EXPLANATORY STATEMENT

Issued by the authority of the Minister for Broadband, Communications and the Digital Economy

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 2012)

Authority

Subsection 154(1) of the Telecommunications (Consumer Protection and Service Standards) Act 1999 (the Act) enables the Minister to determine that specified Telstra Corporation Limited (Telstra) charges are subject to price control arrangements.

Paragraph 155(1)(a) of the Act enables the Minister to determine price-caps and other price controls to be applied in relation to a Telstra charge subject to price control arrangements. Paragraph 155(1)(b) enables the Minister to determine principles in accordance with which Telstra is to make alterations to charges subject to price control arrangements.

Subsection 157(1) of the Act enables the Minister to determine that specified Telstra charges are subject to notification and disallowance.

The Telstra Carrier Charges — Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 (Amendment No. 1 of 2012) (the Amending Determination) amends certain provisions of the Telstra Carrier Charges — Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 (the Principal Determination).

Subsection 33(3) of the Acts Interpretation Act 1901 allows the Minister to amend the Principal Determination.

Purpose

The Amending Determination implements the government’s response to the recommendations of the Retail Price Controls Review Report (the Review Report) prepared by the Department of Broadband, Communications and the Digital Economy (the Department).

The Amending Determination:

- extends the expiry date of the price control arrangements made under the Principal Determination by two years, from 30 June 2012 to 30 June 2014. The roll-over provisions under clause 30 are similarly extended to apply from the new expiry date;
- exempts from price control arrangements services supplied by Telstra using the National Broadband Network (NBN) or equivalent wholesale-only
networks (i.e. designated superfast telecommunications networks), but retaining:

- the cap on the price of specified untimed local calls where they are supplied as part of a telephony-only service; and
- Ministerial disallowance of charges for directory assistance calls for Telstra customers;
- replaces the former methodology of calculating price movements of the ‘fourth basket of services’ with ‘connection service products’ which are subject to individual price caps; and
- makes some minor, consequential technical changes.

The Amending Determination also removes clause 15 (referring to contractual arrangements between the Commonwealth and Telstra for the delivery of untimed local calls in extended zones) as it is now redundant. For the period 1 July 2012 to 30 June 2013, Telstra will continue to provide untimed local call services in extended zones under a commercial arrangement administered on behalf of the Commonwealth by the Telecommunications Universal Service Management Agency (TUSMA). As required under subsection 107(6A) of the Act, the Minister will ensure that from 1 July 2013 there are arrangements in place for extended zones, following consideration by the government.

The Amending Determination alters the calculation of price movements for the fourth basket of services to a cap for individual connection products. Within a price-cap period, Telstra may increase the price for each individual connection product by an amount equal to the Consumer Price Index from 1 July 2012, with Telstra unable to defer or accrue credits. This change recognises that because of how revenue for the ‘fourth basket of services’ is collected, the previous methodology would have become increasingly inaccurate as customers migrate from the copper network to the NBN.

The Amending Determination is a legislative instrument for the purposes of the Legislative Instruments Act 2003 (LIA).

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

Background

The Principal Determination imposes retail price control arrangements on fixed-line services supplied by Telstra. On 24 June 2010, the Minister for Broadband, Communications and the Digital Economy made the Telstra Carrier Charges — Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 (Amendment No. 1 of 2010), amending the Principal Determination. This earlier amendment extended the price control arrangements in force prior to the commencement of the Amending Determination to 30 June 2012, to offer regulatory certainty and appropriate safeguards for consumers.

During 2011/12, the Department conducted a comprehensive review of the price control framework to take account of the changes to industry structure arising from the wholesale-only, open access NBN and to ensure that price controls work in accordance with wholesale price settings and other consumer arrangements.
Following this Review, the government concluded that, on balance, there is a valid case for reducing or removing retail price controls over time. This is in the context of the major structural reform in the telecommunications sector driven by the rollout of the NBN that will increase competition, given lack of competition has been one of the key reasons for retail price controls. The NBN will address the lack of competitive alternatives to Telstra in parts of the fixed-line market.

However, Telstra remains the dominant provider over its copper network at both the retail and wholesale level, pending completion of its structural separation and full deployment of the NBN. Existing retail price controls will therefore be retained unchanged on the copper network for a further two years. This will allow for the further reassessment of the need for such controls as the NBN rollout progresses and competition develops.

