

Commonwealth of Australia

*Telecommunications (Consumer Protection and Service Standards) Act 1999*

**Telecommunications Universal Service Obligation  
(Standard Telephone Service—Requirements and  
Circumstances) Determination (No. 1) 2011**

I, STEPHEN MICHAEL CONROY, Minister for Broadband, Communications and the Digital Economy, make the following instrument under subsections 9(2D) and 9(3) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

Dated 10 March 2011

STEPHEN CONROY

Minister for Broadband, Communications and the Digital Economy

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**Part 1 Preliminary**

**1 Name of instrument**

This Instrument is the *Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination (No. 1) 2011*.

**2 Commencement**

This Instrument commences on the later of:

- (a) the day after it is registered on the Federal Register of Legislative Instruments; or
- (b) the commencement of Part 4 of Schedule 1 to the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010*.

**3 Definitions**

(1) In this Instrument:

**Act** means the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

**CSG Standard** means the *Telecommunications (Customer Service Guarantee) Standard 2011*.

**primary universal service provider** has the meaning given by section 12A of the Act.

**principal place of residence** means the place that, as at the date of the request, the person making the request resides, or intends to reside, for 183 days or more per annum.

**Priority Assistance** has the meaning given by subsection 19(3) of Schedule 2 to the *Telecommunications Act 1997*.

**public mobile telecommunications service** has the same meaning as in the *Telecommunications Act 1997*.

**request** means a request for a standard telephone service made using the primary universal service provider's website, by telephone, or in person at a retail centre.

**satellite service** has the meaning given by subsection 106(4) of the Act.

(2) For the purposes of this Instrument, a premises is an **excluded premises** if the premises satisfies one or more of the following criteria:

- (a) the premises is under construction;
- (b) the premises is not fully completed;
- (c) the premises does not comply with all applicable planning laws;
- (d) the premises is a structure other than a residence, dwelling or business premises (for example, a builder's pole or fence);
- (e) the premises is not self-contained;
- (f) the premises is not a permanent structure;
- (g) the premises does not have access to permanent sanitation facilities;
- (h) the premises is:
  - (i) a portable home; or
  - (ii) a shelter; or
  - (iii) a shed (including a site shed, dairy shed, farm shed, garden shed, or worker's shed); or
  - (iv) a rotunda; or
  - (v) a lean-to, humpy, or tent; or
  - (vi) a building site office; or

- (vii) a donga, unless it is a distinct residence of a kind mentioned in subsection (3); or
  - (viii) an elevator; or
  - (ix) a vehicle (other than a motorhome or caravan described under paragraph (3)(e) or (3)(f)); or
  - (x) evacuation centres, tents, demountable structures or barracks erected in time of emergency that are not intended to be for permanent accommodation; or
  - (xi) a boat on dry land; or
  - (xii) a moored boat (other than a permanently moored boat); or
  - (xiii) a shipping container, unless it is a distinct residence of a kind mentioned in subsection (3); or
  - (xiv) a cubby house; or
  - (xv) an outhouse or a shower block; or
  - (xvi) an annexe;
  - (i) the premises is a residential premises but is not the principal place of residence of the person making the request;
  - (j) the premises is a residential premises but does not have access to facilities capable of supporting independent living;
  - (k) the premises is a business premises but the person making the request does not intend to carry on business for 6 months or more per annum at that premises; or
  - (l) the premises is a residential premises but is not a distinct residence.
- (3) For the purposes of paragraph (2)(l), a ***distinct residence*** includes, but is not limited to:
- (a) a distinct house, flat or apartment; or
  - (b) a distinct dwelling (even if the dwelling does not have a separate land title to the main residence on the relevant land, for example, a granny flat); or
  - (c) a separate farm dwelling; or
  - (d) a distinct residence within a retirement village or nursing home; or
  - (e) a caravan, motorhome or cabin permanently situated at a caravan park, where the person requesting the supply of a standard telephone service to that premises is a permanent or long-term resident of the caravan park; or

- (f) a caravan, motorhome, or cabin situated on owner occupied land or leased land, provided the person making the request has resided, or intends to reside, in the caravan, motorhome, or cabin at that site for 183 days or more per annum; or
- (g) a permanently moored boat; or
- (h) a distinct residence in a mining or isolated community occupied, or intended to be occupied, for 183 days or more per annum.

*Note* The following expressions used in this determination have the same meaning as in the Act:

- carriage service provider
- standard telephone service
- Telecommunications Industry Ombudsman.

#### **4 Requests from a person on behalf of the requestor**

For the purposes of this Instrument, where a person is authorised to make a request for a standard telephone service on behalf of another person, the request is deemed to have been made by the person on whose behalf the request was made.

#### **5 Objects of Part 2 of the Act**

In interpreting the provisions of this Instrument, regard should be had to the objects of Part 2 of the Act.

