

TELSTRA CORPORATION LIMITED

Replacement Required Measures 5(A) and 5(C)-5(E): Disconnection process for Special Services and Special Service Inputs

5(A)	SS Classes Ethernet Lite BDSL and Wholesale Business DSL – for FTTP, FTTN and FTTB
5(C)	SS Classes Wholesale ATM (over copper), ATM (Rebill) (over copper) and ATM (over copper) – for FTTP, FTTN and FTTB
5(D)	Access Service Families DDS Fastway, Data Access Radial, Megalink, Frame Relay, ISDN 2 and ISDN 10/20/30 – for FTTP, FTTN and FTTB
5(E)	Access Service Family Wholesale Transmission – CRA 163 – Telstra domestic tail transmission capacity service – for FTTP, FTTN and FTTB

Consultation with Wholesale Customers, the ACCC and nbn on proposed network agnostic in-train order arrangements for Special Services

Telstra Decision and Statement

30 October 2018



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01 EXECUTIVE SUMMARY

We would like to thank all respondents to our consultation published on 13 September 2018, where we proposed to vary the terms of Required Measures 5(A) and 5(C)-(E) of the Migration Plan to establish an in-train order (ITO) period for Special Services and Special Services Inputs (TSS) migrating to networks other than the nbn (**Consultation**).

In total, we received 7 responses. Additional public responses were provided to the ACCC's separate consultation on the variation to our Migration Plan submitted to the ACCC on 10 September 2018 (the **September 2018 Plan Variation Proposal**) that were also relevant to our decision.

Following a careful review of this feedback, we have decided that there is insufficient support from industry and nbn at this time, to enable Telstra to implement an ITO process for TSS migrating to non-nbn networks. In particular:

- we continue to believe, and several of the Wholesale customer responses confirmed, that an ITO applying to non-nbn networks is wanted by some of our Wholesale customers to reduce the risk of end-user disruption where those end-users wish to migrate to non-nbn networks;
- several Wholesale customers included examples of end-user requirements for TSS replacements which the respondents considered were not adequately or optimally served by existing or planned nbn products;
- a number of other Wholesales customer responses, however, expressed views that a non-nbn network ITO was not required to protect service continuity. nbn also responded that a non-nbn ITO was “not required by industry for a successful migration of Special Services”, on the stated basis that “The industry has had three years to migrate these services, NBN Co is ready to meet all service requests at locations subject to disconnection and end user customers are free to migrate to an alternative non-nbn™ access network at any time”¹; and
- several Wholesale customers expressed a preference for disconnection and migration arrangements which encouraged service based competition supplied via the nbn, over arrangements establishing a level playing field which encouraged infrastructure based competition to the nbn. Some stated that there was sufficient time to migrate end users to non-nbn networks, and if service continuity could not be achieved within that timeframe, then they could still benefit from an ITO by placing an nbn order.

While we still consider that a non-nbn network ITO is the best protection against customer disruption for end-users with a desire to migrate to non-nbn networks, and they should not be competitively disadvantaged relative to migrations to nbn networks, there is insufficient support from industry and nbn for Telstra to be able to take forward our proposal at this time.

As a consequence of this decision, there will be some risk to customer service continuity in circumstances where Wholesale customers and their end users decide to migrate TSS to a non-nbn network and are not ready before mandatory disconnections begin. Ultimately, responsibility for managing this risk rests with end-customers and their Retail Service Providers (**RSPs**), recognising that it is end-users who must initiate migration, and RSPs that must place order with nbn or migrate customers to alternative networks.² We therefore strongly encourage Wholesale customers to:

¹ See p. 7 of nbn's response to our Consultation at <https://www.telstrawholesale.com.au/nbn/special-services.html>

² The Government's Migration Assurance Framework explains the limitations to Telstra's role in supporting end user service continuity as the disconnecting network provider: <https://www.communications.gov.au/publications/migration-assurance-framework-telecommunications-industry-guide>



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- Check that where they believe their end users qualify for an nbn ITO, these premises are correctly identified on the service profiles Telstra Wholesale provides, and if not, raise any concerns with nbn and Telstra Wholesale;
 - Ensure they have a plan to avoid customer disruption for any TSS that remain active on our legacy network that do not qualify for an nbn ITO.

