**TELECOMMUNICATIONS (NETWORK EXEMPTION SPECIFIED VELOCITY NETWORKS)**

**INSTRUMENT 2012**

# COMMONWEALTH OF AUSTRALIA

**TELECOMMUNICATIONS ACT 1997**

I, STEPHEN MICHAEL CONROY, Minister for Broadband, Communications and the Digital Economy, make the following Instrument under subsection 141A(1) and subsection 144(1) of the *Telecommunications Act 1997.*

Dated 9/1/2012



STEPHEN MICHAEL CONROY

Minister for Broadband, Communications and the Digital Economy

#### Name of Instrument

This Instrument is the *Telecommunications (Network Exemption—Specified Velocity Networks) Instrument 2012*.

#### Cessation

This Instrument ceases to have effect on:

* 1. subject to subclause (b), the day which is 90 days after the last of the customer transition completion dates of the Specified Velocity Networks; or

[*explanatory note of proposed Telstra change*: *if Telstra is able to complete a sale of the networks, a short ‘run-on’ period after completion of transition from the Telstra systems to the new owner’s systems will enable a winding down of the Telstra involvement in the running of the network, including to resolve any ‘in-flight’ orders and other edge cases.]*

* 1. 1 July 2023, if Telstra owns any of the Specified Velocity Networks at that date.

~~the designated day~~.

***Note ~~1~~*** By virtue of paragraph 4(1)(a) and subsection 4(2 A) of the *Acts Interpretation Act 1901,* this Instrument will commence immediately on the commencement of Part 3 of Schedule 1 to the *Telecommunications Legislation Amendment (National Broadband Network Measures—Access Arrangements) Act 2011.*

***~~Note 2~~*** ~~The 'designated day' is 1 July 2018, or another day specified by the Minister in a non-legislative~~ ~~instrument under paragraph 577A(10)(b) of the~~ *~~Telecommunications Act 1997~~* ~~(refer subsection~~ ~~577A(10)).~~

#### Definitions

In this Instrument:

***Act*** means the *Telecommunications Act 1997.*

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

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

***Fibre Access Broadband Service*** means a carriage service that:

1. is offered to be supplied on a wholesale basis; and
2. is supplied by means of an optical fibre line; and
3. is offered to be supplied at each of the following maximum transmission speeds:
   1. download transmission speed of 8Mbps and upload transmission speed of 384kbps;
   2. download transmission speed of 30Mbps and upload transmission speed of 1Mbps;
   3. download transmission speed of 100Mbps and upload transmission speed of 5Mbps; and
4. has the following configurations:
   1. a 'best effort' or non-prioritised service, as characterised by the Differentiated Services Code Point Default Forwarding per-hop behaviour; and
   2. connectivity made with static Layer 2 Tunnelling Protocol (L2TP) tunnels and Broadband Virtual Local Area Networks, giving direct access to end user sessions; and =
   3. end-user sessions are aggregated together in the Telstra network via static L2TP tunnels supplied over Ethernet.

***customer transition completion date*** means, in respect of a Specified Velocity Network, the date by which Telstra completes disconnection of all Telstra-Equipped Services supplied to premises connected to that Specified Velocity Network.

***Telstra-Equipped Services*** means, carriage services which Telstra, while it is in a position to exercise control of a Specified Velocity Network, supplies to itself or to access seekers at premises connected to that Specified Velocity Network, including the Fibre Access Broadband Service.

### [*note explaining the Telstra proposed change*: *If Telstra is able to complete a sale of* the networks, Telstra will be supplying carriage services before and after customer transition: before customer transition as the network operator and after customer transition as a wholesale customer of the new owner. It is therefore important to clearly identify the Telstra services which are to be disconnected by the customer transition completion date, and which will then trigger the exemption falling away. As Telstra will be using its systems and its equipment after customer transition, although at a different service layer of level (in the same way as would any RSP), defining the Telstra services to be disconnected by reference to Telstra-owned equipment or systems does not necessarily provide a clear definition. However, using the defined term ‘in a position to control a network’ will provide a bright line because, once the technology and system ‘swap out’ is completed, Telstra will no

*longer be in a position to control the network but will be in the same position as any other RSP*].

