EXPLANATORY STATEMENT

Telecommunications (Consumer Protection and Service Standards) Act 1999

Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005
(Amendment No. 1 of 2006)

Issued by the authority of the Minister for Communications, Information Technology and the Arts

OVERVIEW

The Determination is made under the Telecommunications (Consumer Protection and Service Standards) Act 1999 (the Act).

The Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

The Determination amends certain provisions of the Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 (the 2005 Determination).

The main purpose of the Determination is to amend the 2005 Determination to achieve the following:

• make explicit Telstra’s line rental pricing parity obligations by including in the price controls a requirement that Telstra offer a basic line rental service at the same price across the country. This requirement is drafted so that Telstra’s ability to respond to competition or to introduce new pricing packages is only limited in relation to its basic line rental services.
• alter the provisions in relation to the measurement of price movement for the basic line rental service supplied to residential customers so that the price movement for the first price cap period is measured from the price on 31 December 2005 (i.e. $31.95) instead of the average price in the six months immediately preceding the first price cap period;
• clarify the price control arrangements applying to the 22 cents price cap for calls made to an Internet service provider using a data network access number commencing with 0198, and
• make other minor clarificatory, consequential and machinery type amendments.
CONSULTATION

The Australian Competition and Consumer Commission (ACCC) and Telstra were consulted about the Determination and their comments carefully considered in drafting the Determination. Wider consultation on the Determination was considered unnecessary due to its minor and machinery nature.

NOTES ON CLAUSES

Clause 1 - Name of Determination

Clause 1 provides that the name of the Determination is the *Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 (Amendment No.1 of 2006)*.

Clause 2 - Commencement

Clause 2 provides that the Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

Clause 3 – Variation

Clause 3 provides that the *Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005* (the 2005 Determination) is amended as set out in the Schedule to the Determination.
Schedule – Amendments

Item 1 – Clause 5 – definition of basic line rental service

The definition of a ‘basic line rental service’ is amended by deleting the previous definition and substituting a new definition. The effect of the amendment is to make it clear that a ‘basic line rental service’ does not include a line rental service in respect of which the customer contractually agrees not to exercise the right to pre-select in favour of a carriage service provider other than Telstra.

At the date on which the Determination is registered on the Federal Register of Legislative Instruments, Telstra’s basic line rental services are those supplied under Telstra’s Homeline Part and Businessline Part products.

Item 2 – Clause 5 – new definition of calling card

This item inserts a definition of ‘calling card’ into clause 5 of the 2005 Determination. This definition is used in subclause 16(2) (which exempts local calls made using a calling card from the 22 cent local call cap) and new subclause 17(2) (which exempts calls made using a calling card from the 22 cent cap on dial-up Internet calls).

Item 3 – Clause 5 – new definition of satellite service

The definition of a ‘satellite service’ is inserted into clause 5 of the 2005 Determination. The definition is relevant to the new subclause 17(2), which excludes calls made from a satellite service from the 22 cent cap on dial-up Internet calls except where they are supplied in fulfilment of the universal service obligation.

The definition of a ‘satellite service’ is the same as in section 106 of the Telecommunications (Consumer Protection and Service Standards) Act 1999. That is, ‘a carriage service, where customer equipment used in connection with the supply of the service communicates directly with a satellite-based facility’.
Item 4 – Clause 5 – paragraph (f) definition of subscription pricing package

This clause substitutes a new paragraph (f) in the definition of ‘subscription pricing package’. A couple of minor changes have been made to the existing paragraph (f).

The amendments are designed to remove any potential ambiguity where a customer pays a subscription fee (‘single fixed price’) and then pays a uniform price for each call made (local or trunk) that the price for the calls made are the same per call. The price for the calls is not the same as the price paid for the subscription fee.

The amendments also remove an unnecessary reference to ‘national long-distance calls’. These calls are already covered by the reference to ‘trunk calls’ (which are defined in clause 5 to include ‘national long-distance calls’).

Item 5 – Subclause 13 - Calculation of price movement

Subclause 13(1) of the 2005 Determination is amended by deleting paragraph 13(1)(b), which refers to the second basket of services. The effect of this amendment is that the price movement for the second basket of services (i.e. basic line rental services to residential customers) is not calculated in accordance with subclause 13(1).

This amendment is consequential upon the amendment in item 6 which provides a different means for calculating the price movement for the second basket of services (as set out in new subclause 13(1A)).

The rules determining price movement in the component services in the first, third and fourth baskets remain unchanged.

Item 6 – New subclause 13(1A)

New subclause 13(1A) is inserted into the Determination. This subclause provides that for the purposes of calculating a price movement (for the purposes of determining compliance with the price controls) for the second basket of services, the movement is taken to be the sum of the movements in average price for the services in this basket in the price-cap period from:

(i) for the first price-cap period (i.e. 18 months from 1 January 2006), the price of $31.95; or

(ii) for each subsequent price-cap period, the average price for that product in the financial year immediately preceding the price-cap period (where, subject to subclause 13(8) of the 2005 Determination, the movement in price of the service is weighted by the revenue derived from that service in the financial year immediately preceding the price-cap period against the revenue derived from that basket of services during that period).
**Item 7 – Subclause 13(2)**

This item adds a reference to (1A) into subclause 13(2). Subclause 13(2) provides that certain services are not to be taken into account in calculating price movements. This amendment ensures that these services are not taken into account in calculating the price movement for the second basket of services (as well as the other three baskets).

This amendment is consequential upon the amendments in items 5 and 6 of this Determination.

