

Commonwealth of Australia

*Telecommunications Act 1997*

**Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014**

I, MALCOLM BLIGH TURNBULL, Minister for Communications, make the following Declaration under subsection 63(2) of the *Telecommunications Act 1997*.

Dated

MALCOLM TURNBULL  
Minister for Communications

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**1 Name of Instrument**

This Declaration is the *Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014*.

**2 Commencement**

This Declaration commences on 1 January 2015.

**3 Expiry**

This Declaration expires on 31 December 2016.

**4 Definitions**

In this Declaration:

*ABN* has the meaning given in section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

*Act* means the *Telecommunications Act 1997*.

*associate* of a specified carrier is to be determined in accordance with section 152 of the Act.

*business customer* means a customer that:

- (a) carries on a business or enterprise from a premises, regardless of whether there is any incidental use of the premises for occupation (from time to time) as a place of residence; and
- (b) has an ABN for the business or enterprise.

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

*designated telecommunications network* means a fixed-line telecommunications network (or part of a network) which:

- (a) incorporates local access lines or parts of local access lines necessary for the provision of carriage services; and
- (b) is used to supply superfast carriage services; and
- (c) is not :
  - (i) subject to either sections 141 or 143 of the Act; or
  - (ii) the subject of a ministerial exemption in force under section 141A or section 144 of the Act; or
  - (iii) any of the following types of networks:
    - (A) the national broadband network; or
    - (B) a Specified HFC network; or
    - (C) a fixed-line network that is used to supply carriage services wholly or principally to business customers and/or public bodies, provided that any incidental supply of carriage services to residential customers using the network does not represent more than [0.05%] of the total number of customers serviced by the network at any time; or
    - (D) a fixed-line network in existence immediately before 1 January 2011 that is used to supply carriage services principally to large business customers and/or public bodies and which is extended on or after 1 January 2011 by more than 1 kilometre from any point on the infrastructure of the network (as it stood immediately before 1 January 2011), provided that any incidental supply of carriage services to residential customers using the extended network does not represent more than [0.05%] of the total number of customers serviced by the network at any time; or
    - (E) any fixed-line network in existence immediately before 1 January 2011 which is situated in a real estate development project that is extended on or after 1 January 2011 to an area that was developed as another stage of the project; and
- (d) is situated anywhere in Australia.

**eligible service** has the same meaning as in section 152AL of the *Competition and Consumer Act 2010*.

**employee**, in respect of a wholesale or retail company, includes a natural person who is acting as an agent, or is engaged by the company as a consultant or contractor acting in an equivalent role to an employee or carrying out the role of an employee.

**large business customer** means any business customer other than a small business customer.

**Layer 2** has the same meaning as in the Open System Interconnection reference model for data exchange.

**Layer 2 Wholesale Service** means a Layer 2 carriage service that has all of the following characteristics:

- (a) a downstream data transfer rate of 25 megabits per second (peak information rate); and
- (b) an upstream data transfer rate of 5 megabits per second (peak information rate); and
- (c) is able to be used to supply a residential-grade service; and
- (d) uses a data port (user-network interface) on the network termination device at the end-user's premises; and
- (e) is able to offer a prioritised symmetric bitstream of sufficient capacity to provide a voice service; and
- (f) where an analogue voice port on the network termination unit at the end-user's premises is available, is able to be used with that port.

**national broadband network** has the same meaning as in section 5 of the *National Broadband Networks Companies Act 2011*.

**protected wholesale information** means:

- (a) confidential information obtained by the wholesale company for the purpose of, or in the course of, supplying carriage services to a wholesale customer that identifies the wholesale customer or a customer of that wholesale customer; or
- (b) information obtained by the wholesale company for the purpose of, or in the course of, supplying carriage services to a wholesale customer that is commercially sensitive to a wholesale customer; or
- (c) any confidential information or commercially sensitive information which is derived from information of the kind described in paragraph (a) or (b) above, whether or not in an aggregate form, that:
  - (i) would enable the identity of a wholesale customer to be ascertained; or
  - (ii) would enable the identity of a customer of that wholesale customer to be ascertained;

but does not include:

- (d) information of the kind described in subparagraph (c)(i) above where the information is aggregated on a national basis; or
- (e) information which is already public.

**public body** means:

- (a) the Commonwealth, a State or a Territory; or
- (b) a municipal authority or other local governing body; or
- (c) a public authority that is constituted by or under a law of the Commonwealth, a State or a Territory.

**residential-grade**, in respect of the quality of a carriage service, means entry-level technical and operational characteristics that are appropriate for supplying a carriage service to residential end-users.

**retail company** means a subsidiary company of the specified carrier which has the following functions:

- (a) selling and supplying eligible services to end-user customers using the designated telecommunications network; and
- (b) negotiating and/or establishing supply contracts with end-user customers.

**small business customer** has the same meaning as in section 141G of the Act.

**superfast carriage service** has the same meaning as in subsection 141(10) of the Act.

**specified carrier** means a carrier that either owns or operates a designated telecommunications network at any time on or after the commencement of this Declaration.