***Specified Velocity Network*** means an optical fibre-based telecommunications network:

1. that is owned by Telstra or over which Telstra is in a position to exercise control; and

### [*explanatory note of proposed Telstra change*: *If Telstra is able to* complete a sale of the networks, there will need to be a transition period post sale during which Telstra will continue to operate the network while Telstra and the new owner ‘swap out’ the Telstra network equipment and connections to the Telstra OSS for the new owner’s network equipment and connections to its own OSS. This

*continuing level of involvement by Telstra during the transition period is likely to mean that, within the meaning of section 155, Telstra is in a ‘position to exercise control’ of the network. Accordingly, Part 8 would apply and, as Telstra is vertically integrated, Telstra would be in breach of Part 8 if post sale Telstra continues to operate the network and provide customers with services until the transition to the new owner’s network could be completed.*

*Part 7 does not use a control test but would be triggered in the transition period because the new owner permits the local access lines forming part of the transferred network to be used by Telstra to continue supplying the FAB service until the owner can commence supplying its own compliant layer 2 services.*

*However, using ‘the control test’ as a criterion for the eligibility of the network for the exemption under both Parts 7 and 8 will more narrowly confine the exemption to the specific circumstances of the transition period.*]

1. which comprises:
   1. a network located in:
      1. a real estate development project specified in column 1 of the table at Schedule 1 to this Instrument; and
      2. an area of land depicted in the corresponding map at Annexure A to Schedule 1 (refer to column 2 of the table at Schedule 1 to this Instrument); and
   2. those local access lines or parts of access lines located outside the areas specified in subparagraph (b)(i) necessary for the provision of carriage services to premises located within the areas specified in subparagraph (b)(i); and
2. constructed by Telstra in accordance with a legally enforceable agreement:
   1. in force prior to 25 November 2010; and
   2. between Telstra and the person responsible for the real estate development project; and
3. which uses fibre-to-the-premises architecture.

***Note*** By virtue of paragraph 46(1)(b) of the *Acts Interpretation Act 1901,* the following expressions have the same meaning as in the Act:

* *ACCC*
* *AC MA*
* *~~designated day~~*
* *carriage service*
* *local access line*
* *optical fibre line*
* *real estate development project*
* *telecommunications network*
* *Telstra*
* *A person being in a position to exercise control over a network*

#### Exemptions

1. Subject to the condition set out in subclauses (2), (3) and (4), and pursuant to subsections 141 A(1) and 144(1) of the Act, each Specified Velocity Network is exempt from sections 141 and 143 of the Act.
2. The exemptions are subject to the condition that, if a Fibre Access Broadband Service is not a declared service:
   1. Telstra must offer and supply to access seekers, upon reasonable request, a Fibre Access Broadband Service over the Specified Velocity Network; and
   2. Telstra must:
      1. publish on the wholesale section of its website, the terms and conditions (price and non-price) on which it offers to supply the Fibre Access Broadband Service on a Specified Velocity Network ***(reference offer);*** and
      2. each time it enters into an agreement with an access seeker, where the terms and conditions are not the same as those set out in the reference offer, provide the following information to the ACCC within 14 days of entering into the agreement:
         1. the identity of the parties to the agreement; and
         2. the differences between the terms and conditions set out in the agreement and the terms and conditions set out in the reference offer; and
      3. each time it implements a material change to either the reference offer or the product specification for the Fibre Access Broadband Service, provide the following information to the ACCC within 14 days of implementing the change:
         1. the nature of the change; and
         2. the date the change took effect; and
      4. make available to the ACCC or ACMA, within 14 days of receipt of the request, copies of executed contracts it has entered into with person responsible for the real estate development project for the construction of a Specified Velocity Network.

***Note 1*** Paragraph 141 A(4)(b) provides that an instrument made under subsection 141A(1) may be subject to such conditions as are specified in the instrument.

***Note 2*** Paragraph I44(4)(b) provides that an instrument made under subsection 144(1) may be subject to such conditions as are specified in the instrument.

## The customer transition completion date of a Specified Velocity Network must be no more than:

(a) 27 months after Telstra ceases to own a Specified Velocity Network; or (b) the further period specified by the Minister.

### [*explanatory note for Telstra proposed change*: *Telstra acknowledges that if it is able* to complete a sale of the networks, the end date for the exemption is not a fixed date and so there needs to be some certainty about the maximum timeframe within which customer transition is to be completed. Telstra anticipates that the migration period could take between 12 and 24 months. However, the customer transition period will very much depend on the resources, capability and development times required by a new owner. Telstra’s experience of customer transitions also suggests that unanticipated issues and challenges will arise and that this may result in delays as solutions are developed. Telstra proposes some built-in flexibility by setting a basic period of two and a half years, but if major difficulties arise, the Minister has the power to give a further period.]

