TELSTRA CORPORATION LIMITED

Submission on proposed changes to the NBN Services in Operation Record Keeping Rules

Public Version

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[CIC begins] = information not to be released without a confidentiality undertaking
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EXECUTIVE SUMMARY

NBN Co plays a central role in the delivery of a service that continues to increase in importance to Australian consumers. The digitisation of the economy, and flow-on benefits to businesses and consumers, are reliant on a high performing NBN that meets customer expectations. It is important that NBN Co faces the right incentives to operate efficiently, effectively and in the interests of end users. This will be achieved with transparency on the right service performance metrics that matter to customers, which can be enhanced by the collection and reporting of relevant information by the ACCC.

The proposed increase in coverage of NBN Co operational and performance metrics in the NBN Services in Operation Record Keeping Rules (**NBN SIO RKR**) is positive and represents a step in the right direction.

At present, CVC is a key feature of NBN Co's pricing structure for which limited information is available. Telstra therefore supports the inclusion of additional CVC information on the basis that it will improve transparency and contribute to a broader understanding of the efficiency (or otherwise) of NBN pricing. We are, however, cautious about the level of disaggregation to be applied to CVC information. CVC is one area that allows RSPs to differentiate themselves in the market and should largely be commercial-in-confidence and not reported at access seeker level. There is a risk that disaggregated information may lead to inaccurate and/or misleading comparisons being made between RSPs which would not be in the interests of end-users.

Telstra strongly supports the inclusion of reporting requirements on NBN Co's delivery of wholesale service standards in the NBN SIO RKR. While NBN Co publishes some performance information, this is relatively limited and does not provide a full picture of NBN performance that really matters for customers. The wholesale service standards applicable to NBN Co and the reporting of performance against those standards are important drivers of NBN Co's behaviour as the monopoly provider of fixed broadband services. Performance reporting is also important as it identifies areas where the quality of service being delivered to the end-user may be lagging, enabling RSPs and other stakeholders to help NBN Co address issues. We do consider there is scope to expand or adjust the information related to service performance to better reflect the customer experience on the NBN, specifically that related to outages, network availability and newly activated services.

The collection of a broader set of information under the NBN SIO RKR will help promote efficient market outcomes and the long-term interests of end users. Telstra notes that there is an ACCC process underway that may result in a change to the regulatory framework that applies to the NBN. As such, it is important that any changes be quickly accommodated by the NBN SIO RKR to ensure the benefits of information collection (and reporting) are maintained.

01 Introduction

Telstra welcomes the opportunity to respond to the ACCC Consultation Paper on proposed changes to the NBN Services in Operation Record Keeping Rules (**NBN SIO RKR**).

Telstra supports the expansion of the NBN SIO RKR to include additional information designed to improve transparency of the NBN wholesale market, NBN Co network performance and provide an incentive for NBN Co to improve that performance when it does not meet customer expectations. The inclusion of service standard performance in particular is a welcome development.

Telstra notes that there is a separate ACCC workstream underway aimed at determining the appropriate regulatory framework that should apply to the NBN going forward. While the process is unlikely to be finalised in the near future, it will be important for any outcomes to be incorporated into the NBN SIO RKR where relevant. For example, if the NBN pricing structure is altered then reporting requirements should change to take account of this.

This submission sets out Telstra's response to the proposals made by the ACCC in its Consultation Paper. Our response to the specific questions included in the Consultation Paper is included at Appendix A.

02 Improving existing reporting processes

The ACCC is proposing to introduce a new requirement on NBN Co to notify the ACCC when it is preparing to introduce a new product or service. The purpose of this requirement is to reduce the lead time between the introduction and any reporting of new products and services. Telstra agrees that this proposal appears reasonable. It will allow the ACCC to consider whether the new product or service should be incorporated into the reporting framework.

Further there are additional legitimate reasons why the ACCC may be interested in new products or services being introduced by NBN Co, aside from for reporting purposes. For example, understanding drivers for new products and services is part of the ACCC's role in monitoring the development of competition. This provides further support to including notification of new products and services in the NBN SIO RKR.