Where you are facing any delays in migrating a service in relation to TSS listed on your service profiles which are being used for critical safety and infrastructure uses, we would urge you to raise these cases with us. We will shortly be updating the Disconnection Handbook for Wholesale customers with further information about the process to manage the migration of these types of services off our legacy network.

This statement reflects Telstra's formal decision under clause 5.2(e) of the Migration Plan regarding our Consultation proposal.

02 BACKGROUND

Telstra's Migration Plan requires Telstra to disconnect TSS from its legacy network. TSS are business-grade copper services used mainly by business and government customers for critical purposes other than standard landline phone or internet services. They include products such as Ethernet Lite BDSL, Wholesale Business DSL, Frame Relay, Megalink, DDS Fastway, ISDN and CustomNet Spectrum. The first mandatory disconnection date for TSS (**SSDD**) will occur on 12 November 2018, and will cover Ethernet Lite and Wholesale Business DSL supplied to premises located in nbn rollout regions which have already passed their Rollout Region Disconnection Date.³

Telstra is committed to a successful migration and disconnection of all retail and wholesale services from its legacy networks, in conjunction with the nbn rollout. Telstra places top priority on the end-customer experience through this process, with a focus on service continuity. At the same time, we are also aware of our obligations under the Structural Separation Undertaking and Migration Plan to structurally separate Telstra's legacy copper and HFC networks.

To promote customer continuity throughout the TSS migration and disconnection process, Telstra has undertaken (overall) 38 separate wholesale customer awareness initiatives since May 2016. In 2018 alone, we are aware of at least 21 related news articles in industry and general media. nbn has additionally undertaken at least seven of its own communications with industry. As a result, we are confident that there is a high level of awareness of the impending disconnections of TSS, and the need to migrate to alternative networks, amongst RSPs.

On 10 September 2018 Telstra submitted the September 2018 Plan Variation Proposal for the ACCC's approval⁴. These variations were subsequently approved by the ACCC on 26 October 2018.⁵ The variations to the Migration Plan approved by the ACCC include important changes to Telstra's current disconnection obligations for TSS that will:

- Defer the commencement of any managed disconnection activities following the passing of the SSDD on 12 November 2018 covering Ethernet Lite and Wholesale Business DSL services, until 29 January 2019; and

³ Where the applicable nbn access technology is FTTP, N or B

⁴ See <https://www.accc.gov.au/regulated-infrastructure/communications/industry-reform/telstras-migration-plan/variation-request-submitted>

⁵ See <https://www.accc.gov.au/regulated-infrastructure/communications/industry-reform/telstras-migration-plan/variation-approved-1>



- Extend by 170 business days the timeframe for disconnecting TSS beyond the initial mandatory SSDD for all TSS covered by Required Measures 5(A) and 5(C)-(E)⁶, but only where the customer has an ITO in place to migrate the Special Service to the nbn.

On 13 September 2018, we began our Consultation with Wholesale customers, the ACCC and nbn to vary the terms of Required Measures 5(A) and 5(C)-(E)⁷ to establish an ITO period to extend TSS disconnection beyond the Disconnection Date for orders for non-nbn networks.

These changes, along with the changes in the September 2018 Plan Variation Proposal, would have better protected customers against disruptions when migrating to non-nbn networks, and would have ensured that the disconnection arrangements for TSS remained network agnostic. However, they went beyond what had been commercially agreed with nbn and submitted to the ACCC for approval for the September 2018 Plan Variation Proposal. In order to implement the non-nbn network ITO arrangements in a timely fashion, we would have needed broad industry and nbn support, which was not forthcoming.

03 THE RATIONALE FOR A NON-NBN NETWORK ITO

For the reasons set out in summary below and in full in our Consultation, we believed that the changes to Required Measures 5(A) and 5(C)-5(E) we were proposing would further the best interests of end-users of TSS.

