

Commonwealth of Australia

Telecommunications Act 1997

Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014

I, MALCOLM BLIGH TURNBULL, Minister for Communications, make the following Declaration under subsection 63(2) of the *Telecommunications Act 1997*.

Dated 12 December 2014.

MALCOLM TURNBULL
Minister for Communications

1 Name of Instrument

This Declaration is the *Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014*.

2 Commencement

This Declaration commences on 1 January 2015.

3 Expiry

This Declaration expires on 31 December 2016.

4 Definitions

(1) In this Declaration:

ABN has the meaning given in section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

Act means the *Telecommunications Act 1997*.

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associate of a specified carrier is to be determined in accordance with section 152 of the Act.

business customer means a customer that:

- (a) carries on a business or enterprise from a premises, regardless of whether there is any incidental use of the premises for occupation (from time to time) as a place of residence; and
- (b) has an ABN for the business or enterprise.

declared service has the same meaning as in Part XIC of the *Competition and Consumer Act 2010*.

designated telecommunications network means that part of a fixed-line telecommunications network made up of local access lines or parts of local access lines which:

- (a) is used, or is technically capable of being used, to supply superfast carriage services; and
- (b) is not:
 - (i) subject to either sections 141 or 143 of the Act; or
 - (ii) the subject of a ministerial exemption in force under section 141A or section 144 of the Act; or
 - (iii) any of the following:
 - (A) the national broadband network; or
 - (B) a specified HFC network; or
 - (C) any local access lines that are used to supply carriage services to business customers, public bodies or large charity customers; or
 - (D) a fixed-line network (or any part of such a network) in existence immediately before 1 January 2011 which is situated in a real estate development project that is extended on or after 1 January 2011 to an area that was developed as another stage of the project;
 - (E) a fixed-line network (or any part of a such a network) in existence immediately before 1 January 2011 which prior to that date was used to supply carriage services to residential customers and which has not been extended on or after 1 January 2011;
 - (F) a fixed-line network (or any part of such a network) in existence immediately before 1 January 2011 which prior to that date was used to supply carriage services wholly or principally to residential customers and which is extended on or after 1 January 2011 by less than 1 kilometre from any point on the infrastructure of the network (as it stood immediately before 1 January 2011); and
 - (G) a fixed-line network (or any part of such a network) which is:
 - (i) owned by a carrier that is also the primary universal service provider; and
 - (ii) built (including any extensions made to such a network of less than 1 kilometre from any point on the infrastructure of the network) between 1 January 2011 and 31 December 2014 to enable the primary universal service provider to

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fulfil the universal service obligation; and
(c) is situated anywhere in Australia.

eligible service has the same meaning as in section 152AL of the *Competition and Consumer Act 2010*.

employee, in respect of a wholesale or retail company, includes a natural person who is acting as an agent, or is engaged by the company as a consultant or contractor acting in an equivalent role to an employee or carrying out the role of an employee.

large charity customer means a customer that is an incorporated charitable organisation which employs 15 or more employees at any time.

Layer 2 has the same meaning as in the Open System Interconnection reference model for data exchange.

Layer 2 Wholesale Service means a Layer 2 bitstream service that has all of the following characteristics:

- (a) a downstream data transfer rate of 25 megabits per second (peak information rate); and
- and
- (b) an upstream data transfer rate of 5 megabits per second (peak information rate); and
- (c) is able to be used by a carrier or carriage service provider to supply carriage services, including voice telephony, to an end-user.

local access line has the same meaning as in section 141D of the Act.

multi-dwelling unit means a building or buildings where multiple separate units for occupation (from time to time) as a place of residence or business are contained within one complex.

national broadband network has the same meaning as in section 5 of the *National Broadband Network Companies Act 2011*.

operational support systems means any system for service activation, customer support, billing and service fault rectification and similar functions and includes systems for maintaining and recording customer information.

permitted discrimination grounds means discrimination against a carrier or carriage service provider by a specified carrier (or wholesale company, as the case may be) where it has reasonable grounds to believe that the particular carrier or carriage service provider would fail, to a material extent, to comply with an obligation that is reasonably necessary to protect the carrier's (or the wholesale company's) legitimate interests.