Telstra also considers it reasonable to reduce the notification period in rule 14 from 90 calendar days to a shorter period. This would contribute towards reducing any lag that exists between the introduction of new products and services and any reporting, if reporting is deemed appropriate. However, while 28 days seems appropriate, the period should be agreed in consultation with NBN Co based on what is reasonably practicable given their business processes.

03 Introduction of CVC overage reporting

Telstra agrees with the ACCC that CVC overage is an important element of the cost of obtaining NBN TC4 services. This has become particularly evident over the past two years where COVID-related developments, such as working from home and distance learning, have significantly changed data usage requirements. Telstra's submission to the ACCC Extension of NBN SIO RKR Consultation[1] set out a view that CVC overage should be included in the NBN SIO RKR. CVC overage is a concern to RSPs as

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[1] Telstra, Extension of NBN SIO RKR Submission Consultation Submission, August 2020.

it leads to cost uncertainty. The collection of CVC overage information will serve a similar purpose to the current collection of SIOs with no data limit (compared to total SIOs) under the Internet Activity RKR i.e. it provides an indication of users potentially facing additional costs for exceeding inclusion limits. It will also contribute to a broader understanding of the efficiency (or otherwise) of NBN pricing.

The CVC overage metrics proposed by the ACCC seem appropriate. Specifically:

- Overage quantity (Mbps)
- Overage amount payable ($)
- National Ordered Bandwidth; and
- National included Bandwidth.

For reporting purposes, and to enhance transparency, this could be further split by POI and traffic class. Any public reporting should, however, only be made at an aggregated level. It would be inappropriate to report CVC overage by access provider as this would lead to a risk of incorrect or misleading assumptions being made about congestion or quality of service.

04 Proposed changes to the products reported under the NBN SIO RKR

4.1. Enterprise Ethernet reporting

The NBN SIO RKR does not currently include measures related to Enterprise Ethernet Services.

The ACCC is proposing that NBN Co report on its Enterprise Ethernet Services. The proposed reporting comprises SIOs disaggregated for each access seeker into three class of service categories and by each speed tier offered by NBN Co.

Telstra supports the extension of the NBN SIO RKR to include Enterprise Ethernet Services. Given NBN Co's growing participation in this market, alongside concerns that have been raised in the past regarding NBN Co's conduct, it is appropriate for the ACCC to collect information to monitor and assess NBN Co's involvement. Collecting information should also assist the ACCC to respond to any complaints from access seekers, or other stakeholders, should they arise in the future.

Telstra's main concern in relation to Enterprise Ethernet Services is whether the entry of NBN Co into the competitive enterprise market is efficient. While it will provide an indication of the size and composition of the market, the information the ACCC is proposing to include will not allow for an assessment to be made of whether NBN Co is investing efficiently in the wholesale enterprise market. As set out in our previous submission, Telstra considers that the NBN SIO RKR should be extended to include information on NBN Co's revenue and costs. For the enterprise market this includes the return NBN Co is making from its enterprise investments. Our position on the inclusion of cost and revenue information is discussed in more detail in Section 7.1 of this submission.

It is not clear whether there is any benefit from publicly disclosing Enterprise Ethernet Services information in the wholesale market indicators report or elsewhere. In the case of Enterprise Ethernet Services, access seekers are currently provided monthly information by NBN Co in relation to their activity. This includes an anonymised market share[2], SIO numbers and year-on-year comparison. There would therefore be limited benefit to access seekers of the proposed RKR information being published, particularly as this would be lagged. Such information is also unlikely to be useful from a

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[2] That is, an access seeker can view their market share relative to other access seekers who are not identified.

market competition perspective, as Enterprise Ethernet Services information should not be viewed in isolation from the broader wholesale enterprise market. However, if the ACCC finds that there is benefit from publishing Enterprise Ethernet Services information, Telstra's position is that this should only be done so at an aggregated level.

4.2. Business Satellite Services

Similar to Enterprise Ethernet Services, the NBN SIO RKR does not currently include measures related to Business Satellite Services. NBN Co provides a variety of business products via its Satellite network including:

- Access Bandwidth Service Layer 3 (ABSL3);

- Virtual ISP (VISP); and

- Internet of Things (IoT).

The ACCC is seeking views on whether NBN Co should be required to provide periodic reporting in relation to its wholesale products supplied as Business Satellite Services.