1. A Specified Velocity Network ceases to be subject to the exemptions 90 days after the customer transition completion date of that Specified Velocity Network.

**Schedule 1 - Specified Velocity Networks**

(clauses 3 and 4)

#### New South Wales

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| **Item** | **Column 1**  **Name and location of real estate development project** | **Column 2**  **Area of project (Map Number)** |
| 1 | Aveo Island Point Estate - St George's Basin (Sanctuary Point) NSW | Map 1 at Annexure A |
| 2 | Bingara Gorge Estate - Wilton NSW | Map 2 at Annexure A |
| 3 | Calala Village Estate - Tamworth NSW | Map 3 at Annexure A |
| 4 | Endeavour House - Coogee NSW | Map 4 at Annexure A |
| 5 | Fern Bay Seaside Village - Fern Bay NSW | Map 5 at Annexure A |
| 6 | Freeman's Ridge Estate - Hoxton Park NSW | Map 6 at Annexure A |
| 7 | Harrington Grove Estate - Harrington Park NSW | Map 7 at Annexure A |
| 8 | Heritage on Peel 1 - Tamworth NSW | Map 8 at Annexure A |
| 9 | Hermitage Camden Valley Golf Resort - Catherine Fields NSW | Map 9 at Annexure A |
| 10 | Hundred Hills Estate - Murwillumbah NSW | Map 10 at Annexure A |
| 11 | Jacksons Landing Estate - Pyrmont NSW | Map 11 at Annexure A |
| 12 | Manufactured Homes Estate -Leppington NSW | Map 12 at Annexure A |
| 13 | Moore Creek Estate - Calala (Tamworth) NSW | Map 13 at Annexure A |
| 14 | Rouse Hill Estate - Rouse Hill NSW | Map 14 at Annexure A |
| 15 | Seaside City Estate - Kingscliffe NSW | Map 15 at Annexure A |
| 16 | Stonecutters Ridge Estate - Colebee NSW | Map 16 at Annexure A |
| 17 | Tamworth Lifestyle Village - West Tamworth NSW | Map 17 at Annexure A |
| 18 | Windmill Downs Estate - Tamworth NSW | Map 18 at Annexure A |
| 19 | Windmill Hill Estate - Tamworth NSW | Map 19 at Annexure A |

**Victoria**

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| **Item** | **Column 1**  **Name and location of real estate development project** | **Column 2**  **Area of project (Map Number)** |
| 20 | Cascades on Clyde Estate -Cranbourne VIC | Map 20 at Annexure A |
| 21 | Cornells Hill Estate - Doreen VIC | Map 21 at Annexure A |
| 22 | Eastridge Estate -Mooroolbark/Croydon VIC | Map 22 at Annexure A |
| 23 | Eynesbury Estate - Eynsbury VIC | Map 23 at Annexure A |
| 24 | Kew Cottages Estate - Kew VIC | Map 24 at Annexure A |
| 25 | Kingsford Estate - Point Cook VIC | Map 25 at Annexure A |
| 26 | Laurimar Estate - Doreen VIC | Map 26 at Annexure A |
| 27 | Martha Cove Estate - Safety Beach VIC | Map 27 at Annexure A |

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| **Item** | **Column 1**  **Name and location of real estate development project** | **Column 2**  **Area of project (Map Number)** |
| 28 | Saltwater Coast Estate - Point Cook VIC | Map 28 at Annexure A |
| 29 | Somerfield Estate - Keysborough VIC | Map 29 at Annexure A |
| 30 | The Hunt Club Estate - Cranbourne VIC | Map 30 at Annexure A |
| 31 | Yarra's Edge Estate - Melbourne VIC | Map 31 at Annexure A |

