 January 2018. The ACCC may be limited in its ability to fully consider submissions received after the deadline.

Responses may be emailed to ssu-migration@acc.gov.au with the title: *Submission re: proposed variations to the Migration Plan*. We would appreciate electronic copies of submissions in either Adobe PDF or Microsoft Word format that is text searchable.

For enquiries regarding this Discussion Paper, please contact:

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Confidentiality of submissions

To facilitate an informed and open consultation, the ACCC will treat all submissions as public and publish them on the ACCC website. If interested parties wish to submit commercial-in-confidence material to the ACCC, they should submit both a public and commercial-in-confidence version of their submission. In the confidential version, confidential material should be clearly identified and marked as confidential. In the public version, confidential material should be redacted and replaced with an appropriate symbol or '[c-i-c]'.

It is the ACCC's preference that as much material is disclosed in the public version as possible.

3. Recent variations to the Migration Plan

Telstra's Structural Separation Undertaking (SSU) and Migration Plan together set out how Telstra will progressively stop supplying telephone and broadband services over its networks and migrate those services to the NBN.

The Migration Plan outlines how Telstra will migrate voice and broadband services from its copper and HFC networks to the NBN as the network is rolled out. The Migration Plan was approved by the ACCC in June 2015.

In July 2016, the ACCC approved a variation to the Migration Plan proposed by Telstra. The variation sought to improve existing arrangements following Telstra and NBN Co's experience migrating end-users to the NBN. The changes included:

- providing additional time for connecting premises with an NBN order before mandatory disconnection occurs
- amending the regime for disconnecting Special Services (business grade services) to accommodate the move to a MTM NBN, and
- formalising arrangements to provide additional flexibility in migration processes to ensure service continuity for end-users.

The ACCC considered that the variation reflected improvements to the migration process and provided greater assurance to end-users that they will not prematurely lose their voice and broadband services during migration to the NBN, provided they have submitted an NBN order.

Further details on recent variations to the Migration Plan can be found on the ACCC [website](#).

4. Telstra's proposed variations to the Migration Plan

4.1. Variations proposed 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. NBN Co announced that it will commence deploying the FTTC access technology in November 2016.

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 considers that the Migration Plan needs to be further amended to reflect that NBN's use of Telstra's existing copper network infrastructure for the purpose of supplying a new NBN service over FTTC. This in turn will result in the disconnection of Telstra copper services supplied once NBN notifies Telstra that the FTTC order is complete.

The changes to the Migration Plan proposed by Telstra include:

- the inclusion of new sub-clauses to clarify the conditions for Telstra copper services to be disconnected as part of the rollout of FTTC
- the addition of text outlining the processes that Telstra will follow to disconnect retail and wholesale copper services to FTTC-connected premises.

Telstra has advised that the changes to the Migration Plan it is proposing provide clarity for industry regarding the processes that will be used for disconnecting copper services at FTTC-connected premises. Telstra considers the changes will apply equivalently across retail and wholesale services. Telstra has also advised that its proposed changes will not have a material or adverse commercial effect on wholesale customers.

4.1.2. Update Special Services Classes

The concept of a Special Service (SS) Class within the Migration Plan is defined by the access technology to be utilised. To accommodate the introduction of FTTC-connected premises, Telstra is proposing to update the SS Class lists for Direct Special Services for retail and wholesale customers.

4.1.3. Update other related obligations

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

4.2. Variations proposed to amend the Order Stability Period

Telstra may apply an Order Stability Period (OSP) in each rollout region immediately prior to and after the disconnection date for copper and HFC Services to allow it time to clear any remaining pending orders before the managed disconnection process commences.

Currently, clause 13.1 of the Migration Plan requires Telstra to conclude OSP no later than 45 business days after the disconnection date for all services, other than at In-Train Order Premises⁸ which are to be permanently disconnected no later 120 business days after the disconnection date.

Clause 15 of the Migration Plan currently requires 'Phase 2' In-Train Order Premises to be permanently disconnected 155 Business Days after the disconnection date.