Telstra's views on the inclusion of Business Satellite Services information are similar to that for Enterprise Ethernet Services, as outlined above. It is important for the ACCC to have sufficient information on NBN wholesale products that enable it to continually assess the level of competition in the market. In the case of Business Satellite Services, this is important as the business products grow in size and importance.

Again, we do not consider it necessary to publicly disclose Business Satellite Services information in the NBN Wholesale Market Indicators Report, or elsewhere.

05 Proposed changes to the Disclosure Direction for CVC metrics

The ACCC is proposing to publish more granular and detailed CVC data, including CVC utilisation. Telstra has previously set out its position that additional CVC information should be included in the NBN SIO RKR. As noted by the ACCC, a key part of NBN Co's pricing structure (and the cost faced by access seekers) is its capacity charge. However, at present there is limited information available on CVC demand. Notwithstanding RSP advocacy for the CVC pricing structure to be abolished as set out in our previous submission, Telstra supports measures to expand reported CVC metrics.

5.1. CVC acquired

The ACCC is seeking feedback on the benefits of publishing new TC4 CVC capacity acquired metrics. Specifically:

- Total CVC capacity acquired by access seeker at the end of each quarter;

- Average CVC capacity acquired by access seeker across the quarter;

- Average CVC capacity acquired by access seeker during the last week of the quarter; and/or

- Weekly national average CVC capacity acquired for each of the 13 weeks of the quarter.

Telstra supports the inclusion of additional TC4 CVC capacity acquired metrics and agrees that the publication of more detailed CVC acquired information will improve transparency and provide context for CVC utilisation data. However, it is not appropriate for this data to be published at access seeker level.

CVC is one area that allows RSPs to differentiate themselves in the market and should be considered commercial-in-confidence.

5.2. CVC utilisation

The ACCC currently receives CVC utilisation data from NBN Co on a confidential basis. This includes, for each of the NBN traffic classes (TC1, TC2 and TC4):

- Average CVC utilisation for each day; and

- Average CVC utilisation for:

    o 7pm-11pm for each day for TC1, or

    o 9am-5pm for each day for TC2, or

    o Each hour of the peak period (7pm-11pm) for each day for TC4.

This information covers each CVC purchased by each access seeker at all NBN POIs. The Discussion Paper sets out a view that publication of some of this currently confidential data would likely improve competition and ensure a high level of transparency. Accordingly, the ACCC is seeking feedback on how utilisation metrics could be published and whether these should be disaggregated, such as:

- National average utilisation of Week 13 (day and peak period)

- Access seeker average utilisation of Week 13 (day and peak period)

- POI by POI average utilisation of Week 13 (day and peak period)

- Weekly national average for each of the 13 weeks of each quarter)

Consistent with our position set out in our submission to the ACCC consultation on extending the NBN SIO RKR, Telstra supports the publication of CVC utilisation information. We agree with the publication of the utilisation metrics proposed by the ACCC, with the exception of access seeker utilisation. As set out above in relation to CVC acquired, Telstra would not support the release of CVC utilisation data by access seeker on the basis that this is commercial-in-confidence. This does not, however, preclude access seekers from publishing their own CVC utilisation data as a point of differentiation as is currently done by some RSPs.

We do consider the information could be further disaggregated by location. Specifically, in our submission on the proposal to extend the NBN SIO RKR we proposed the publication of CVC utilisation information for each traffic class (TC1, TC2 and TC4) split by:

- POI

- Metropolitan/regional, and

- State/Territory

This level of information would provide insights into how industry is responding to demand across different parts of the market and may encourage competitive responses from RSPs.

We also consider it important for the market to fully understand the capacity and utilisation of NBN Co's infrastructure. Transparency in this regard is particularly important as NBN Co benefits from statutory protections that prevent RSPs from bypassing parts of NBN Co's infrastructure. CVC utilisation information only provides one part of the picture; it would also be useful to understand how much unutilised capacity NBN Co has in its network. This would help RSPs and the ACCC understand

whether increases in traffic will result in capacity constraints and/or drive future cost to NBN Co. It may also assist in congestion management and enable RSPs to make efficient decisions that affect end users' usage. Such information should be reported on a similar basis to that proposed for CVC utilisation (i.e. for each traffic class by POI) to enable useful comparisons to be made.