**Queensland**

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| **Item** | **Column 1**  **Name and location of real estate development project** | **Column 2**  **Area of project (Map Number)** |
| 32 | Bluewater Estate - Trinity Park (Cairns) QLD | Map 32 to Annexure A |
| 33 | Boonaroo Views Estate - Nerang QLD | Map 33 to Annexure A |
| 34 | Brookwater Estate - Brookwater QLD | Map 34 at Annexure A |
| 35 | Canopy's Edge Estate - Smithfield (Cairns) QLD | Map 35 at Annexure A |
| 36 | Cascade Gardens Estate -Rockhampton QLD | Map 36 at Annexure A |
| 37 | Centrus Estate - Eight Mile Plains QLD | Map 37 at Annexure A |
| 38 | Ecopoint Estate - Victoria Point QLD | Map 38 at Annexure A |
| 39 | Edenbrook Estate - Bundaberg QLD | Map 39 at Annexure A |
| 40 | Emerald Lakes Estate - Carrara QLD | Map 40 at Annexure A |
| 41 | Fitzgibbon Chase Estate - Fitzgibbon QLD | Map 41 at Annexure A |
| 42 | FKP Rochedale Estate - Rochedale QLD | Map 42 at Annexure A |
| 43 | Forest Ridge Estate - Narangba QLD | Map 43 at Annexure A |
| 44 | Gainsborough Greens Estate -Pimpana QLD | Map 44 at Annexure A |
| 45 | Gecko Valley Estate - Gladstone QLD | Map 45 at Annexure A |
| 46 | Greater Ascot Estate - Shaw (Townsville) QLD | Map 46 at Annexure A |
| 47 | H2O MDU - Southport QLD | Map 47 at Annexure A |
| 48 | Highland Reserve Estate - Biloela QLD | Map 48 at Annexure A |
| 49 | Huntington Downs Estate - Maudsland QLD | Map 49 at Annexure A |
| 50 | Kerrisdale Estate - Beaconsfield (North Mackay) QLD | Map 50 at Annexure A |
| 51 | Liberty Rise Estate - Bohle (Townsville) QLD | Map 51 at Annexure A |
| 52 | Mount Cotton Estate - (Mount Cotton Brisbane) QLD | Map 52 at Annexure A |
| 53 | Mountview Estate - Redbank Plains QLD | Map 53 at Annexure A |
| 54 | Northern Element Estate - Pimpana (Ormeau) QLD | Map 54 at Annexure A |
| 55 | Ocean Reach Estate - Cannon Valley (Airlie Beach) QLD | Map 55 at Annexure A |
| 56 | Ocean's Edge Estate - Palm Cove (Cairns) QLD | Map 56 at Annexure A |
| 57 | Oxford & Thorpe St Units - Balmoral (Brisbane) QLD | Map 57 at Annexure A |
| 58 | Pacific Harbour Estate - Bribie Island QLD | Map 58 at Annexure A |
| 59 | Panorama Heights Estate - Biloela QLD | Map 59 at Annexure A |
| 60 | Pioneer Valley Estate - Kuraby QLD | Map 60 at Annexure A |

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| **Item** | **Column 1**  **Name and location of real estate development project** | **Column 2**  **Area of project (Map Number)** |
| 61 | Plantation Palms Estate - Rural View (North Mackay) QLD | Map 61 at Annexure A |
| 62 | Riverside Ridge Estate - Douglas (Townsville) QLD | Map 62 at Annexure A |
| 63 | Riverstone Crossing Estate -Maudsland/Upper Coomera QLD | Map 63 at Annexure A |
| 64 | Royal Pines Marina Estate - Benowa (Gold Coast) QLD | Map 64 at Annexure A |
| 65 | Salacia Waters Estate - Paradise Point QLD | Map 65 at Annexure A |
| 66 | Sanctum Estate - Mount Low (Townsville) QLD | Map 66 at Annexure A |
| 67 | Smithfield Village Estate - Trinity Park (Cairns) QLD | Map 67 at Annexure A |
| 68 | Stoneybrook Estate - Glen Eden (Gladstone) QLD | Map 68 at Annexure A |
| 69 | Tannum Waters Estate - Tannum Sands (Gladstone) QLD | Map 69 at Annexure A |
| 70 | The Fairways Estate - Brookwater QLD | Map 70 at Annexure A |
| 71 | The Observatory Estate - Reedy Creek QLD | Map 71 at Annexure A |
| 72 | The Outlook Estate - Deebing Heights QLD | Map 72 at Annexure A |
| 73 | The Ridges Estate - Peregian (Sunshine Coast) QLD | Map 73 at Annexure A |
| 74 | Village at Cooparoo - Coorparoo (Brisbane) QLD | Map 74 at Annexure A |
| 75 | Village at Redcliffe - Redcliffe QLD | Map 75 at Annexure A |
| 76 | Waverley Park Estate - Willowvale QLD | Map 76 at Annexure A |
| 77 | Wheller on the Park Estate -Chermside QLD | Map 77 at Annexure A |
| 78 | Willowbank Estate - Kirwan (Townsville) QLD | Map 78 at Annexure A |
| 79 | Windarra Estate - Bunya (Brisbane) QLD | Map 79 at Annexure A |
| 80 | Yeronga Village - Yeronga QLD | Map 80 at Annexure A |
| 81 | Yungaba - Kangaroo Point QLD | Map 81 at Annexure A |

