



Telecommunications (Statutory Infrastructure Providers—Circumstances for Exceptions to Connection and Supply Obligations) Determination 2024

I, Michelle Rowland, Minister for Communications, make the following determination.

Dated 21 May 2024

Michelle Rowland
Minister for Communications

Contents

Part 1—Introductory	1
1 Name	1
2 Commencement.....	1
3 Authority	1
4 Definitions	1
5 Schedules.....	2
Part 2—Circumstances	3
Division 1—Exceptions to the obligation to connect premises to a qualifying telecommunications network	3
6 Determination of circumstances.....	3
Division 2— Exceptions to the obligation to supply eligible services	6
7 Determination of circumstances.....	6
Schedule 1—Repeals	10
<i>Telecommunications (Statutory Infrastructure Providers—Circumstances for Exceptions to Connection and Supply Obligations) Determination 2021</i>	10

Part 1—Introductory

1 Name

This instrument is the *Telecommunications (Statutory Infrastructure Providers—Circumstances for Exceptions to Connection and Supply Obligations) Determination 2024*.

2 Commencement

This instrument commences the day after this instrument is registered.

3 Authority

This instrument is made under subsections 360P(3) and 360Q(4) of the *Telecommunications Act 1997*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) building lot (section 372Q);
- (b) carriage service provider (section 7);
- (c) connected (section 7);
- (d) eligible service (section 360A);
- (e) NBN corporation (section 7);
- (f) qualifying carriage service (section 360A);
- (g) qualifying telecommunications network (section 360A);
- (h) relevant service area (section 360A);
- (i) request (section 7);
- (j) service area (section 7);
- (k) statutory infrastructure provider (section 360A).

- (1) In this Instrument:

Act means the *Telecommunications Act 1997*.

CCA means the *Competition and Consumer Act 2010*.

declared service has the same meaning as given by section 152AL of the CCA.

relevant SIP means a statutory infrastructure provider for a service area within which the premises subject to a request for a connection of an end-user at premises, or supply of an eligible service to a carriage service provider (in order that the carriage service provider can provide qualifying carriage services to the end-user at premises), is located.

- (2) For the purposes of this Instrument, the reference to end-user in relation to a request for a connection of an end-user at premises, or supply of an eligible service to a carriage service provider (in order that the carriage service provider can provide qualifying carriage services to the end-user at premises) is taken to

be a reference to the person who has entered into a legally binding arrangement with the carriage service provider for a connection or supply of an eligible service to, specified premises, unless otherwise specified in the request.

- (3) For the purposes of this Instrument, a request for a connection of, or supply of an eligible service to, premises sited at a building lot that has more than one premises is taken to relate to the individual premises specified in the request regardless of the existence of other premises at that building lot.
- (4) For the avoidance of doubt, where there is more than one relevant SIP for a service area, the circumstances determined in Part 2 may be applicable in relation to each relevant SIP.

5 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Part 2—Circumstances

Division 1—Exceptions to the obligation to connect premises to a qualifying telecommunications network

- Note 1: Subsection 360P(1) of the Act imposes the obligation on a statutory infrastructure provider for a service area to connect an end-user at premises in the service area, on reasonable request by a carriage service provider on behalf of the end-user, to a qualifying telecommunications network.
- Note 2: Subsection 360P(2) of the Act provides that the obligation to connect premises to a qualifying telecommunications network does not arise under subsection 360P(1) in the circumstances specified in a ministerial determination under subsection 360P(3).
- Note 3: Connection to a qualifying fixed-line telecommunications network is required unless it is not reasonable to do so, and where it is not reasonable to do so, connection must be to another type of qualifying telecommunications network, such as one which uses either a fixed-wireless or satellite technology platform: see paragraphs 360P(1)(a) and (b) of the Act.
- Note 4: A statutory infrastructure provider is not obliged under subsection 360P(1) of the Act to connect premises in order that a carriage service provider can provide qualifying carriage services to an end-user, where the premises is not situated in the provider's service area.

