

TRADE PRACTICES ACT 1974

Order under paragraph 152AT(3)(a) by the Australian Competition and Consumer Commission

Individual exemption from standard access obligations in respect of LCS

1. Title

This Order may be cited as Individual Exemption Order No. 3 of 2008.

2. Commencement and Expiry

- (1) This Order comes into effect 12 months after the date of release of the Commission's Final Decision on Telstra's application for an individual exemption from the Standard Access Obligations in respect of LCS lodged on 12 October 2007.
- (2) This Order will expire on 31 December 2012 or the expiry or revocation of either the LCS Declaration or the ULLS Declaration, whichever first occurs.

3. Interpretation

- (1) Unless the contrary intention appears, where words or phrases used in this Order are defined in the Act, the *Telecommunications Act 1997* or the instrument declaring the Declared Service, those words or phrases have the same meaning in this Order.
- (2) In this Order, unless the contrary intention appears –

Access means access by an Access Seeker to an Exchange Building for the purpose of taking supply of the ULLS from Telstra.

Access Seeker has the same meaning as in section 152AG of the Act.

Act means the *Trade Practices Act 1974*.

Attachment A ESAs means the ESAs listed in Attachment A to this Order.

Bundled Fixed Voice and Broadband Service means a voice service provided together with a broadband service to an End User both of which are supplied by means of Telstra's copper-based public switched telephone network.

Capped Exchange means an Exchange Building which Telstra has determined is unavailable for Access by Access Seekers for any reason, including without limitation those Exchange Buildings listed by Telstra in the TEBA Capped List as 'MDF capped', 'Racks capped' or 'Racks and MDF capped'.

Commencement Date means the date on which this Order comes into effect in accordance with Item 2 of this Order.

Commission means the Australian Competition and Consumer Commission.

Constructively Capped Exchange means an Exchange Building other than a Capped Exchange which the ACCC has determined that Telstra requires as a condition of Access improvements to be made to an Exchange Building at an Access Seeker's cost where such improvements go beyond the standard costs required for Access by the Access Seeker.

Declared Service means the LCS.

End User means an end-user of carriage services or other services supplied by means of carriage services, rather than the suppliers of these services.

Exchange Service Area or **ESA** has the meaning given to that phrase by the Australian Communications Industry Forum Limited definition in ACIF C559:2006, Part 1.

Exchange Building means a telecommunications exchange building owned, operated or controlled by Telstra.

Exemption means the exemption specified in Item 4 of this Order.

First Queued Access Seeker means the Queued Access Seeker in respect of an Exchange Building that lodged its PSR first in time in respect of that Exchange Building.

Joint Completion Inspection or **JCI** means an inspection of an Exchange Building by representatives of Telstra and an Access Seeker conducted following the completion of construction works in that Exchange Building by that Access Seeker.

LCS means the Local Carriage Service declared by the Commission under subsection 152AL(3) of the Act pursuant to the LCS Declaration.

LCS Declaration means the declaration made by the Commission under section 152AL(3) of the Act in respect of the LCS with effect from 1 August 2006 and published in the *Commonwealth of Australia Gazette* No. GN 31 of 9 August 2006, as varied from time to time.

Note: The Commission may extend or further extend the expiry date of the LCS Declaration under subsection 152ALA(4) of the Act.

LSS means the Line Sharing Service declared by the Commission under subsection 152AL(3) of the Act pursuant to the LSS Declaration.

LSS Declaration means the declaration made by the Commission under section 152AL(3) of the Act in respect of the LSS, the extension of which became effective on 29 October 2007 and was published in the *Commonwealth of Australia Gazette* No. S214 of 29 October 2007, as varied from time to time.

Note: The Commission may extend or further extend the expiry date of the LSS Declaration under subsection 152ALA(4) of the Act.

MDF means the Main Distribution Frame.

Potentially Capped Exchange means a Telstra Exchange Building which Telstra has determined may be unavailable for Access by Access Seekers for any reason. This includes without limitation Exchange Buildings listed in the TEBA Capped List as 'Potential'.

Preliminary Study Request or **PSR** means a request by an Access Seeker to Telstra for Access to an Exchange Building.

Prescribed LSS to ULLS Migration Process means a process developed and implemented by Telstra for the migration by Telstra, at the request of an Access Seeker, of End Users from LSS to ULLS in Attachment A ESAs.

Queued Access Seeker means an Access Seeker who:

- a. submitted a PSR before the Commencement Date in respect of Access to an Exchange Building within an Attachment A ESA that has not been rejected by Telstra and has not been withdrawn by the Access Seeker at any subsequent time; and
- b. has not passed JCI in relation to that PSR.

For the avoidance of doubt:

- a. a PSR has not been rejected by Telstra while it is still under consideration by Telstra; and
- b. Queued Access Seeker includes without limitation a First Queued Access Seeker.

Standard Access Obligations means the standard access obligations set out in section 152AR of the Act.

Standard Telephone Service has the meaning given by section 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).

TEBA Capped List means the document that Telstra publishes from time to time that lists those Exchange Buildings that Telstra regards as Capped Exchanges or Potentially Capped Exchanges.

Telstra means Telstra Corporation Limited (ACN 051 775 556).