Note: For the purposes of the definition of permitted discrimination grounds, examples of grounds include evidence of lack of creditworthiness and repeated failures by the particular carrier or carriage service provider to comply with similar terms and conditions offered by the specified carrier (or wholesale company, as the case may be).

point of interconnection means a point within a carrier's telecommunications network:

- (a) for the interconnection of facilities by another carrier; and
- (b) which is:
 - (i) located in each State or Territory capital city in which the carrier operates the

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- designated telecommunications network and is reasonably accessible to the other carrier; or
- (ii) another location as agreed between the carrier and the other carrier.

primary universal service provider has the meaning given in section 12A of the Telecommunications (*Consumer Protection and Service Standards*) Act 1999.

protected wholesale information means:

- (a) confidential information obtained by the wholesale company for the purpose of, or in the course of, supplying carriage services to a wholesale customer that identifies the wholesale customer or a customer of that wholesale customer; or
- (b) information obtained by the wholesale company for the purpose of, or in the course of, supplying carriage services to a wholesale customer that is commercially sensitive to a wholesale customer; or
- (c) any confidential information or commercially sensitive information which is derived from information of the kind described in paragraph (a) or (b) above, whether or not in an aggregate form, that would enable the identity of a:
- (i) wholesale customer to be ascertained; or
- (ii) customer of a wholesale customer to be ascertained;

but does not include:

- (d) information of the kind described in subparagraph (c)(i) above where the information is aggregated on a national basis; or
- (e) information which is already public.

public body means:

- (a) the Commonwealth, a State or a Territory; or
- (b) a municipal authority or other local governing body; or
- (c) a public authority that is constituted by or under a law of the Commonwealth, a State or a Territory.

related body corporate has the same meaning as in section 9 of the *Corporations Act 2001*.

retail company means a company which has the following functions:

- (a) selling and supplying eligible services to end-user customers using the designated telecommunications network; and
- (b) negotiating or establishing supply contracts with end-user customers.

specified broadband service means a carriage service which has the following characteristics;

- (c) it enables end-users to download communications; and
- (d) its download transmission speed is normally 6 megabits per second or more; and
- (e) it is supplied using a line to premises occupied or used by an end-user.

specified carrier means a carrier that either owns or operates a designated telecommunications network at any time on or after the commencement of this Declaration, and where the context permits, includes a wholesale company.

specified HFC network means:

- (a) a telecommunications network that is used to supply carriage services and the line

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- component of which consists of optical fibre to connecting nodes, supplemented by coaxial cable connections from the nodes to the premises of end-users; and
- (b) which was in existence prior to 1 January 2011. For the avoidance of doubt, any extensions to such a network made on or after 1 January 2011 are to be treated as forming part of a ‘specified HFC network’ for the purposes of this Determination.

superfast carriage service has the same meaning as in subsection 141(10) of the Act.

universal service obligation has the meaning given in section 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

wholesale company means a company which has the following functions:

- (a) selling and supplying eligible services to carriers, carriage service providers and the retail company (**wholesale customers**) using the designated telecommunications network; and
- (b) where required, providing (or arranging for the provision of) service activation and network provisioning, and fault detection, handling and rectification and similar functions, in respect of the designated telecommunications network; and
- (c) negotiating or establishing access agreements with its wholesale customers. For the avoidance of doubt, additional functions of the wholesale company may include controlling or operating the designated telecommunications network but these are not mandatory functions.

Note: Several other words and expressions used in this Declaration have the same meaning given by the *Telecommunications Act 1997* (see subsection 13(1) of the *Legislative Instruments Act 2003*). For example:

- carriage service;
- carriage service provider;
- carrier;
- customer cabling;
- customer equipment;
- facility;
- main distribution frame;
- real estate development project; and
- telecommunications network.

- (2) Where the specified carrier uses a designated telecommunications network to supply carriage services to carriers or carriage service providers, and those carriers and carriage service providers:
- (a) are each:
- (i) related body corporates of the specified carrier; or
 - (ii) within the same company group of companies as the specified carrier; and
- (b) supply carriage services to residential customers;
- the operations of the designated telecommunications network will not be treated as being on a wholesale-only basis for the purposes of subsection 6(6)(a) of this Declaration.

5 Application

A carrier licence granted to any specified carrier is subject to the conditions set out in section 6 if, at any time, on or after the commencement of this Declaration one or more local access lines forming part of a designated telecommunications network are used by the specified carrier or any of its associates to supply superfast carriage services or specified broadband services to residential customers.