6 Determination of circumstances

For the purposes of subsection 360P(2) of the Act, the following circumstances are determined:

- (a) where, by the day requested for connection, the premises specified in the request is:
 - (i) under construction and a relevant SIP has reasonably determined that the building works for the premises will not have sufficiently progressed to a stage that is adequate for the connection to be undertaken; or
 - (ii) a permanent structure that does not comply with all applicable planning and development laws pertaining to structural safety and integrity; or
 - (iii) a moveable structure that is not reasonably expected to be continuously located at the particular site where the connection has been requested;
- (b) where the supply of a power source by the end-user is required to adequately support the connection and that power source is not reasonably expected to be available by the date requested for the connection;
- (c) where fulfilment of the connection obligation at the particular premises would constitute a contravention by a relevant SIP of an applicable law of the Commonwealth, State, Territory or local government and there are no steps reasonably available to the relevant SIP to lawfully avoid the contravention;
- (d) where civil works which are not the responsibility of a relevant SIP are required to adequately support the connection, and have not been supplied or arranged to be supplied by the date requested for the connection;

Note: Part 20A of the Act generally requires developers to arrange for civil works to be undertaken to ensure that fibre-ready facilities (such as pit and pipe) are installed in their real estate development projects.

- (e) where a relevant SIP has already received a request for connection at the same premises, and the relevant SIP is either processing the request or has already connected that premises;
- (f) where the premises is connected to another qualifying telecommunications network (*third party network*) and a relevant SIP is reasonably satisfied, based on documentation obtained from the requesting carriage service provider or other information, that at the time of the request either:
 - (i) an end-user or another person is being supplied with a qualifying carriage service using the third party network and that person has not been advised by the provider using the third party network to supply the service, that the service is to be withdrawn within a specified timeframe; or
 - (ii) an end-user or another person is being supplied with a qualifying carriage service using the third party network and that person has not requested or does not intend to request the cancellation of the service within a reasonable timeframe;
- (g) where the installation of equipment necessary for the connection would put a relevant SIP's employees, contractors or agents or members of the public at unreasonable risk of being exposed to health or safety hazards;
- (h) where, in order for a relevant SIP to carry out or complete any part of the connection, the installation of facilities or other equipment (such as customer premises equipment) is necessary for the connection: and
 - (i) the relevant SIP requires either or both of the following:
 - A. access to land, premises or areas within premises (including, without limitation, common areas) owned or occupied by a party that are not publicly accessible;
 - B. the consent of a person to attach or install facilities or other equipment to, or within, premises; and
 - (ii) after reasonable endeavours have been undertaken by the relevant SIP to obtain such access or consent (including if requested, informing the requesting carriage service provider of the nature and scope of the works required to be undertaken by the relevant SIP), such access has been refused or not granted within the reasonable timeframe requested by the relevant SIP (as applicable); and
 - (iii) the relevant SIP has exhausted all lawful available avenues (including any under Commonwealth law) to obtain such access.

Note: Under Schedule 3 to the Act, carriers have some powers to inspect land, install certain telecommunications facilities and maintain existing telecommunications facilities, and have some immunities from some state and territory legislation, such as planning laws. Conditions and notification obligations apply.

- (i) where the carriage service provider has not accepted a relevant SIP's terms and conditions for the connection of premises, provided those terms and conditions are not inconsistent with this Instrument;

Note: Subsection 360W(1) of the Act requires each SIP to make available on its website, the price and non-price terms and conditions on which it offers to connect premises in the relevant service area.

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- (j) a relevant SIP has a reasonable need to identify the end-user and adequate information is not available to enable the relevant SIP to identify that end-user;
 - (k) where a relevant SIP believes, on reasonable grounds, that the request to connect the premises is fraudulent;
 - (l) where a relevant SIP believes, on reasonable grounds, that the person to whom the request to connect the premises relates does not have the legal right to occupy the premises specified in the request;
 - (m) where:
 - (i) after conducting an on-site inspection of, or undertaking other inquiries or analysis of, the location where the premises is sited, a relevant SIP reasonably determines there are particular topographical or other features of the premises or its location that either impact or prevent the connection and/or would render the premises incapable of being supplied with a properly functioning eligible service (the **impediment**); and
 - (ii) the relevant SIP has notified the requesting carriage service provider in writing of the impediment, and if applicable, details of reasonable adjustments that could be undertaken (with or without any cost to the end-user) within a reasonable timeframe to remove or overcome the impediment to enable the connection to be undertaken and/or render the premises capable of being supplied in the future with a properly functioning eligible service;
 - (iii) the relevant SIP has asked the requesting carriage service provider to notify the end-user in writing of the information of the impediment (and any other details, if applicable) as referenced in paragraph (ii) above; and
 - (iv) the end-user has not, within a reasonable timeframe specified by the carriage service provider, removed the impediment or made other reasonable adjustments.