**South Australia**

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| **Item** | **Column 1**  **Name and location of real estate development project** | **Column 2**  **Area of project (Map Number)** |
| 82 | Bluestone Mount Barker Estate - Mt Barker SA | Map 82 at Annexure A |
| 83 | Narnu Waterways Estate SA | Map 83 at Annexure A |
| 84 | The Marina - Hindmarsh Island SA | Map 84 at Annexure A |
| 85 | Wakefield Waters Estate - Port Wakefield SA | Map 85 at Annexure A |

**Western Australia**

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| **Item** | **Column 1**  **Name and location of real estate development project** | **Column 2**  **Area of project (Map Number)** |
| 86 | Austin Cove Estate - Yunderup WA | Map 86 at Annexure A |
| 87 | Baldivis North Estate - Baldivis WA | Map 87 at Annexure A |
| 88 | Bayonet Head Estate - Bayonet Head WA | Map 88 at Annexure A |
| 89 | Beachridge Estate - Dryandra Boulevard WA | Map 89 at Annexure A |

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| **Item** | **Column 1**  **Name and location of real estate development project** | **Column 2**  **Area of project (Map Number)** |
| 90 | Beachside at Yanchep Estate -Yanchep WA | Map 90 at Annexure A |
| 91 | Brighton estate - Butler WA | Map 91 at Annexure A |
| 92 | Broadwater Park Private Estate -Broadwater WA | Map 92 at Annexure A |
| 93 | Brookleigh Estate - Caversham WA | Map 93 at Annexure A |
| 94 | Capricorn Village Estate - Two Rocks WA | Map 94 at Annexure A |
| 95 | Champion Lakes/Champion Drive - Champion Lakes WA | Map 95 at Annexure A |
| 96 | Clydesdale Estate - McKail (Albany North) WA | Map 96 at Annexure A |
| 97 | CY O'Connor Village - Forrestdale WA | Map 97 at Annexure A |
| 98 | Dalyellup Beach Estate - Dalyellup WA | Map 98 at Annexure A |
| 99 | Ellenbrook Estate - Ellenbrook WA | Map 99 at Annexure A |
| 100 | Esprit Estate - Eaton WA | Map 100 at Annexure A |
| 101 | Evermore Heights Estate - Baldivis WA | Map 101 at Annexure A |
| 102 | Frasers Landing Estate - Coodanup (Mandurah) WA | Map 102 at Annexure A |
| 103 | Heron Park Estate - Harrisdale WA | Map 103 at Annexure A |
| 104 | Ibis Gardens Estate - Broadwater WA | Map 104 at Annexure A |
| 105 | Port Geographe Estate - Geographe (Busselton) WA | Map 105 to Annexure A |
| 106 | Provence Estate - Yalyalup (Busselton) WA | Map 106 at Annexure A |
| 107 | Rapids Landing Estate - Margaret River WA | Map 107 at Annexure A |
| 108 | Seville Grove Estate - Seville Grove WA | Map 108 at Annexure A |
| 109 | Shorehaven at Alkimos Estate -Alkimos WA | Map 109 at Annexure A |
| 110 | St Leonards Estate - West Swan WA | Map 110 at Annexure A |
| 111 | Taylor Private Estate - Caversham WA | Map 111 at Annexure A |
| 112 | The Glades Byford Estate - Byford WA | Map 112 at Annexure A |
| 113 | Vasse Newton Estate - Vasse WA | Map 113 at Annexure A |
| 114 | Whiteman Edge Estate - Henley Brook/West Swan WA | Map 114 at Annexure A |
| 115 | Yalyalup Estate - Yalyalup WA | Map 115 at Annexure A |

**Northern Territory**

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| **Item** | **Column 1**  **Name and location of real estate development project** | **Column 2**  **Area of project (Map Number)** |
| 116 | Bellamack Multiple Estate Area -Bellamack NT | Map 116 at Annexure A |
| 117 | Johnston Northern Enterprise Estate Area - Johnston NT | Map 117 at Annexure A |
| 118 | Lyons Estate - Lyons NT | Map 118 at Annexure A |