## **Part 2 Requirements and Circumstances**

### **Division 1 Requirements for a request for supply of a standard telephone service**

#### **6 Request requirements**

For the purposes of subsection 9(2C) of the Act, a request for the supply of a standard telephone service (whether or not bundled with other products or services) must comply with the following requirements:

- (a) the request must include the full name of the person making the request;
- (b) the request must include the location of the premises where the standard telephone service is to be supplied;
- (c) the request must state the date upon which the person making the request requires the standard telephone service at the premises;
- (d) if the request relates to the supply of a standard telephone service to business premises, where reasonably required by the primary universal

service provider, the request must be accompanied by written documentation verifying that a business is carried on permanently at the premises specified in the request;

- (e) the request must be accompanied by all other information the primary universal service provider has requested that it reasonably requires for the purpose of supplying a standard telephone service and a service connection for that standard telephone service;
- (f) the request must be accompanied by all other information the primary universal service provider has requested that it reasonably requires to be satisfied that the circumstances specified in subsections 7(1) and (4) do not apply.

## **Division 2 Circumstances in which the obligation to supply standard telephone services on request does not apply**

### **7 No obligation to supply a standard telephone service in certain circumstances**

(1) For the purposes of subsection 9(2E) of the Act, an obligation to supply a standard telephone service on request does not arise under subsections 9(1)(a) or 9(2) of the Act if:

(a) any of the following circumstances applies to a request:

- (i) the premises specified in the request at which the standard telephone service is to be supplied is an excluded premises;
- (ii) subject to subsection (2), at the time the request (the *subsequent request*) is made, there is a request which is pending (the *pending request*) for the supply of a standard telephone service at the same premises, whether the pending request is with the primary universal service provider or another carriage service provider, and whether it was made by the person making the first-mentioned request or a third party;
- (iii) the person making the request does not have the legal right to occupy the premises specified in the request;
- (iv) both:
  - (A) the guaranteed maximum connection periods in Division 2 of Part 2 of the CSG Standard apply to the primary universal service provider in relation to the request; and
  - (B) the primary universal service provider is exempt from complying with the guaranteed maximum connection

periods under section 20 of the CSG Standard;

- (v) the primary universal service provider believes, on reasonable grounds, that the request for the standard telephone service is fraudulent;
- (vi) the person making the request is under 18 years of age and is not the legal owner or lessee of the premises specified in the request for the standard telephone service;
- (vii) the request is a request by a carriage service provider other than the primary universal service provider for the supply of a standard telephone service for the purpose of that carriage service provider supplying a standard telephone service to its customer;
- (viii) the installation or supply of the standard telephone service would contravene a law of the Commonwealth, or the applicable State or Territory;
- (ix) subject to subsection (3) the primary universal service provider has made a reasonable offer to supply the standard telephone service to the premises and the person making the request has refused to accept the supply of the standard telephone service; and

(b) the primary universal service provider complies with the notification requirements at subsection 8(3).

(2) Subparagraph (1)(a)(ii) does not apply where:

- (a) the subsequent request would require the supply of equipment, or other goods or services, under subsection 9E(1) of the Act in order to comply with the *Disability Discrimination Act 1992*; and
- (b) the pending request would not require the supply of such equipment, or such goods or services.

(3) An offer is not a reasonable offer for the purposes of subparagraph (1)(a)(ix) if the primary universal service provider would be required to supply equipment, or other goods or services, under subsection 9E(1) of the Act in order to comply with the *Disability Discrimination Act 1992*, and the offer does not include an offer to supply such equipment, or such goods or services.

(4) For the purposes of subsection 9(2E) of the Act, if the primary universal service provider complies with the notification requirements at subsection 8(4), an obligation to supply a standard telephone service on request does not arise under subsections 9(1)(a) or 9(2) of the Act for any period during which any of the following circumstances applies to a request:

- (a) the person making the request does not make available, at the expense of the person making the request, an electricity supply sufficient for the technology used to provide the standard telephone service at the premises;
- (b) where lead-in cabling is required to be installed to permit the primary universal service provider to supply a standard telephone service in response to the request, the person making the request does not:
  - (i) supply, agree to pay the reasonable costs of supplying, or arrange for the payment of the costs of supplying, suitable trenching to house underground cabling between the point that the cable enters the property and the point that the cable enters the building; or
  - (ii) erect, agree to pay the reasonable costs of erecting, or arrange for the payment of the costs of erecting, poles at the premises if it is not reasonably feasible to have underground cables;
- (c) the person making the request does not agree to the primary universal service provider's standard form of agreement for the installation and supply of the standard telephone service;
- (d) the person making the request does not provide identification;
- (e) unimpeded ingress and egress to the premises or the land leading to the premises is not available to enable the primary universal service provider to access power or infrastructure as necessary for the installation of a standard telephone service,
- (f) the premises specified in the request for the standard telephone service is not sufficiently secure for the housing of telecommunications equipment, taking into consideration the nature of the premises (including whether it is in a remote area and whether it is permanently occupied);
- (g) the installation or supply of a standard telephone service at the proposed location would put employees of the primary universal service provider or the public at risk of exposure to unreasonable health or safety risks;
- (h) all of the following conditions are met:
  - (i) the guaranteed maximum connection periods in Division 2 of Part 2 of the CSG Standard apply to the primary universal service provider in relation to the request;
  - (ii) the primary universal service provider is exempt from complying with the guaranteed maximum connection periods under section 21 or section 22 of the CSG Standard;
  - (iii) the primary universal service provider has complied with the applicable requirements of sections 23, 24 and 27 of the CSG Standard;

