

EXPLANATORY STATEMENT

Telecommunications (Consumer Protection and Service Standards) Act 1999

Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No.1 of 2005 Instrument of Revocation 2015

Issued by the Authority of the Minister for Communications

Legislative Authority

The *Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No.1 of 2005* (the Determination) is made under subsections 154(1), 155(1) and 157(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Act).

Subsection 154(1) of the Act enables the Minister to determine that specified Telstra Corporation Limited (Telstra) charges are subject to price control arrangements.

Paragraph 155(1)(a) of the Act enables the Minister to determine price-caps and other price controls to be applied in relation to a Telstra charge subject to price control arrangements. Paragraph 155(1)(b) enables the Minister to determine principles in accordance with which Telstra is to make alterations to charges subject to price control arrangements. Subsection 157(1) of the Act enables the Minister to determine that specified Telstra charges are subject to notification and disallowance.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides the Minister with the power to repeal, rescind, revoke, amend or vary any instrument made under the powers conferred by the Act.

Purpose

The purpose of the *Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No.1 of 2005 Instrument of Revocation 2015* (the Revocation Instrument) is to revoke the Determination as currently in force.

Background

The Determination imposes retail price controls (RPC) on certain services supplied by Telstra.

These arrangements apply price caps to specified ‘baskets’ of fixed-line services supplied by Telstra along with other pricing obligations. The objectives of RPC are to provide parity between metropolitan, rural and regional customers, protect low-income consumers and ensure that efficiency benefits are passed on to customers. While Telstra can vary the prices of individual items in a ‘basket’, the total variation must be zero or within the Consumer Price Index (CPI) depending on the ‘basket’, meaning that Telstra must at least absorb any changes in the CPI.

Basket 1 consists of local, STD, fixed to mobile and international calls, and line rentals. Basket 2 is Telstra's basic residential line rental product (HomeLine Part) which is capped by the CPI. Basket 3 is Telstra's basic business and charity line rental product (BusinessLine Part) and also has its price limited by CPI. In addition, there are 10 specified connection services which are subject to price increase caps in line with CPI movements.

Other price controls include the price for untimed local calls which are not to increase above 22 cents and 50 cents from payphones, price parity between metropolitan and regional areas, and line rental to schools at a price at or below that offered to residential customers.

Price control arrangements of this type have applied to Telstra (or its predecessors, Telecom and the Overseas Telecommunications Corporation) since 1989. They were originally introduced at a time when Telstra was the only telecommunications provider and fixed line telephony was the predominant telecommunications service, giving Telstra significant market position. RPC and other regulatory measures were viewed as means to appropriately balance this dominant market position while the market was deregulated and competition increased through new players and services.

RPC have been reviewed every two to three years since their introduction and were kept in place to address potential ongoing structural and social equity issues in the telecommunications market. These issues have declined with improved access to telecommunications infrastructure, including the National Broadband Network (NBN), the increasing availability and use of alternative services to fixed lines (such as mobile services and Internet Protocol telephony) and increased retail competition.

The most recent formal review in 2012 by the Department (previous reviews being undertaken by the ACCC) found that there was potentially a valid case for reducing or removing RPC over time and that this should be subject to further analysis in 2014 having regard to the progress of the NBN and the development of competition.

On 26 June 2012, the *Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 (Amendment No. 1 of 2012)* was made, amending the Principal Determination. This amendment extended the price control arrangements to 30 June 2014, exempting Telstra from price control arrangements over the NBN or equivalent wholesale-only networks and capping individual connection service products in addition to other changes.

Following targeted consultation with Telstra, the ACCC and the Commonwealth Department of Education in March 2014, Telstra's RPC were extended for a further 12 months until 1 July 2015 to allow for a regulatory review process and the further analysis foreshadowed in the 2012 review.

In February 2014, the Department engaged the Centre for International Economics (CIE) to undertake an economic analysis of Telstra's RPC to provide advice on the future of price control arrangements in the context of the Government's broader deregulation agenda.

CIE found that with the development of a competitive retail market for telecommunications services, RPC are no longer required and that RPC are having no

impact on prices charged by Telstra. Prices offered by Telstra are below the level required by RPC.

CIE also reported that it is likely that Telstra would have offered nationally consistent prices in the absence of RPC.

The findings of the CIE analysis confirm the trends identified in the Department's 2012 review and reinforce the decreasing relevance of RPC in the current telecommunications market.

In light of the findings of the consultation processes, the retail price control arrangements, including the price caps and pricing structure, are no longer considered necessary, thereby justifying the revocation of the Determination in its entirety. It is also considered that revoking the retail price control arrangements would represent a reduction in industry reporting requirements for Telstra. The revocation of the determination also aligns with the Government's broader deregulation agenda.

Revoking RPC would represent a reduction in industry reporting requirements for Telstra with no impact on consumers, and deliver a net economic saving of approximately \$246,000 per annum due to reduced administration and compliance costs.