Risk to end-user service continuity

Despite nbn and RSP efforts to encourage end users to migrate onto alternative networks, looking at the data as at May 2018 (6 months before the 12 November 2018 SSDD), we were concerned that the volumes of active TSS on Telstra's legacy network were only slowly reducing and remained generally quite high.

For example, in our Consultation, we observed that the volume of eligible active Ethernet Lite BDSL and Wholesale Business DSL services remaining on Telstra's legacy copper network and subject to this SSDD had only decreased by approximately 17%⁸ in the 12 months to May 2018.

We were concerned that this presented a risk that end-users of these TSS would not have time to complete their migration to substitute services before they were due for disconnection.

While Telstra had visibility of the status of the migration of its own retail legacy TSS, we did not have visibility of that status for those services belonging to our Wholesale customers. In particular, we did not know whether the end-users of services due for disconnection were migrating to the nbn or to alternative networks or if they were sufficiently progressing through the order and provisioning process to allow for transition prior to disconnection.

Telstra's September 2018 Plan Variation Proposal recognised this risk by proposing a "safety-net" extension to disconnection for legacy services with ITOs in place. However, the ITO arrangements for TSS included in the September 2018 Plan Variation Proposal addressed only the risk where there was a valid order in place to migrate the TSS to the nbn. They did **not** cover any TSS which were being migrated to a non-nbn network. The proposals covered by Telstra's Consultation sought to address this residual risk to service continuity.

End-user competitive choice

Whilst the nbn is the main network replacing Telstra's legacy network for the supply of standard copper and HFC services, there is competitive infrastructure that can be used to supply TSS substitutes and, in some

⁶ For clarification, no changes were proposed to the disconnection processes contained in RM 5(B) relating to CustomNet Spectrum services, due to the differing disconnection arrangements applying to those services as a result of Telstra announcing a full national product exit.

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⁸ Note, there was an error in our original Consultation Document, and this figure incorrectly stated 14%.



cases, end-users with TSS would prefer to migrate to infrastructure not provided by nbn. For example, we were aware of some cases where the end-user's technical requirements were not adequately or optimally served by nbn's current and planned product offerings.

Underpinning this Consultation proposal was our belief that end-users with a desire to migrate their TSS to non-nbn networks should not be disadvantaged in terms of migration timeframes, nor that they should have their competitive migration choices limited by a discriminatory migration framework.

04 REVIEW OF CONSULTATION FEEDBACK RECEIVED

In our Consultation, Telstra sought feedback from industry, nbn and the ACCC on our proposed changes. In particular, we stated that we would be interested to hear views from respondents on the likely importance to customer experience and competition of an equivalent ITO Period for TSS migrating to the nbn and other networks. We stressed that it was important that respondents drew to our attention instances where customers preferred services using competitive infrastructure over nbn's, and would face an unacceptable risk of being disrupted if they were subject to mandatory disconnection before the proposed ITO timeframes.

Responses we have considered in forming our decision

We would like to thank all respondents to our Consultation. Responses to our Consultation⁹ were received from:

- AT&T;
- Enablis Pty Ltd;
- nbn;
- Optus;
- Orange;
- Vodafone; and
- a respondent who requested to remain confidential.

We are also grateful to those who have provided responses to the ACCC's consultation on the September 2018 Plan Variation Proposal. Where published responses to the ACCC's consultation¹⁰ have expressed views on our Consultation proposal, we have also taken these views into consideration in forming our decision. Public responses to the ACCC's consultation were provided by:

- Compete;
- Exetel;
- Macquarie Telecom Group;
- nbn;
- TPG; and
- Vocus.

⁹ Published at: <https://www.telstrawholesale.com.au/nbn/special-services.html>

¹⁰ See <https://www.accc.gov.au/regulated-infrastructure/communications/industry-reform/telstras-migration-plan/variation-request-submitted>



We very much value the views of our Wholesale customers on this important subject. We urge you to continue to engage directly with your Telstra Wholesale Account Manager if you have any concerns in relation to the arrangements for the impending disconnection or migration of your Special Services.