**Item 8 – New subclause 13(3A)**

This amendment inserts a new subclause 13(3A). The effect of this subclause is to establish rules for calculating the average price for basic line rental services (the second basket of services) where they are supplied as part of a bundle of services. These rules are the same rules that apply to the first, third and fourth basket of services. The amendment provides that for the purpose of calculating the average price for the basic line rental services, where the service is supplied as part of a bundle of services consisting of any or all of the price-capped services (whether or not non price-capped services are also included in the bundle), the following principles are to apply:

(a) where the benefit derived from the bundle of services is a reduced price or no change for one or more services (or for a specified amount of a service), the value of the benefit is to be deducted from each service in the bundle to which the discount applies or for which no charge applies;

(b) where there is a single fixed price for the bundle of services, the value of the benefit of a single fixed price is to be deducted proportionately across all the services in the bundle;

(c) where the principles in 13(3A) (a) and (b) above do not apply, the value of the benefit is to be calculated and deducted from the services in the bundle in accordance with the methodology set out in subclause 13(5) of the 2005 Determination.

This amendment is consequential upon the amendments in items 5 and 6.

**Item 9 – Subclause 16(2)**

Subclause 16(2) is amended such that the price cap of 22 cents for untimed local calls does not apply to either local calls made from public pay phones or local calls made using calling cards. A ‘calling card’ is defined in clause 5 of the Determination (see item 2 of this Determination).
**Item 10 – Subclause 16(3)**

This item amends subclause 16(3) to include a reference to subclause (3A).

This amendment is consequential upon the amendment in item 11.

**Item 11 – Subclause 16(3)**

This item inserts a new subclause 16(3A). Subclause (3A) provides that the exemption from the local call cap established by subclause 16(3) (which exempts local calls offered in combination with a lower than standard line rental from the 22 cent untimed local call cap), does not apply where calls are offered as part of a product or arrangements offered in combination with a basic line rental service.

The effect of this amendment is that where a call is offered in combination with a basic line rental service, the 22 cent untimed local call cap will apply, even if the basic line rental service is lower than the standard line rental. This will ensure that the price of local calls offered as part of a product or arrangement offered in conjunction with a basic line rental service cannot exceed 22 cents. This measure protects the accessibility of the basic line rental service.

**Item 12 – New subclause 16(9)**

This item inserts new subclause 16(9). This subclause provides that, for the purpose of clause 16, a call made to an Internet service provider using a data network access number commencing with the numerals 0198 is not an untimed local call.

While a lot of such calls made to an ISP are likely to fall under the definition of an untimed local call, the price control arrangements relating to such calls are specifically dealt with under a stand alone provision (clause 17).

This amendment ensures that such calls are not subject to the local call pricing parity obligation set out in subclauses 16(5) to (8).

**Item 13 – Subclause 17(1)**

Subclause 17(1) is amended to make it subject to new subclauses 17(2), (3) and (4).

This amendment is consequential upon the amendments in item 14.
**Item 14 – Subclauses 17(2), 17(3) and 17(4)**

Item 14 inserts new subclauses 17(2), (3) and (4). These amendments are to more closely reflect the price cap provisions that previously applied when a call made to an Internet service provider (ISP) using a data network access number commencing with the numerals 0198 was covered by the untimed local calls provision (i.e. clause 16).

New subclause 17(2) excludes the 22 cents price cap on calls made to an ISP using the data network access number commencing with 0198 from calls made using either a public mobile telecommunications service or a satellite service, where such a service is not supplied in fulfilment of the universal service obligation, as well as calls made using an ISDN service or a calling card.

‘Calling card’, ‘public mobile telecommunications service’, ‘satellite service’ and ‘universal service obligation’ are defined in clause 5 of the Determination.

New subclause 17(3) excludes the 22 cents price cap for calls made to an ISP using the data network access number commencing with 0198 where such calls are offered in combination with a line rental that is lower than the standard line rental for residential and charity customers. This is consistent with the exclusion for the untimed local call cap in subclause 16(3).

New subclause 17(4) replicates the existing subclause 17(2). This is consistent with the exclusion for the untimed local call cap in subclause 16(4).

**Item 15 – New clause 19A – Basic line rental services**

Item 15 makes explicit Telstra’s line rental pricing parity obligations by including in the price controls a requirement that Telstra offer a basic line rental service at the same price across the country. This requirement is drafted so that line rental pricing parity is maintained without compromising Telstra’s capacity to introduce new pricing packages or to respond to competition.

The effect of this provision is to create a national line rental parity obligation for the basic line rental service consistent with the existing local call parity obligation in the 2005 Determination (see subclauses 16(5) to 16(8)).

This parity obligation applies to Telstra’s ‘basic line rental services’ (as defined in clause 5), which at the date of the Determination are the line rentals supplied under Telstra’s Homeline Part and Businessline Part products.

Subclause 19A(1) of the Determination obliges Telstra to offer the basic line rental service to residential and charity customers in non-metropolitan areas, at the same or lower price and on the same price-related terms, as offered to these customers in metropolitan areas.
Subclause 19A(2) of the Determination provides that Telstra must offer the basic line rental service to business customers in non-metropolitan areas, at the same or lower price and on the same price-related terms, as offered to metropolitan business customers.

Subclause 19A(3) of the Determination provides that Telstra must offer the basic line rental service, in comparable bundles, to its customers in non-metropolitan areas, at the same or lower price and on the same price-related terms, as offered to metropolitan customers.

Subclause 19A(4) provides the operative definitions of metropolitan area, non-metropolitan area, and price-related terms in relation to clause 19A.

**Item 16 – Schedule 1**

Column 3 of item 2 of Schedule 1 to the 2005 Determination is altered to replace the formula (CPI-0) x 1.5 with the formula CPI-CPI.

The effect of this amendment is to provide that there shall be no overall increases in the price of the second basket of services for the first price control period.