ULLS means the Unconditioned Local Loop Service declared by the Commission under subsection 152AL(3) of the Act pursuant to the ULLS Declaration.

ULLS Declaration means the declaration made by the Commission under section 152AL(3) of the Act in respect of the ULLS with effect from 1 August 2006 and published in the *Commonwealth of Australia Gazette* No. GN 31 of 9 August 2006, as varied from time to time.

Note: The Commission may extend or further extend the expiry date of the ULLS Declaration under subsection 152ALA(4) of the Act.

WLR means the Line Rental Service (also known as Wholesale Line Rental) declared by the Commission under subsection 152AL(3) of the Act pursuant to the WLR Declaration.

WLR Declaration means the declaration made by the Commission under section 152AL(3) of the Act in respect of the WLR with effect from 1 August 2006 and published in the *Commonwealth of Australia Gazette* No. GN 31 of 9 August 2006, as varied from time to time.

Note: The Commission may extend or further extend the expiry date of the WLR Declaration under subsection 152ALA(4) of the Act.

4. Exemption

Subject to the conditions and limitations specified in Item 5 below, Telstra is exempt from the Standard Access Obligations in respect of the supply of LCS within the Attachment A ESAs.

5. Conditions and Limitations

Under subsection 152AT(5) of the Act, the Exemption is subject to the following conditions and limitations:

- 5.1 Until the date on which the Commission publishes a Prescribed LSS to ULLS Migration Process on its website, the Exemption does not apply in respect of the supply by Telstra of LCS to an Access Seeker in respect of any End User that, immediately prior to the Commencement Date, was supplied with a Bundled Fixed Voice and Broadband Service by the Access Seeker using the LSS, WLR and LCS supplied by Telstra.
- 5.2 If Telstra develops and implements a Prescribed LSS to ULLS Migration Process and the Commission has published that process on its website (as referred to in item 5.1), Telstra must comply with that process.
- 5.3 Any Prescribed LSS to ULLS Migration Process developed and implemented by Telstra must provide for the migration of End Users from LSS to ULLS in a manner that ensures:
 - a. any period of time in which an End User is unable to receive a broadband service by means of the copper pair servicing their Standard Telephone Service by reason of that migration will be no longer than three (3) hours; and
 - b. End User involvement in that migration (including without limitation the making of a telephone call or sending of correspondence by the End User to Telstra) is not required.
- 5.4 Telstra must notify the Commission, if it develops and implements a Prescribed LSS to ULLS Migration Process. The notice must:
 - a. be in writing;
 - b. be addressed to the Group General Manager, Communications Group (or such other person as notified by the Commission);

- c. include certification by an officer of Telstra that its Prescribed LSS to ULLS Migration Process satisfies the requirements of Item 5.3 of this Order;
- d. detail each aspect of the Prescribed LSS to ULLS Migration Process (including without limitation details of how the LSS to ULLS migration will be engineered, timeframes within which the LSS to ULLS migration will take place and details of any administrative processes to be undertaken in conjunction with the LSS to ULLS migration);
- e. be in a form appropriate for publication by the Commission on its website; and
- f. not contain any confidential information.

5.5 The Exemption does not apply in respect of the supply of LCS to any Queued Access Seeker in the Attachment A ESA in respect of which the Access Seeker is a Queued Access Seeker.

5.6 Telstra must provide notice to the Commission within 24 hours of an Exchange Building within any Attachment A ESA first becoming a Capped Exchange or a Potentially Capped Exchange. The notice must:

- a. be in writing;
- b. addressed to the Group General Manager, Communications Group (or such other person as notified by the Commission);
- c. be specify the Attachment A ESA within which the Exchange Building has become a Capped Exchange or Potentially Capped Exchange;
- d. specify whether the Exchange Building has become a Capped Exchange or a Potentially Capped Exchange;
- e. provide an explanation of why the Exchange Building has become a Capped Exchange or Potentially Capped Exchange;
- f. specify the date upon which the Exchange Building first became a Capped Exchange or Potentially Capped Exchange;
- g. be in a form appropriate for publication by the Commission on its website; and
- h. not contain any confidential information.

5.7 The Exemption ceases to apply within an Attachment A ESA from the date on which the Exchange Building within the Attachment A ESA first becomes a Capped Exchange, Potentially Capped Exchange or a Constructively Capped Exchange.

5.8 The Exemption ceases to apply within an Attachment A ESA from the date on which Telstra first ceases to supply the ULLS whether to itself or to other persons within that Attachment A ESA for any reason.

Note: Telstra will be taken to have ceased to supply the ULLS to itself or other persons if it ceases to be an access provider of the ULLS (within the meaning of subsection 152AR(2)) within the relevant Attachment A ESA.

5.9 For the avoidance of doubt, the Exemption will not apply in respect of LCS provided under an agreement which is in force as at the Commencement Date for so long as that agreement remains in force.

Gracie Samuel

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Chairperson

DATED: 22 August 2008

ATTACHMENT A

ESA Code	ESA NAME	STATE
BBEG	BUNDABERG	QLD
SALB	ST ALBANS	VIC
SEAF	SEAFORD	VIC
WOYY	WOY WOY	NSW