06 Reporting of NBN Co's service standards performance

The ACCC is seeking stakeholder feedback on the introduction of service standards performance reporting and payment of related rebates by NBN Co. The stated purpose of including such information in the NBN SIO RKR is to provide the ACCC with more effective oversight on the delivery of NBN wholesale services and the NBN wholesale market.

Telstra strongly supports the inclusion of reporting requirements on NBN Co's delivery of wholesale service standards in the NBN SIO RKR. While NBN Co publishes some performance information, this is relatively limited and does not provide a full picture of NBN performance that accurately reflects the customer experience. For example, the network availability metric published by NBN Co shows that it appears to exceed its performance objective of 99.90% but this metric currently excludes planned outages and emergency outages. Outages may be categorised as planned even if they do not meet the 10-business day notification SLA, including those with less than one-hour notice. Telstra's experience is that such outages are a source of customer frustration and complaint, which is currently not appropriately reflected in NBN Co's performance metrics.

As set out in our previous submission, the wholesale service standards applicable to NBN Co and the reporting of performance against those standards are important drivers of NBN Co's behaviour as the monopoly provider of fixed broadband services. Performance reporting is also important as it identifies areas where the quality of service being delivered to the end-user may be lagging, enabling RSPs and other stakeholders to put pressure on NBN Co to address issues.

The ACCC has proposed the inclusion of reporting metrics on service standards, including:

- NBN Co performance against service levels or performance objectives for the delivery of connections, faults and appointments,

- Network availability,

- Number of customers impacts by planned/unplanned outages and the length of time services were unavailable,

- Number of delayed and failed connections on each network,

- Number of different types of faults on each network, e.g. end-user faults, performance incidents and network activities and the number of services experiencing recurring performance incidents and end-user faults,

- Speed information for services on fixed line, fixed wireless and satellite networks,

- Wholesale rebates incurred by NBN Co for missed appointments, late and failed connections, unrectified faults and speed assurance, and

- Number of PA customers.

Telstra agrees with the inclusion of these metrics in the NBN SIO RKR. There are, however, additional metrics – or expansions of the metrics proposed by the ACCC - that Telstra considers should be included to accurately reflect the customer experience on the NBN. These are:

- The number of planned outages where notification does not meet the 10 business days SLA, including where customers receive less than one hours' notice – outage notification is a pain point for customers. Between January and July this year, **[c-i-c begins] [c-i-c ends]** Telstra customers were impacted by planned outages. The 10 business days SLA was not met for **[c-i-c begins] [c-i-c ends]** of planned outages, with **[c-i-c begins] [c-i-c ends]** of these receiving less than 1 hours' notice.

- The network availability measure should be adjusted for outages that do not meet planned criteria – the current measure used means that NBN Co appears to exceed its performance objective of 99.90% network availability. However, this measure excludes planned and emergency outages, where outages may be categorised as planned even where they do not meet the 10 business days SLA. From the end user perspective, it is not reasonable to suggest that an outage with less than one hours' notice is planned.

- The number of newly activated services that experience a fault within 20 business days – the customer experience is greatly enhanced when their service works right, first time. From Telstra's experience, there is a significant amount of customer frustration when faults occur soon after connection and there should be incentive on NBN Co to ensure a service is working as expected before it is considered an active service.

The Consultation Paper notes that any expanded arrangement to include reporting of NBN service standards information is likely to only be provided to the ACCC in the first instance, although the ACCC welcomes views on the potential for including some of this information in the NBN Wholesale Market Indicators Report or elsewhere.

In Telstra's view the primary driver for including metrics on service standards should be whether doing so will provide an incentive for improved behaviour where performance is lagging. It is also important that the information provides a whole of network view of NBN Co performance compared to the limited performance information that is currently published. The metrics proposed by the ACCC will contribute towards this, but the incentive will only come where the information is published in some form.

As noted in the Consultation Paper and above, NBN Co does provide monthly performance reports to RSPs, and publishes a limited number of performance measures on its website.[3] It is appropriate that NBN Co reports to each RSP on its performance in relation to that RSP, but this means there is a gap in terms of oversight of NBN Co's overall performance. While it is important for the ACCC to have that oversight, it is equally important for industry and stakeholders to understand NBN performance in its entirety. Telstra therefore considers that metrics relating to NBN Co's service standards performance should be published, either in the NBN Wholesale Market Indicators Report or separately on a more regular (i.e. monthly) basis.