Feedback received on the risk to end-user service continuity

Several of the industry responses provided echoed our concerns that, without a non-nbn network ITO, there would be a risk to service continuity for some end-users wishing to migrate to non-nbn networks. Several of these responses included examples of end-user requirements which could not be adequately met by the nbn. However a number of other industry responses as well as nbn expressed views that a non-nbn network ITO was not required to protect service continuity.

In summary:

- **AT&T, Orange Business Services and Vodafone Enterprise Australia** called out that the requirements of their global customers necessitated more time to be allowed for their migration than provided for by the current 12 November 2018 disconnection date. The response from **Orange Business Services** went on to advise that: *“If this is not approved there will be a major impact on Orange customers eg [major airline end customer names redacted] which impact critical customer business operations globally and will affect Australia's reputation across the globe.”*
- **Optus** referred to *“Optus' goal of maintaining continuity of service for its customers and ensuring all migrations occur in a seamless manner”*. However, Optus went on to advise that, whilst *“Optus supports any framework that provides continuity of service for our customers, upon further review of the operational impacts of Telstra's proposed ITO amendments to include non-NBN Co networks, Optus considers that at such a late stage in its migration planning, this proposal is likely to be contrary to this goal.”*
- **Vocus'** response to the ACCC's consultation advised that: *“The extension of the ITO process to Special Services [migrating to the nbn] appropriately addresses the risk of businesses being without a working service”* and that *“Vocus is ready to work with both existing and new customers to help them through the transition to the NBN”*.
- **TPG's** response to the ACCC's consultation advised that: *“TPG is concerned about the high likelihood of business customers being stranded without service on the Special Services Discontinuation Date (SSDD). One of the primary concerns we have is driven by the fact that the TPG group does not consider that NBN Co has put in place any products that naturally will fit the requirements that business customers have for their services.”*
- **Enablis** advised that: *“We have a [sic] hundreds of services being effected by the upcoming SSDD date - with many services being migrated to non NBN fibre services primarily for speed and cost related considerations. These orders are in train and we have spent over 9 months educating our clients of the pending changes proactively through events and close customer account management. We now face a scenario where these orders are not due to be delivered before 12th November and because they are not classed as ITO under current NBN rule - could be terminated. This would effectively leave our mid size enterprise clients with no data connection at sites, stopping them from trading... Needless to say the disruption to our business and our clients business would be catastrophic - and this whole event has had so much time and effort on our behalf invested to mitigate such a scenario”*
- **Macquarie Telecom Group's** response to the ACCC's consultation advised that: *“...there are likely to be some customers with complicated environments and legacy communications equipment and plant that might give rise to unexpected problems. It is unfortunate but understandable that RSPs and the NBN have not been able to already prepare all of these customers for the migration. However, maintaining continuity of service to these customers is important...”* Macquarie's response to the



ACCC's consultation went on to submit that "...it is one thing to give [sic] customer with complex migration problems some extra time to ensure the smooth transition to the all-new NBN. It is something altogether different to now propose these customers could be retained by Telstra on its own network." **Commpete** expressed similar concerns in its response to the ACCC's consultation.