6 Class Licence Conditions

- (1) The specified carrier must:
 - (a) from 1 January 2015 until 30 June 2015 comply with the conditions set out in subsections (2) and (3); and
 - (b) if it chooses to offer a Layer 2 Wholesale Service at any time between 1 January 2015 until 30 June 2015, comply with the conditions set out in subsection (7) and (8), and the reference to 'wholesale company' in subsection (7) is to be taken as a reference to the specified carrier for this purpose; and
 - (c) from 1 July 2015 until 31 December 2016 comply with the conditions set out in subsections (5), (6), (7) and (8); and
 - (d) within 20 days of the conditions set out in this Declaration applying to the specified carrier in respect of its operations of a designated telecommunications network provide the ACCC with written notice of this.

Interim wholesale service offerings

- (2) Subject to subsection (4), the specified carrier must offer, or ensure that any of its associates (as relevant) offers, to supply to another carrier or carriage service provider the following:
 - (a) eligible services (using the designated telecommunications network) from the specified carrier's point of interconnection to either of the following points, as requested by the carrier or carriage service provider:
 - (i) the main distribution frame of the relevant building; or
 - (ii) an end-user's premises;
 - (b) information about the types of customer equipment, and any proprietary customer equipment, needed to enable the other carrier or carriage service provider to supply carriage services to an end-user;
 - (c) access to any necessary facilities and permit interconnection of those facilities at the specified carrier's (or an associate's) nominated point of interconnection; and
 - (d) in the case where the eligible service is proposed to be supplied to a premises in multi-dwelling unit, access to relevant customer cabling controlled by the specified carrier (or an associate of the specified carrier),
to enable that carrier or carriage service provider to supply carriage services to an end-user.
- (3) In fulfilling the supply obligation under subsection (2) above, the specified carrier must:
 - (a) take all reasonable steps to ensure that the technical and operational quality of the eligible services supplied to the carrier or carriage service provider using the designated telecommunications network is the same as that which the specified carrier provides to its own retail operations;
 - (b) not discriminate in favour of its own retail operations (other than on permitted discrimination grounds):
 - (i) in relation to the supply of an eligible service, including in respect of any price and non-price terms and conditions for such supply;
 - (ii) in carrying on any of the following activities:
 - (A) enhancing an eligible service;
 - (B) developing a new eligible service;
 - (C) extending or enhancing the capability of a facility by means of which an eligible service is supplied;
 - (D) an activity that is preparatory to the supply of an eligible service;

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- (E) an activity that is incidental to the supply of an eligible service; and
 - (F) giving information to carriers and carriage service providers about any of the activities listed in sub-subparagraphs (A)-(E);
- (c) not discriminate between carriers and carriage service providers (other than on permitted discrimination grounds) in relation to:
- (i) the supply of an eligible service; and
 - (ii) carrying on any of the activities listed at sub-subparagraphs (3)(b)(ii)(A)-(F).

Exception to interim wholesale service offerings

- (4) The obligation under subsection (2) does not apply in respect of a particular local access line that forms part of a designated telecommunications network, to the extent that such a line is used to supply a carriage service to an end-user, if all of the following circumstances apply:
- (a) the local access line was being used by the specified carrier (or any of its associates) on 31 December 2014 to supply a carriage service to an end-user at premises owned or occupied by that end-user; and
 - (b) at the relevant time, the specified carrier is continuing to supply a carriage service to the end-user at the relevant premises using the line.

General separation and supply obligations

- (5) The specified carrier must not use or permit any of its associates to use any local access line forming part of the designated telecommunications network to supply a carriage service unless all the conditions specified in subsection (6) are met.
- (6) To the extent that the operations of the specified carrier (and its associates) in respect of the designated telecommunications network are not operated on a wholesale-only basis at all times during which section 5 and paragraph (1)(c) apply, the specified carrier must ensure that all of the conditions set out in paragraphs (a)-(r) below are satisfied:
- (a) the specified carrier must not supply eligible services using the designated telecommunications network to the retail company unless the specified carrier is also the wholesale company;
 - (b) the wholesale operations of the designated telecommunications network must be conducted through the wholesale company and the retail operations must be conducted through the retail company;
 - (c) the wholesale company and retail company must:
 - (i) each operate separate operational support systems; and
 - (ii) either operate:
 - (A) separate business and communication systems; or
 - (B) shared business and communication systems but only if they are not used by the wholesale company in any manner which has (or potentially has) the effect of discriminating in favour of the retail company in respect of the supply of eligible services or in carrying on any of activities listed at subparagraph (6)(m)(ii);
 - (d) the specified carrier must provide to the ACCC a statutory declaration made in accordance with the *Statutory Declarations Act 1959* (Cth) by a director or company secretary of the specified carrier, that the wholesale company (at all relevant times) has operated the systems in accordance the condition in sub-