Telstra considers that the OSP should be equivalently applied across the various In-Train Order Premises. Telstra is proposing that the Clause 13.1 OSP be amended to align with the timeline specified in clause 15 as the date by which Telstra will permanently disconnect In-Train Order Premises (i.e. the maximum duration of the OSP period for In-Train Order Premises would be increased to 155 days after the disconnection date). Telstra has advised that its proposal will also minimise disruption to the supply of copper and HFC services.

4.3. Variations proposed to clarify the application of the Cease Sale restrictions for Multi Dwelling Unit Common Area Sub Locations

Clause 17.1 of the Migration Plan requires 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.

Telstra proposes 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 considers this proposed change aligns 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.

5. Issues for consideration

The ACCC has raised with Telstra the potential impact of the proposed Migration Plan variations and rollout of FTTC on the customer experience associated with the NBN migration process.

Telstra has advised that existing processes applicable to other access technologies used for the MTM NBN in place to minimise disruption to the supply of fixed line services during the migration process will be adopted for the rollout of FTTC.

Telstra does not expect the use of FTTC as an access technology to cause any impediments to the timely and efficient disconnection of services. Telstra has also advised that in the event any issues arise, it would work with NBN Co and other stakeholders to support a positive customer experience.

⁸ '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.

Importantly, the Migration Plan is intended to provide suitable protections that services will not be disconnected during the switchover period other than at the customer's request, and that there are measures in place to minimise service disruption arising from migration to the extent that it is within Telstra's control.

The ACCC has raised with Telstra whether erroneous advice that a particular premises had been migrated to the NBN would prevent it from restoring onto its network a disconnected service supplied to that premises. Telstra has confirmed that clause 19 of the Migration Plan would likely permit Telstra to restore a service in this circumstance during the switchover period.

The ACCC has also raised with Telstra whether it could be obliged to disconnect a copper service even though NBN Co has been unable to detect traffic being sent to or from the end-user's NBN modem following a FTTC connection. This could be because the modem has not yet been received, has not yet been plugged in, or there is a fault with the modem or NBN equipment.

Under the proposed arrangements in place between Telstra and NBN Co, which are supported by the proposed variations to the Migration Plan, a period of 10 calendar days would need to expire from the time of NBN Co accepting a FTTC order as being activated before Telstra could be required to disconnect the service. Also, there will be a process in place for this to be extended for a maximum of a further 10 calendar days where NBN Co is notified by a retail service provider that an issue has arisen that prevents the FTTC service being activated. Within this maximum period, a service would only be notified to Telstra for disconnection following end-user traffic being detected at the NBN modem.

Telstra has advised that it will work collaboratively with NBN Co and other stakeholders in the event any concerns arise regarding the proposed disconnection arrangements for FTTC connected premises.

The ACCC is interested in stakeholder views on:

- Whether Telstra's proposed variations to the Migration Plan for the roll-out of FTTC services provide suitable protections that existing services will not be erroneously disconnected during the switchover period?
- Do the proposed variations provide an adequate mechanism to minimise potential unintended disconnections during the switchover period for FTTC services?

The ACCC is also seeking comment from stakeholders on the following:

- Do the proposed variations promote service continuity and minimise disruption regarding disconnection of existing copper services and the supply of services enabled through FTTC to the extent that it is within Telstra's control?
- Do the proposed variations adequately set out the processes and timelines by which wholesale and retail customers will be disconnected from existing copper services and supplied services enabled through FTTC?
- Do the proposed variations raise any issues for the equivalent treatment of Wholesale Customers and Telstra Retail Customers regarding disconnection of existing copper services and the supply of services enabled through FTTC?
- Are the proposed variations likely to give rise to any unintended consequences?
- Are there any issues of concern to stakeholders regarding the proposed variations not addressed in Telstra's submission supporting its proposal or in this Discussion Paper?

6. Next steps

The ACCC invites interested parties to make submissions on the issues raised in this Discussion Paper and any other issues relevant to Telstra's proposed variations to the Migration Plan.