- Telstra notes in response that the proposal for a non-nbn network ITO was intended to mitigate the risk of customer disruption for Telstra's Wholesale customers where they wanted to migrate TSS to their own networks, given we have limited visibility of the progress of our Wholesale customers' migrations, and to maintain a competitively neutral approach to migrations and disconnections. It would in no way give Telstra an advantage over other networks, as erroneously claimed by Macquarie. We, therefore, reject the assertions that a non-nbn network ITO would have resulted in particular competitive or commercial advantage being conferred upon Telstra. We have, at all times, acted in a manner that we believe to be in the best interests of our Wholesale customers and end-users.
- **Commpete** raised concerns that any extension to the current mandatory TSS disconnection timeframes "would have the knock-on effect of prolonging coexistence in areas where these special services exist".
 - Telstra notes in response that, a non-nbn network ITO would not materially affect the timeframe that co-existence is an issue, as any prolonging of co-existence would be caused by an nbn network ITO, which is proposed to have the same duration as the non-nbn network ITO.
- **Exetel's** response to the ACCC's consultation observed that: "...it isn't just Telstra, Optus, Vocus, and TPG that have legacy copper services to cut over, but a number of smaller Tier 2 ISPs like Exetel, Macquarie Telecom, Inabox, etc, and many legacy resellers of Optus XYZed, and AAPT Midband Ethernet services that have a large number of services to migrate as well". In some cases, Exetel stated "there is no real alternative service from NBN to migrate these customers to". Exetel's response to the ACCC raised concerns regarding a "truly negative impact on many businesses around Australia who rely upon copper to provide business data and voice to their business" of premature disconnection, and therefore advised that "if something is difficult, then if a short extension of time can be used as a resource to make it less difficult, then I cannot possibly fathom why he and others are against a move that actually benefits customers more than it does service providers".
- **nbn** agreed with Telstra that "The seamless and effective migration of Special Services from legacy networks is critical to the business market". However, nbn expressed the view that the non-nbn ITO arrangements proposed by Telstra in its Consultation were "not required by industry for a successful migration of Special Services", on the stated basis that "The industry has had three years to migrate these services, NBN Co is ready to meet all service requests at locations subject to disconnection and end user customers are free to migrate to an alternative non-nbn™ access network at any time".

Feedback received on end-user competitive choice

Several of the responses provided to our Consultation and the ACCC's consultation provided examples of end-customers with requirements for replacements to their legacy TSS which the respondents considered were not adequately or optimally served by existing or planned nbn products. None of the respondents to either consultation suggested that nbn's offerings were intended to "cover the field" in terms of the options available to end-users when looking to replace their legacy special services. For example:

- **Orange** advised that: "NBN access in many cases is not a suitable replacement service for our particular customers [sic] needs".



- As noted above, **Enablis** advised that it had hundreds of services affected by the 12 November SSDD, with many of these being migrated to non NBN fibre services “*primarily for speed and cost related considerations*”.
- **TPG’s** response to the ACCC’s consultation stated that: “*One of the primary concerns we have is driven by the fact that the TPG group does not consider that NBN Co has put in place any products that naturally will fit the requirements that business customers have for their services ... Using the NBN products currently on offer, the effect of the proposal [to have an nbn-only ITO] is to force TPG business customers from their current service with TPG (for example a mid-band ethernet service) onto a lower quality and lower speed NBN service at a higher price*”.
- **Exetel’s** response to the ACCC’s consultation stated that: “*when we send migration offers to our customers using Telstra Wholesale and AAPT Wholesale fibre, in many cases the offer is cheaper for the same speed they are on now, however many of our clients are taking up higher bandwidths which they did not have access to before*”. Exetel also advised that: “*For a data service, it is not just a matter of ordering a TC2 NBN service and moving them over, I truly wish it was that simple, however from Exetel’s perspective, these customers are on services which (on average) sync at 14Mbps/14Mbps, and in many places there are no TC2 equivalents, as in many cases the site is only serviceable up to 10Mbps/10Mbps*”.
- **nbn** agreed with Telstra’s view that “*there is competitive infrastructure that can be used to supply TSS substitutes, which underlies the competitiveness of the business market more generally*”. However, nbn submitted that an nbn-only ITO did “*not restrict infrastructure competition in any way as any retail service provider that wishes to connect a customer to a non-nbn™ access network is free to do so*”.

The responses received from industry were quite polarised regarding the expected impact of our Consultation proposal on competition in the market for business services. On balance, however, the responses from industry expressed a preference for arrangements which encouraged services based competition supplied via the nbn, over arrangements establishing a level playing field which encouraged infrastructure based competition to the nbn. For example, **Optus** responded that:

“There is also a clear risk that the additional 170 business days ITO period would allow other carriers to aggressively build out fibre therefore bypassing the opportunity for businesses to benefit from competition on the nbn”.