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- subparagraph (6)(c)(ii)(B):
- (i) by 31 January 2016;
 - (ii) by 30 June 2016; and
 - (iii) by 31 December 2016;
- (e) the specified carrier must provide (and ensure that the wholesale company provides) all reasonable assistance and responds to any reasonable request made by the ACCC for the purposes of any audits undertaken by the ACCC to verify compliance with sub-subparagraph (6)(c)(ii)(B) by the ACCC;
 - (f) the wholesale company must operate a single business-to-business interface for use by its retail company and other carriers and service providers for ordering eligible services that are to be supplied using the designated telecommunications network;
 - (g) the wholesale company must not perform any function of the retail company;
 - (h) the retail company must not perform any function of the wholesale company;
 - (i) the offer and supply of eligible services using the designated telecommunications network to a person who is a carrier or a carriage service provider using the designated telecommunications network must be effected through the wholesale company;
 - (j) in respect of eligible services the retail company acquires directly from the wholesale company for the purposes of its business, the offer and supply of eligible services to end-user customers using the designated telecommunications network must be effected through the retail company;
 - (k) the wholesale company must publish in a prominent place on its website and provide to the Australian Competition and Consumer Commission within 5 business days of publication, the terms and conditions (price and non-price) on which it supplies the eligible services (including the Layer 2 Wholesale Service) using the designated telecommunications network;
 - (l) the wholesale company must:
 - (i) supply eligible services (including the Layer 2 Wholesale Service) using the designated telecommunications network;
 - (ii) give access to any necessary facilities and permit interconnection of those facilities at a nominated point of interconnection;
 - (iii) offer necessary connectivity to a relevant point of interconnection for the relevant local access line; and
 - (iv) provide information about the types of customer equipment, and supply any proprietary customer equipment, needed for the supply of carriage services to an end-user; and
 - (v) in the case where the service is proposed to be supplied to a premises in a multi-dwelling unit, give access to relevant customer cabling controlled by the wholesale company (or its associate);to the retail company and other carriers and carriage service providers;
 - (m) in fulfilling the supply obligations under paragraph (l), the wholesale company must not discriminate:
 - (i) in favour of the retail company in relation to the supply of an eligible service, including in respect of any price and non-price terms and conditions for such supply (other than on permitted discrimination grounds);
 - (ii) in favour of the retail company in carrying on any of the following activities:
 - (A) enhancing an eligible service;
 - (B) developing a new eligible service ;

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- (C) extending or enhancing the capability of a facility by means of which an eligible service is supplied;
 - (D) an activity that is preparatory to the supply of an eligible service;
 - (E) an activity that is incidental to the supply of an eligible service; and
 - (F) giving information to carriers and carriage service providers about any of the above activities listed at subparagraphs (6)(m)(ii) ;
- (iii) between wholesale customers (carriers and carriage service providers) requesting services (other than on permitted discrimination grounds) in relation to:
- (A) the supply of an eligible service, including in respect of any price and non-price terms and conditions for such supply; and
 - (B) the carrying on any of activities listed at subparagraph (6)(m)(ii);
- (n) at any given time, a person appointed as director of the wholesale company (or the retail company, as the case may be) must not be appointed as a director of the other company;
- (o) at any given time, a person occupying a senior management position with the wholesale company (or the retail company, as the case may be) must not hold any senior management position with the other company;
- (p) an employee of the wholesale company (or the retail company, as the case may be) must not be employed by the other company;
- (q) the wholesale company (including any of its directors, senior management and employees) must not disclose protected wholesale information to the retail company (including any of its directors, senior management and employees) unless authorised by the respective wholesale customer to do so; and
- (r) where the wholesale company discloses, where permitted, protected wholesale information to an associate of the wholesale company, the associate must not disclose protected wholesale information to the retail company (including any of its directors, senior management and employees) unless authorised by the respective wholesale customer to do so.

Layer 2 Wholesale Service Supply Obligation

- (7) At all times during which the Layer 2 Wholesale Service is not a declared service, the specified carrier must ensure that the wholesale company offers to supply, upon reasonable request by another carrier or carriage service provider, a Layer 2 Wholesale Service using the designated telecommunications network.
- (8) The price offered for the supply of the Layer 2 Wholesale Service (in accordance with subsection (7)) must not be more than \$27 (exclusive of GST) per service on a monthly basis in relation to the use of the local access line.