

EXPLANATORY STATEMENT

CARRIER LICENCE CONDITIONS (TELSTRA CORPORATION LIMITED) DECLARATION 1997 (AMENDMENT NO. 1 OF 1998)

TELECOMMUNICATIONS ACT 1997

Issued by the Authority of the Minister for Communications and the Arts

Division 3 of Part 3 of the *Telecommunications Act 1997* (“the Act”) provides for the imposition of licence conditions on carriers.

Section 61 of the Act provides that a carrier licence is subject to the conditions specified in Schedule 1 to the Act. Section 62 provides that a carrier licence is subject to the condition set out in section 152AZ of the Trade Practices Act 1974, which provides that a carrier must comply with any applicable standard access obligations. Section 63 of the Act provides that the Minister may, by written instrument:

- (a) impose conditions, in addition to those referred to in sections 61 and 62, applying to all carrier licences (s.63(1))
- (b) impose conditions on specified carrier licences (s.63(2))
- (c) provide that specified conditions will be imposed on a carrier licence which may be granted to a specified person during a specified period (s.63(3))
- (d) vary conditions imposed under subsections (1), (2) or (3) (s.63(5)).

On 23 September 1997, the Minister for Communications, the Information Economy and the Arts, Senator the Hon Richard Alston, announced that the Government had decided to impose ‘interim’ licence conditions requiring Telstra to provide local number portability to Optus by 1 May 1998. Number portability will allow customers wishing to change carriers or carriage service providers to retain their existing telephone number. There is international evidence that it enhances competition by eliminating potential entry barriers for new telecommunications providers and allowing customers to take advantage of competition in the local loop without the disincentive of a change of number.

The attached Declaration under section 63(5) of the Act varies the Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 to give legislative effect to the Minister’s announcement. It has been prepared as an ‘interim’ measure to have force only until the portability arrangements envisaged by section 462 in Part 22 of the Act are in place.

Section 462 of the Act requires carriers and carriage service providers to comply with the numbering plan in force. Where the numbering plan requires a carrier or carriage service provider to provide number portability in relation to the customers of a carriage service provider, the section requires that the person subject to the requirement must provide the portability on such terms as it agrees with the provider in relation to whom portability is to be provided. If those parties cannot agree on terms, then the terms are to be settled by an arbitrator appointed by those parties. Where the parties cannot agree on an arbitrator, the Australian Competition and

Consumer Commission (ACCC) is to arbitrate the matter. Any arbitration determination made under this section must comply with any disallowable pricing principles determined by the Minister under the section and the numbering plan.

The Telecommunications Numbering Plan 1997, made by the Australian Communications Authority (ACA) on 22 December 1997 under subsection 455(1) of the Act, requires that carriers or carriage service providers provide portability for local services by an implementation date to be fixed by the ACA.

The attached declaration is an interim measure only. While the terms detailed in the declaration reflect the fundamental cost allocation features detailed in AUSTEL's 25 June 1997 local number portability arbitration determined (also referred to as AUSTEL's 'final view'), it is not intended that they should limit the possible outcomes of either a commercially agreed solution or arbitrated outcome to the terms and conditions of local number portability under the new regulatory regime.

The Minister must give a copy of an instrument made under section 63(5) of the Act to the relevant carrier. An instrument made under section 63(5) may be revoked by the Minister (s.63(6)); must be published in the Gazette (s. 63(10)); is disallowable by the Parliament (s.63(13)); and takes effect when a copy of the instrument is published in the Gazette (s.63(11)).

**CARRIER LICENCE CONDITIONS (TELSTRA CORPORATION LIMITED)
DECLARATION 1997 (AMENDMENT NO. 1 OF 1998)**

1. Commencement

This clause provides for the licence conditions contained in the Declaration to commence on gazettal.

2. Variation

This clause provides that the Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997, gazetted on 30 June 1997, is varied in accordance with this Declaration.

3. Clause 3 (Definitions)

This clause includes key definitions for the Declaration.

4. Local number portability (new clause 13)

The availability of local number portability is important for competition in the local loop because the need to change telephone numbers is removed as a barrier to end-users changing carriers or carriage service providers.

This clause contains the key 'local number portability' obligations imposed on Telstra. It will require Telstra to:

- ensure, at its cost, that its telecommunications network is capable of providing local number portability to Optus by 1 May 1998 and at all times on and after that date; and
- provide, as soon as practicable after a request is received from Optus, local number portability in relation to 'portable local service numbers' specified by Optus in its request, at all times on and after 1 May 1998, if Optus agrees to:
 - pay Telstra the one-off administrative costs incurred by Telstra for the initial transfer of a customer from its telecommunications network to the telecommunications network operated by Optus ('customer transfer costs') agreed between the parties by 1 April 1998, or failing agreement, determined by the ACCC by 1 May 1998; and
 - contribute to Telstra's costs associated with any additional routing and processing required within its network in order to transfer a call to the telecommunications network operated by Optus where the called customer has ported his or her number to Optus ('call conveyancing costs') at the level of one cent per call.

These cost sharing arrangements, which reflect the fundamental cost allocation features detailed in paragraph 4.8 of AUSTEL's 25 June 1997 local number portability arbitration determination (also referred to as AUSTEL's 'final view') are

intended fully to cover the costs which Telstra can recover from Optus for local number portability.

In the event that the parties fail to reach agreement on the appropriate amount to be paid by Optus for customer transfer costs, it is intended that the ACCC determine the appropriate amount for the purposes of this instrument. It is not intended that the ACCC be required to undertake a formal arbitration of the matter, rather that it undertake such analysis as it considers necessary to determine an appropriate amount.

The clause also provides that the Australian Communications Authority (ACA) may, by written instrument, determine that it is unreasonable to expect Telstra to comply with either of these key obligations if its inability to comply is directly or substantially attributable to either:

- Optus's level of co-operation in the development and implementation of arrangements necessary to provide for local number portability; or
- Significant events of a technical or engineering nature that Telstra could not reasonably have anticipated
 - it is intended that only exceptional circumstances would warrant an exemption of this sort.

The clause further provides that the ACA may, by written instrument, determine that Telstra should be exempted from complying with either of these key obligations in certain areas where, in its view, it would not be technically feasible to provide portability. In the event that the ACA was to make a determination of this sort it may do so conditionally. It may, for example, stipulate that the obligations to provide local number portability in areas exempted by such a determination would be reinstated at such time as it became technically feasible to do so. The sort of circumstance envisaged might include where Telstra's ongoing digitisation program rendered exchanges previously incapable of providing portability technically capable of doing so.

Cessation (new clause 14)

Section 462 of the *Telecommunications Act 1997* ("the Act") requires carriers and carriage service providers to comply with the numbering plan in force. Where the numbering plan requires a carrier or carriage service provider to provide number portability in relation to the customers of another carriage service provider, it is envisaged that commercial negotiation between the parties should result in agreed terms and conditions relating to the provision of portability. It is only where the parties cannot agree that such terms are to be settled by an arbitrator appointed by the parties. Where the parties cannot agree on an arbitrator, the ACCC is to arbitrate the matter. Any arbitration determination made under this section must comply with any disallowable pricing principles determined by the Minister under the section and the numbering plan.

New clause 14 provides that, if the numbering plan currently in force requires Telstra to provide local number portability (as defined in this Declaration) in relation to

Optus's customers, clause 13 will cease to have effect at the earlier of the time when in accordance with section 462 of the Act:

- the parties agree on terms and conditions on which Telstra will supply local number portability to Optus; or
- these terms and conditions are determined either by an arbitrator appointed by the parties or by ACCC.