As part of its carrier licence conditions, Telstra will still be required to provide the 'Access for Everyone' package, endorsed by low-income consumer advocacy groups through the Low-income Measures Assessment Committee (LIMAC). This package contains products and arrangements that address the needs of a wide range of low-income consumers.

The legislative power in the *Telecommunications (Consumer Protection and Service Standards) Act 1999* will remain in place to reintroduce RPC if required.

Consultation

In November 2013, the Government consulted with stakeholders on a number of initial measures, including RPC, for a proposed Telecommunications Deregulation Bill, which sought to reduce telecommunications regulation while maintaining or strengthening important consumer safeguards.

On 15 April 2014, the Department released a consultation paper outlining proposed deregulatory measures, including RPC. Stakeholders were invited to comment on an online discussion forum on the Department's website. Submissions were received from Optus, Telstra, the Communications Alliance, the Australian Mobile Telecommunications Association, the Australian Communications Consumer Action Network and the National Farmers' Federation. All submissions supported repeal of RPC arrangements.

On 12 May 2014, the Department held a stakeholder forum that sought stakeholder perspectives on a range of proposed deregulatory measures. The forum supported the repeal of RPC.

The Department held a number of consultation rounds as part of the drafting process for the report undertaken by the CIE. This included a number of iterations of the report with Telstra and the ACCC, both supporting the repeal of RPC.

Additionally, the Department consulted on the report with the National Farmers' Federation (NFF) and the New South Wales Farmers' Association (NSW FA). The NFF supports the repealing of RPCs provided that the legislative power in the *Telecommunications (Consumer Protection and Service Standards) Act 1999* remains in place to reintroduce price control arrangements if required (as is the case). The NSW FA did not support repeal due to concerns about lack of competition in regional areas resulting in price increases in regional markets. The analysis undertaken by the CIE does not support this view as it demonstrates that retail service providers, not currently subject to RPC, voluntarily price on a uniform national basis, even where they are permitted to have differential pricing (such as the mobile telephone market).

Regulation Impact

The Office of Best Practice Regulation (OBPR) advised that the Department is compliant with the Government's Regulation Impact Statement (RIS) requirements on the basis that:

- the Department self-assessed that the policy development process has followed a similar process to that required for a RIS and it adequately addressed all seven RIS questions
- the regulatory costs have been agreed with OBPR of \$246,000 in savings per annum.

Other details

The Revocation Instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and shall commence on the day after it is registered on the Federal Register of Legislative Instruments.

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in **Attachment 1**.

Details of the accompanying Revocation Instrument are set out in **Attachment 2**.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the
Human Rights (Parliamentary Scrutiny) Act 2011

Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No.1 of 2005 Instrument of Revocation 2015

The *Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No.1 of 2005 Instrument of Revocation 2015* (the Revocation Instrument) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Revocation Instrument

The *Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No.1 of 2005* (the Determination) currently in force sets out price control arrangements for specified retail carriage services provided by Telstra Corporation Limited (Telstra). The arrangements are mainly by way of caps and apply to 'baskets' of services, such as monthly line rental, untimed local calls for residential and pay phones, and generally only permit price increases in line with CPI movements. Price control arrangements of this type have applied to Telstra (or its predecessors, Telecom and the Overseas Telecommunications Corporation) since 1989.

Due to improved access to telecommunications infrastructure, including the National Broadband Network, the increasing availability and use of alternative services to fixed lines, e.g. mobile services and Internet Protocol telephony, and increased retail competition, retail price controls no longer have an impact on prices charged by Telstra. Prices offered by Telstra are below the level required by the retail price controls which are estimated to have a net economic cost of approximately \$246,000 per annum. As such, price control arrangements are no longer required, thereby justifying the revocation of the Determination in its entirety.

The effect of the Revocation Instrument is that the retail price control arrangements applying to Telstra and the Australian Competition and Consumer Commission (ACCC) are removed. However the legislative power in the *Telecommunications (Consumer Protection and Service Standards) Act 1999* will remain in place to allow RPC to be reintroduced if required.

No human rights issues were raised during consultation on the revocation of the Determination. The removal of retail price controls, pricing structure and price caps does not raise any human rights issues.

Human rights implications

This Revocation Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Revocation Instrument is compatible with human rights as it does not raise any human rights issues.

Attachment 2***Details of the Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No.1 of 2005 Instrument of Revocation 2015*****Section 1 – Name of Instrument**

Section 1 of the Revocation Instrument provides that the name of the instrument is the *Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No.1 of 2005 Instrument of Revocation 2015*.

Section 2 - Commencement

Section 2 provides that the Revocation Instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 - Revocation

Section 3 provides that the *Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No.1 of 2005* is revoked.

Section 4 - Expiry

Once the Revocation Instrument comes into effect, it will have fulfilled its purpose (i.e. revoked the Determination). Therefore, the Revocation Instrument itself can be removed from the Federal Register of Legislative Instruments. Accordingly, a self-expiry provision has been involved at section 4.