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[3] See, for example: https://www.nbnco.com.au/corporate-information/about-nbn-co/updates/dashboard-september-2021

07   Other NBN SIO RKR and Disclosure Direction changes

7.1.   Any other changes

The ACCC is also seeking stakeholder feedback on any other changes or modifications that might be appropriate for the NBN SIO RKR or Disclosure Direction as the NBN market continues to mature. Telstra considers there are three modifications that are appropriate:

1.   NBN Co cost and revenue information

Telstra's submission to the ACCC Extension of NBN SIO RKR Consultation set out a view that there is a need for greater transparency of NBN Co's costs and revenues to address the risk of market failures occurring. This is particularly important as NBN Co competes with private entities in the enterprise market. While there have been some developments aimed at improving transparency, the NBN SIO RKR should also be used to collect NBN Co cost and revenue information.

There are several key issues that NBN Co's cost and revenue information should address, including:

- What is the cost of NBN Co's loss-making services?

- What return is NBN Co making from its different markets and services?

- Do NBN Co's prices include the RBS levy? If it is assumed NBN Co's prices already include the levy, what return is NBN Co making net of the levy receipts and is this consistent with the return assumed in the determination of the RBS levy?

- What return is NBN Co making from its enterprise investments (having netted the RBS levy off its revenues)?

- What proportion of NBN Co's investments have been undertaken with a target return at least as high as NBN Co's WACC, and what proportion is meeting a lower rate of return. This information could be split by geography, technology and customer type.

- What return is NBN Co earning when it decides to overbuild private, competitive infrastructure?

Some of the information that NBN Co should provide is not dissimilar to Telstra's reporting under the Regulatory Accounting Framework RKR (now removed) and Structural Separation Undertaking. And just like these previous Telstra reporting requirements, Telstra acknowledges that not all the suggested NBN Co information could be made public. But it would still be relevant for the ACCC to collect the information for its own assessment, for example to ensure investment decisions are efficient.

2.   SIOs disconnected

The NBN SIO RKR currently includes the services in operations (SIOs) at the end of each calendar quarter for each access technology by AVC class on a national basis. While this is useful, it would be enhanced by the number of SIOs disconnected reported on the same basis. This could provide an indication of potential changes in the market in response to, for example, alternative products and services or price changes.

3.   Real time usage data

Telstra considers that it would be useful for the NBN SIO RKR to establish a requirement for NBN Co to collect and maintain data that enables RSPs to more effectively deal with customer enquiries. This would include half-hour usage data, showing the size and utilisation of any contended links, and any

breaches of agreed thresholds. The purpose of the data requirement would be to place an obligation on NBN Co to develop processes and systems to record this data, which would ultimately enable such information to be shared with RSPs, who can then more effectively communicate with customers regarding the status of their NBN service. RSPs have been unable to commercially negotiate the provision of such information to date despite the benefits to NBN Co, RSPs and end-users. The data would not need to be provided to the ACCC.

Table: ACCC consultation questions

No.	Consultation Paper Question	Telstra Response
1	Do you support the introduction of a requirement on NBN Co to notify the ACCC when it is preparing to introduce a new product or service? Please provide reasons.	Yes – this will enable the ACCC to consider whether the new product or service should be incorporated into the reporting framework. There are also other legitimate reasons why a new product or service may be of interest to the ACCC.
2	Should the notification period in rule 14 be reduced from 90 calendar days to a shorter period, such as 28 calendar days? Please provide reasons.	This seems reasonable and will reduce lags in any reporting. However, the timing should be agreed with NBN Co based on what is practicable.
3	Are there any other changes that should be made to the NBN SIO RKR rules to improve reporting timeliness and ensure that information provided to the ACCC and publicly disclosed is relevant?	N/a
4	Do you have views regarding the introduction of CVC overage reporting?	Telstra supports to introduction of CVC overage reporting – see Section 03.
5	What level of disaggregation should CVC overage reporting be provided?	CVC overage reporting should only be reporting at an aggregated level. It would be inappropriate to report at access seeker level – see Section 03.
6	Do you have views regarding the publication of high-level CVC overage information in the NBN Wholesale Market Indicators Report, or elsewhere?	CVC overage information should be published in the NBN Wholesale Market Indicators report. However, this should only be at an aggregate (not access seeker) level. It will be important for the ACCC to explain the context for CVC overage information to prevent misleading or inappropriate assumptions being made.
7	Do you have views regarding the size and scope of the enterprise Ethernet market in Australia?	N/a