Division 2— Exceptions to the obligation to supply eligible services

- Note 1: Paragraph 360Q(1)(a) of the Act imposes the obligation on a statutory infrastructure provider for a service area to supply, on reasonable request by a carriage service provider, an eligible service to the carriage service provider in order that the carriage service provider can provide qualifying carriage services to an end-user at premises in the service area.
- Note 2: Subsection 360Q(3) of the Act provides that the obligation to supply an eligible service does not arise under subsection 360Q(1) in the circumstances specified in a ministerial determination under subsection 360Q(4).
- Note 3: A statutory infrastructure provider is not obliged under subsection 360Q(1) of the Act to supply eligible services in order that a carriage service provider can provide qualifying carriage services to an end-user at premises, where the premises is not situated in the statutory infrastructure provider's service area.
- Note 4: Subsections 152AR(4) and (9) in Part XIC of the CCA sets out the exceptions to category A standard access obligations applicable to the supply of declared services by a carrier or a carriage service provider that is not an NBN corporation.
- Note 5: Subsections 152AXB(3) and (6) in Part XIC of the CCA sets out the exceptions to category B standard access obligations applicable to the supply of declared services by an NBN corporation.

7 Determination of circumstances

For the purposes of subsection 360Q(3) of the Act, the following circumstances are determined:

- (a) where, by the day requested for the supply, the premises specified in the request is:
- (i) not connected to the relevant SIP's qualifying telecommunications network and the relevant SIP is not required under subsection 360P(1) of the Act to connect the premises; or
 - (ii) under construction and the relevant SIP has reasonably determined that the building works for the premises will not have sufficiently progressed for the commencement of the supply; or
 - (iii) a permanent structure that does not comply with all applicable planning and development laws pertaining to structural safety and integrity; or
 - (iv) a moveable structure that is not reasonably expected to be continuously located at the particular site where the supply of the eligible service has been requested;
- (b) where the supply of a power source by the end-user is required to adequately support the supply of the eligible service and that power source is not reasonably expected to be available by the date requested for the commencement of the supply;
- (c) where fulfilment of the supply obligation at the particular premises would constitute a contravention by the relevant SIP of an applicable law of the Commonwealth, State, Territory or local government and there are no steps reasonably available to the relevant SIP to lawfully avoid the contravention;
- (d) where the relevant SIP has already received a request for supply of an eligible service at the same premises, and the relevant SIP is either