The exception was the response provided to the ACCC’s consultation by **TPG**. TPG submitted that:

“TPG is [sic] believes that business customers ought to be given full opportunity to acquire connectivity solutions from the carrier that best suits their particular requirements, whether that is service supplied using the NBN network or another network provider.

The NBN benefits from a very favourable regulatory environment and from having access to taxpayer capital to fund their competitive entry into the business and government market. It is unreasonable that private companies that have made significant investments with private capital be forced to compete on an uneven playing field.

The current proposal to give businesses that have an in-train order for an NBN service more time, but not those that have an in-train order for a service on a non-nbn network further entrenches the benefits that nbn has, and TPG believes it is anti-competitive and discriminates in favour of NBN.

...TPG has alternative products for business customers to acquire on TPG’s own fibre network and, if a business customer wishes to acquire such a service, they should have the choice to do so, without the overhanging threat of near-term forced disconnection.”



Feedback received on consistency with Migration Plan Policy

Many of the responses expressed the view that a non-nbn network ITO would be contrary to the policy principles underpinning the Migration Plan:

- For example, **Macquarie Telecom Group**'s submission to the ACCC's consultation expressed the view that our Consultation proposal "*should be rejected as being wholly inconsistent with the NBN policy, the Migrations Plan principles, and the policy of structural separation*".
- **nbn** set out detailed submissions explaining why, in nbn's view, a non-nbn network ITO was inconsistent with wider industry migration arrangements; the policy of Telstra's structural separation; and the MPPs or Telstra's commercial agreements with nbn. nbn's submission did not deny the consistency of our Consultation Proposal with Specific Principles 18 and 28 and General Principle 10 of the MPPs as set out in our Consultation. However, nbn expressed the view that our Proposal offered "*no greater compliance with these specific Migration Plan Principles*" than the September 2018 Plan Variation Proposal. In essence, we understand that the root of nbn's objections to a non-nbn network ITO was its view that: "*the regulatory and migration framework does not contemplate migration to other non-nbn™ access networks*".
 - We consider these views to be incorrect, as clearly infrastructure based competition exists, and is contemplated by a wide range of legislative and regulatory instruments relating to non-nbn access networks. Just one example of this, is the proposed Rural Broadband Subsidy whereby non-nbn access networks would be required to contribute to the cost of cross-subsidising rural networks, protecting nbn's ability to nationally average prices.

05 CONCLUSION AND NEXT STEPS

Notwithstanding the many submissions expressing a desire for a non-nbn network ITO, our ability to introduce a non-nbn network ITO is dependent on support from industry and nbn. At this time, it is clear that there is insufficient support from industry and nbn for Telstra to be able to take forward this proposal. Accordingly, this statement reflects Telstra's formal decision under clause 5.2(e) of the Migration Plan not to proceed with its Consultation proposal amendments to Required Measures 5(A) and 5 (C)-(E).

As a consequence of this decision, there will be some risk to customer service continuity, in circumstances where Wholesale customers and their end users decide to migrate TSS to a non-nbn network and are not ready before the disconnection date. However, we are encouraged by the responses provided in particular by nbn, Optus and Vocus that they do not see a non-nbn ITO as being necessary to ensure service continuity for their customers.

The Government's Migration Assurance Framework¹¹ explains the limitations to Telstra's role in supporting end-user service continuity as the disconnecting network provider. Ultimately, responsibility for managing this risk rests with end-customers and their RSPs, recognising that it is end-users who must initiate migration, and RSPs that must place order with nbn or migrate customers to alternative networks.

Where you are facing any delays in migrating a service in relation to TSS listed on your service profiles which are being used for critical safety and infrastructure uses, we would urge you to raise these cases with us. In the coming weeks we will be including relevant updates in this regard in our Disconnections Handbook, available on the Telstra Wholesale Customer Portal. We urge you to look out for these updates, as the Disconnections Handbook contains important information and support for Wholesale customers about the process to manage the migration of these types of services off our legacy network. We will then work with nbn to support you in seeking to minimise any service disruption in managing the transition of these critical services.

¹¹ <https://www.communications.gov.au/publications/migration-assurance-framework-telecommunications-industry-guide>