8	Do you support the introduction of Enterprise Ethernet reporting? Please provide reasons.	Yes – NBN Co's participation in this market may give rise to competition concerns. The ACCC should have greater visibility of market data for monitoring and assessment purposes.
9	What level of disaggregation in Enterprise Ethernet reporting should be required?	Telstra agrees with the reporting proposed by the ACCC. We also consider this could be enhanced by information on NBN Co's revenue and costs – see Section 4.1.
10	What level of detail regarding Enterprise Ethernet services should be publicly disclosed in the NBN Wholesale Market Indicators Report, or elsewhere?	Telstra does not consider it necessary or beneficial to publish information in relation to Enterprise Ethernet Services at this stage.
11	Do you have views regarding the size and scope of the business satellite market in Australia?	N/a
12	Do you support the introduction of Business Satellite Service reporting? Please provide reasons.	Yes – similar to Enterprise Ethernet Services it is important for the ACCC to have sufficient information on NBN wholesale products that enable it to assess the level of competition in the market.
13	What level of disaggregation in Business Satellite Service reporting should be required?	N/a
14	What level of detail regarding Business Satellite Services should be publicly disclosed in the NBN Wholesale Market Indicators Report, or elsewhere?	Telstra does not consider it necessary to publicly disclose Business Satellite Services information in the NBN Wholesale Market Indicators Report, or elsewhere.
15	Do you consider that TC4 CVC capacity acquired data should be publicly reported for access seekers? Please provide reasons.	Telstra supports the inclusion of additional TC4 CVC capacity acquired metrics. The publication of more detailed CVC acquired information will improve transparency and provide context for CVC utilisation data.
16	Do you consider that TC4 CVC capacity acquired data should be publicly reported each quarter across a wider range of timeframes (e.g. weekly, monthly)? Please provide reasons.	Telstra considers monthly reporting would provide a greater level of detail.

17	How should TC4 CVC capacity acquired data be best presented to provide stakeholders with an appropriate level of information?	As with all CVC-related information, CVC capacity acquired data should not be published at access seeker level. CVC is one area that allows RSPs to differentiate themselves in the market and should be considered commercial-in-confidence.
18	Should the ACCC make any changes to TC1 or TC2 CVC capacity reporting? Please provide reasons.	N/a
19	Do you consider that CVC utilisation data should be reported publicly? What level of disaggregation is appropriate? Please provide reasons.	As with all CVC-related information, CVC utilisation data should not be published at access seeker level – see Section 5.2
20	How should CVC utilisation be best presented to provide stakeholders with an appropriate level of information?	Telstra considers CVC utilisation information could be further disaggregated by location. Specifically, each traffic class (TC1, TC2 and TC4) split by: • POI • Metropolitan/regional, and • State/Territory This level of information would provide insights into how industry is responding to demand across different parts of the market and may encourage competitive responses from RSPs. See Section 5.2.
21	Is using a 7-day average (e.g. for Week 13 of each quarter) appropriate to present utilisation data, or another methodology? Please provide reasons.	N/a
22	Do you consider that the NBN SIO RKR should incorporate data on NBN Co's delivery of service standards? Please provide reasons.	Telstra strongly supports the inclusion of data on NBN Co's delivery of service standards - see Section 06.
23	If so, which information should be included and at what frequency? Please provide reasons.	Telstra agrees with the information proposed by the ACCC. However, expanded and additional information would assist with providing a full picture of whole of network performance that reflects the customer experience on the NBN. See Section 06.

24	Should the ACCC make any other changes to the NBN SIO RKR and/or Disclosure Direction?	Telstra considers the NBN SIO RKR would be strengthened with the inclusion of information relating to NBN Co's costs and revenues, as well as SIO disconnection data. See Section 7.1.