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- processing the request or has already commenced the supply of an eligible service to that premises;
- (e) where the premises is connected to another qualifying telecommunications network (*third party network*) and a relevant SIP is reasonably satisfied, based on documentation obtained from the requesting carriage service provider or other information, that at the time of the request either:
- (i) an end-user or other person is being supplied with a qualifying carriage service using the third party network and that person has not been advised by the provider using that third party network to supply the service, that the service is to be withdrawn within a specified timeframe; or
 - (ii) an end-user or other person is being supplied with a qualifying carriage service using the third party network and that person has not requested or does not intend to request the cancellation of the service within a reasonable timeframe;
- (f) where the installation of equipment necessary for the supply of the eligible service would put the relevant SIP's employees, contractors or agents or members of the public at unreasonable risk of being exposed to health or safety hazards;
- (g) where, in order for the relevant SIP to commence the supply of an eligible service, the installation of facilities or other equipment (such as customer premises equipment) is necessary; and
- (i) the relevant SIP requires either or both of the following:
 - A. access to land, premises or areas within premises (including, without limitation, common areas) owned or occupied by a party that are not publicly accessible;
 - B. the consent of a person to attach or install the facilities or other equipment to, or within, premises; and
 - (ii) after reasonable endeavours have been undertaken by the relevant SIP to obtain such access or consent (including if requested, informing the requesting carriage service provider in writing of the nature and scope of the works required to be undertaken by the relevant SIP), such access has been refused or not granted within the reasonable timeframe requested by the relevant SIP (as applicable); and
 - (iii) the relevant SIP has exhausted all lawful available avenues (including any under Commonwealth law) to obtain such access;
- Note: Under Schedule 3 to the Act, carriers have some powers to inspect land, install certain telecommunications facilities and maintain existing telecommunications facilities, and have some immunities from some state and territory legislation, such as planning laws. Conditions and notification obligations apply.
- (h) where the carriage service provider has not accepted the relevant SIP's terms and conditions for the supply, provided those terms and conditions are not inconsistent with this Instrument;
- Note: Subsection 360X(1) of the Act requires each SIP to publish on its website the price and non-price terms and conditions on which it offers to supply eligible services in the relevant service area.
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- (i) the relevant SIP has a reasonable need to identify the end-user and adequate information is not available to enable the relevant SIP to identify that end-user;
 - (j) where the relevant SIP believes, on reasonable grounds, that the request to supply the eligible service is fraudulent;
 - (k) where the relevant SIP believes, on reasonable grounds, that the person to whom the request to supply the eligible service relates does not have the legal right to occupy the premises specified in the request;
 - (l) where:
 - (i) after conducting an on-site inspection of, or undertaking other inquiries or analysis of, the location where the premises is sited, the relevant SIP reasonably determines there are particular topographical or other features of the premises or its location that would render the premises incapable of being supplied with a properly functioning eligible service (the **impediment**); and
 - (ii) the relevant SIP has notified the requesting carriage service provider in writing of the impediment, and if applicable, details of reasonable adjustments that could be undertaken (with or without any cost to the end-user) within a reasonable timeframe to remove or overcome the impediment and render the premises capable of being supplied with a properly functioning eligible service; and
 - (iii) the relevant SIP has asked the requesting carriage service provider to notify the end-user in writing of the impediment (and any other details, if applicable) as referenced in paragraph (ii) above; and
 - (iv) the end-user has not, within a reasonable timeframe specified by the carriage service provider, removed the impediment or made other reasonable adjustments;
 - (m) where:
 - (i) the eligible service to be supplied by a relevant SIP (other than an NBN corporation) is a declared service (the **declared service**); and
 - (ii) the relevant SIP is subject to a category A standard access obligation (within the meaning of Part XIC of the CCA) in relation to the eligible service; and
 - (iii) the relevant SIP is not required to supply the declared service under subsection 152AR(3) of the CCA on the basis that:
 - A. supplying the declared service would have any of the effects set out at paragraphs 152AR(4)(a) to (f) of the CCA; or
 - B. there are reasonable grounds to believe any of the events set out at paragraphs 152AR(9)(a) or (b) of the CCA would occur, including on the basis of the grounds set out at paragraphs 152AR(10)(a) and (b) of the CCA (where applicable);
 - (n) where:
 - (i) an NBN corporation is the relevant SIP; and
 - (ii) the eligible service to be supplied by the NBN corporation is a declared service (the **declared service**); and
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- (iii) the NBN corporation is subject to a category B standard access obligation (within the meaning of Part XIC of the CCA) in relation to the eligible service; and
 - (iv) the NBN corporation is not required to supply the declared service under subsection 152AXB(2) of the CCA on the basis that:
 - A. supplying the declared service would have any of the effects set out at paragraphs 152AXB(3)(a) to (c) of the CCA; or
 - B. there are reasonable grounds to believe any of the events set out at paragraphs 152AXB(6)(a) or (b) of the CCA would occur, including on the basis of the grounds set out at paragraphs 152AXB(7)(a) and (b) of the CCA (where applicable);
 - (o) where a request for the supply of an eligible service does not comply with any reasonable process or form requirements for the request of supply of an eligible service as set out in a relevant SIP's access agreement or the terms and conditions published in accordance with section 360X of the Act, including where a request includes invalid, inaccurate or incomplete information that would prevent a relevant SIP from fulfilling the supply obligation;
 - (p) where:
 - (i) processing a request for the supply of an eligible service would result in the transfer of an eligible service that a relevant SIP is already supplying to another carriage service provider; and
 - (ii) the requesting carriage service provider has not undertaken all actions required under any industry standard, industry code or supplementary industry guideline applicable to such a transfer.

Schedule 1—Repeals

Telecommunications (Statutory Infrastructure Providers— Circumstances for Exceptions to Connection and Supply Obligations) Determination 2021

1 The whole of the instrument

Repeal the instrument.