**Specified HFC network** means a telecommunications network that is used to supply carriage services and the line component of which consists of optical fibre to connecting nodes, supplemented by coaxial cable connections from the nodes to the premises of end-users.

**wholesale company** means a subsidiary of the specified carrier which has the following functions:

- (a) controlling and operating the designated telecommunications network; and
- (b) selling and supplying eligible services to carriers, carriage service providers and the retail company (*wholesale customers*) using the designated telecommunications network; and
- (c) where required, providing service activation and network provisioning, and fault detection, handling and rectification, in respect of the designated telecommunications network; and
- (d) negotiating and/or establishing access agreements with its wholesale customers.

Note: Several other words and expressions used in this Declaration have the same meaning given by the *Telecommunications Act 1997* (see subsection 13(1) of the *Legislative Instruments Act 2003*). For example:

- carriage service;
- carriage service provider;
- carrier;
- facility;
- local access line; and
- telecommunications network.

## 5 Application

A carrier licence granted to any specified carrier is subject to all of the conditions set out in section 6 if, at any time, on or after the commencement of this Declaration the designated telecommunications network (or any part of the network) is used to supply a superfast carriage service to residential customers.

## 6 Class Licence Conditions

### *Separation obligations*

- (1) The specified carrier must not use, or permit any of its associates to use, any local access line forming part of the designated telecommunications network to supply a carriage service unless all the conditions specified in subsections 6(2), (3) and (4) are met.
- (2) To the extent that the operations of the specified carrier in respect of the designated telecommunications network are not operated on a wholesale only basis at all times during which section 5 applies, the specified carrier must, in respect of the operations of the designated telecommunications network, establish and maintain a wholesale company and a retail company, and ensure that all of the conditions set out in paragraphs (a) –(m) below are satisfied:
  - (a) the wholesale operations of the network must be conducted through the wholesale company, and the retail operations must be conducted through the retail company;
  - (b) the wholesale company and retail company must each establish and maintain separate business, communications and operational support systems;
  - (c) the wholesale company must establish and maintain a business-to-business interface for use by its retail company and other carriers and service providers for ordering eligible services;
  - (d) the wholesale company must not be permitted to perform any function of the retail company;
  - (e) the retail company must not be permitted to perform any function of the wholesale company;
  - (f) the offer and supply of eligible services to a person who is a carrier or a carriage service provider using the designated telecommunications network must be effected through the wholesale company;
  - (g) in respect of eligible services the retail company acquires directly from the wholesale company for the purposes of its business, the offer and supply of eligible services to end-user customers using the designated telecommunications network must be effected through the retail company;
  - (h) the wholesale company must publish in a prominent place on its website, the following information:
    - (i) the terms and conditions (price and non-price) on which it offers to supply its eligible services (including the Layer 2 Wholesale Service) on the designated telecommunication network (*reference offer*); and
    - (ii) on a six-monthly basis, the prices charged during the reporting period for the supply of eligible services to:
      - (A) the retail company; and
      - (B) any carrier or carriage service provider; and
    - (iii) on a six-monthly basis, in respect of any agreement entered into during

- the reporting period for the supply of eligible services with;
- (A) the retail company; or
  - (B) any carrier or carriage service provider;
- where the agreed terms and conditions are not the same as the applicable reference offer, a description of the parties to each agreement and the details of the differences between the agreed terms and conditions and the reference offer;
- (i) the wholesale company must only supply eligible services (including the Layer 2 Wholesale Service), and give access to any necessary facilities, to the retail company and other carriers and carriage service providers on the following conditions;
    - (i) the wholesale company must not discriminate :
      - (A) in favour of the retail company in relation to the supply of an eligible service;
      - (B) in favour of the retail company in carrying on any of the following activities,
        - (i) enhancing an eligible service;
        - (ii) an activity that is preparatory to the supply of an eligible service;
        - (iii) an activity that is incidental to the supply of an eligible service; and
        - (iv) giving information to carriers and carriage service providers about any of the above activities;
      - (C) between carriers and carriage service providers in relation to:
        - (i) the supply of an eligible service; and
        - (ii) in carrying on any of activities listed at sub-subparagraph 6(2)(e)(i)(B);
    - (j) at any given time, a person appointed as director of the wholesale company (or the retail company, as the case may be) must not be appointed as a director of the other company;
    - (k) at any given time, a person occupying a senior management position with the wholesale company (or the retail company, as the case may be) must not hold any senior management position with the other company;
    - (l) an employee who is engaged to work for the wholesale company (or the retail company, as the case may be) must not undertake any work for the other company; and
    - (m) the wholesale company must not disclose protected wholesale information relating to any of its wholesale customers to the retail company or any of the retail company's employees unless authorised by the respective wholesale customer to do so.

### ***Layer 2 Wholesale Service Supply Obligations***

- (3) At all times during which the Layer 2 Wholesale Service is not a declared service, the specified carrier must offer to supply, upon reasonable request by another carrier or carriage service provider, a Layer 2 Wholesale Service using the designated telecommunications network.
- (4) The price offered for the supply of the Layer 2 Wholesale Service (in accordance with subsection (3)) must not be more than \$27 on a per port basis.