

Explanatory Note

Issued by the Authority of the Minister for Communications

Telecommunications Act 1997

Acts Interpretation Act 1901

Telecommunications (Network Exemption—Telstra South Brisbane Network) Instrument 2012 (Amendment No. 1 of 2013)

Authority

Subsection 141A(1) of the *Telecommunications Act 1997* (the Act) confers power on the Minister for Communications to exempt specified networks from the Layer 2 bitstream requirements of section 141 of the Act. Subsection 144(1) of the Act confers power on the Minister to exempt specified networks from the wholesale only requirements of section 143 of the Act.

Section 33(3) of the *Acts Interpretation Act 1901* provides, among other things, that a power to make an instrument shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

This Amending Instrument is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (see subsections 141A(6) and 144(6) of the Act).

Purpose

The purpose of this Instrument is to amend the *Telecommunications (Network Exemption—Telstra South Brisbane Network) Instrument 2012* (the Original Instrument) in order to extend its duration by two years, with the added effect of ensuring that current price-related terms and conditions for the specified wholesale service supplied over the exempted network remain unchanged until 30 September 2014.

Background

On 9 January 2012, the then Minister for Broadband, Communications and the Digital Economy made the Original Instrument, which has the purpose of exempting Telstra Corporation Limited's (Telstra's) South Brisbane fibre-to-the-premises network from the requirements of sections 141 and 143 of the Act until 31 December 2013.

Consultation

In accordance with subsections 141A(5) and 144(5) of the Act, the Minister wrote to the Chairs of the Australian Competition and Consumer Commission (ACCC) and the Australian Communications and Media Australia (ACMA) respectively on 30 October 2013, to initiate

the consultation. On 19 November 2013, the ACCC provided its formal advice to the Minister regarding the proposal. The ACMA provided its advice on 21 November 2013. The Department (on the Minister's behalf) also consulted directly with Telstra. Targeted consultation was undertaken with telecommunications services access seekers that may be impacted by the decision.

Details

Clause 1—Name of Instrument

Clause 1 provides that the name of the Instrument is the *Telecommunications (Network Exemption—Telstra South Brisbane Network) Instrument 2012 (Amendment No. 1 of 2013)*.

Clause 2—Commencement

The Instrument takes effect on the day it is signed by the Minister for Communications. A copy of the Instrument will be published on the Department of Communications' website.

Clause 3—Variation

Clause 3 provides that the Instrument is varied in accordance with the amendments set out in the Schedule to the Instrument.

Schedule—Detail of Amendments

Item 1

Item 1 of the Schedule to the Instrument changes the cessation date of the Original Instrument from 31 December 2013 to 31 December 2015. This represents a two year extension of the Part 7 and 8 exemptions granted in respect of Telstra's optical fibre-based South Brisbane Network.

The Original Instrument provided for the exemptions to cease operating on 31 December 2013. This date was selected at the time of granting the original exemptions as it reflected the timeframe by which Telstra anticipated that it would have sold the covered network to NBN Co Limited (NBN Co). Despite entering into good faith negotiations, Telstra has been unable to successfully negotiate the sale of the network to NBN Co. The extension of the exemptions for two years will minimise any disruption to retail service providers and provide certainty for end-users that are serviced by the South Brisbane network. Also, in the coming months, the Government will be considering the treatment of the South Brisbane network in the context of the long term structure of the telecommunications industry.

Item 2

Item 2 of the Schedule replaces the note that originally accompanied clause 2 of the Original Instrument. The new note reminds readers of the historical date the Instrument commenced, which was on 12 April 2012.

Item 3

Item 3 of the Schedule replaces paragraph 4(2)(b) of the Original Instrument with two new paragraphs. The only substantive change from the Original Instrument is to impose an additional condition requiring Telstra to offer to supply the Fibre Access Broadband Service (as defined) at its current prices in South Brisbane, as established by Item 4 of the Schedule, until 30 September 2014. All other aspects of the replacement conditions remain substantially the same as those set out in the Original Instrument. The purpose of this new pricing measure is to provide access seekers with certainty that Telstra will not change its reference offer prices and price-related conditions before 1 October 2014, assuming that the Fibre Access Broadband Service (as defined) remains a service which is not a declared service under Part XIC of the *Competition and Consumer Act 2010*. The other conditions in new paragraph 4(2)(b) reflect the existing conditions set out in the Original Instrument, but with a minor change to reflect the change that the price terms and price conditions cannot alter before 1 October 2014.

New paragraph 4(2)(c) reflects the existing conditions set out in the Original Instrument, which will apply from 1 October 2014 until the cessation of the Instrument (being on 31 December 2015). For clarity, the price terms inserted by replacement paragraph 4(2)(b)(i) will not apply from 1 October 2014. The continuation of these conditions will ensure that during all times the Fibre Access Broadband Service is not a declared service, it will continue to be supplied by Telstra over the exempted South Brisbane Network to access seekers on request and on an open and equitable basis, with sufficient oversight by the ACCC.

Item 4

Item 4 of the Schedule amends the Original Instrument by inserting a new Schedule 2. The new Schedule sets out the specific price-related terms and price conditions upon which Telstra must offer and supply the Fibre Access Broadband Service (as defined in the Original Instrument) on the exempted network until 30 September 2014.

The price terms and price-related conditions set out in Schedule are in substantially the same form as the terms contained in Telstra's Reference Offer for the Fibre Access Broadband Service that applied as at 10 December 2013.