- (i) the installation of a standard telephone service at the proposed location would not be in the interests of public safety;
- (j) installation or supply of a standard telephone service would put the employees or contractors of the primary universal service provider at risk of being exposed or subject to:
  - (i) threatening or intimidating conduct or threatening behaviour by the person making the request, other persons or animals at the premises specified in the request for the standard telephone service or on the property on which the premises is located; or
  - (ii) unhealthy or unsanitary environments at the premises specified in the request for the standard telephone service or at the property on which the premises is located, including those which arise from waste, infestation, chemical hazards or other hazardous conditions; or
  - (iii) injury due to poor building structures, an unsafe building space or substandard electrical fittings;
- (k) the primary universal service provider is prevented from installing a standard telephone service at the proposed location because the installation activity would have significant adverse environmental impacts and the primary universal service provider is unable to undertake the installation activity in compliance with Schedule 3 of the *Telecommunications Act 1997*, or is prevented from undertaking the installation activity by the *Environment Protection and Biodiversity Conservation Act 1999*;
- (l) both:
  - (i) the consent or authority of any person other than the person making the request is required before the primary universal service provider is authorised to perform the works necessary to install the standard telephone service, including any consent or authority that is required:
    - (A) to access any premises or facilities (such as common property); or
    - (B) to temporarily or permanently locate equipment at a location (such as an equipment room or a part of a premises not owned by the person making the request); and
  - (ii) that consent or authority is not provided;



(m) subject to subsections (5) and (6), the premises specified in the request for the supply of a standard telephone service is already supplied with a standard telephone service (the *existing standard telephone service*):

- (i) by a carriage service provider other than the primary universal service provider except where:
  - (A) the person making the request, or another person residing at the premises, requests Priority Assistance; and
  - (B) that carriage service provider does not offer Priority Assistance; or
- (ii) by the primary universal service provider in fulfilment of the universal service obligation.

(5) Subparagraph (4)(m)(i) does not apply where the existing standard telephone service is:

- (a) a public mobile telecommunications service; or
- (b) a mobile satellite service.

(6) Subparagraph (4)(m)(ii) does not apply where:

- (a) the relevant request for the supply of a standard telephone service would require the supply of equipment, or other goods or services, under subsection 9E(1) of the Act in order to comply with the *Disability Discrimination Act 1992*; and
- (b) the existing standard telephone service does not require the supply of such equipment, or such goods or services.

## **8 Notification requirements**

- (1) Subsection (3) sets out the notification requirements applying to subsection 7(1).
- (2) Subsection (4) sets out the notification requirements applying to subsection 7(4).
- (3) The primary universal service provider must, within 10 business days of deciding that one or more of the circumstances in paragraph 7(1)(a) applies to the request, provide to the person making the request a statement in writing setting out:
  - (a) which of the circumstances listed in paragraph 7(1)(a) the primary universal service provider is relying on in coming to its decision that the obligation to supply a standard telephone service does not arise; and

- (b) the grounds on which the primary universal service provider has based its judgment that that circumstance, or each of those circumstances, applies to the request; and
  - (c) the entitlement of the person making the request to dispute that the circumstance applies to the request by:
    - (i) requesting the primary universal service provider to reconsider whether the grounds referred to in paragraph (3)(b) exist or are a proper basis for the primary universal service provider to form the view that the obligation to supply a standard telephone service does not arise; or
    - (ii) complaining to the Telecommunications Industry Ombudsman, following such a request for reconsideration; and
  - (d) how the person making the request can contact the primary universal service provider and the Telecommunications Industry Ombudsman.
- (4) The primary universal service provider must, within 10 business days of deciding that one or more of the circumstances in subsection 7(4) applies to the request, provide to the person making the request a statement in writing setting out:
- (a) which of the circumstances listed in subsection 7(4) the primary universal service provider is relying on in coming to its decision that the obligation to supply a standard telephone service does not arise; and
  - (b) the grounds on which the primary universal service provider has based its judgment that that circumstance, or each of those circumstances, applies to the request; and
  - (c) the entitlement of the person making the request to dispute that the circumstance applies to the request by:
    - (i) requesting the primary universal service provider to reconsider whether the grounds referred to in paragraph (4)(b) exist or are a proper basis for the primary universal service provider to form the view that the obligation to supply a standard telephone service does not arise; or
    - (ii) complaining to the Telecommunications Industry Ombudsman, following such a request for reconsideration; and
  - (d) how the person making the request can contact the primary universal service provider and the Telecommunications Industry Ombudsman.