Telstra will be exempt from retail price controls using services provided over the NBN or designated superfast telecommunications networks, with the exception of the cap on untimed local calls for telephony-only users and ministerial disallowance of charges for directory assistance calls. This recognises the reduced need for regulation of retail services on the NBN while maintaining important consumer protections for telephony-only users.

Consultation

On 21 October 2011, the Department published a discussion paper on retail price control arrangements that should apply to Telstra after the expiry of the current arrangements on 30 June 2012. The Department received 10 submissions in response to the discussion paper. Submissions were received from industry participants, the Australian Competition and Consumer Commission (the ACCC), the Australian Communications Consumer Action Network, Australian Information and Communications Technology in Education Committee, the Isolated Children’s Parents’ Association and a member of the public.

Broadly, industry participants considered retail price controls were a second-best solution to deal with excessive prices in the sector. All industry participants who addressed the issue, as well as the ACCC, submitted that retail price controls should not apply to services supplied using the NBN. The ACCC recommended abolishing price caps on the first basket of services (various services) and the fourth basket of services (connection services). Optus considered that retail price controls should be abolished. To the extent they were not, it advocated a progressive rollback of retail price controls in line with the rollout of the NBN. Telstra’s position was that retail price controls should be abolished, but if they were retained it favoured a simple, targeted and flexible regime which would apply equally to services supplied using existing networks and the NBN.

Consumer groups supported the retention of retail price controls, and suggested ways in which certain measures could be strengthened to improve outcomes for consumers; for example, the imposition of a sub-cap on fixed-to-mobile call rates.
The Department has also consulted with the departments of the Prime Minister and Cabinet, Treasury, Finance and Deregulation, Attorney-General’s, Employment, Education and Workplace Relations, Families and Housing, Community Services and Indigenous Affairs, and Regional Australia, Local Government, Arts and Sport, as well as the ACCC and Telstra.

Details of the accompanying Amending Determination are set out in the Attachment.
Statement of Compatibility with Human Rights
Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 (Amendment No. 1 of 2012)

This Amending Determination is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Amending Determination

The Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 currently in force (the Principal Determination) is made under subsection 154(1), paragraphs 155(1)(a) and (b) and subsection 157(1) of the Telecommunications (Consumer Protection and Service Standards) Act 1999 (the Act). The Principal Determination sets out price control arrangements for specified Telstra Corporation Limited (Telstra) services.

In November 2011, the Department of Broadband, Communications and the Digital Economy issued a discussion paper as part of its review into the price control framework taking account of the transition to the National Broadband Network (the NBN) and new universal service arrangements to be progressively administered by the Telecommunications Universal Service Management Agency from 1 July 2012. Ten submissions were received.

The Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 (Amendment No. 1) (the Amending Determination) amends the Principal Determination by:

- extending the expiry date of the price control arrangements by two years until the end of 30 June 2014;
- exempting Telstra from price control arrangements over the NBN or equivalent wholesale-only networks, but retaining:
  - the cap on the price of specified untimed local calls where they are supplied as part of a telephony-only service; and
  - Ministerial disallowance of charges for directory assistance calls for Telstra customers;
- removing the redundant clause 15, which referred to extended zones; and
- capping individual connection service products from 1 July 2012; and
- making technical and consequential changes.

No human rights issues were raised during consultation undertaken for the Review and in developing the draft Amending Determination. The amendments to the Principal Determination do not raise human rights issues.

Human rights implications

This Amending Determination does not engage any of the applicable rights or freedoms. To the extent that submissions to the Review addressed social equity
concerns and facilitating greater access to broadband technology, these matters are considered outside the scope of the Amending Determination.

**Conclusion**

This Amending Determination is compatible with human rights as it does not raise any human rights issues.
**Details of the Telstra Carrier Charges — Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 (Amendment No. 1 of 2012)**

Clause 1 – Name of Determination

Clause 1 provides that the title of the Determination is the *Telstra Carrier Charges — Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 (Amendment No. 1 of 2012)* (the Amending Determination).

Clause 2 – Commencement

Clause 2 provides that the Amending 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 Principal Determination)* is amended as set out in the Schedule to the Amending Determination (the Schedule).

Schedule – Amendments

Item 1 – Clause 3 (expiry)

In order to give effect to a two year extension to the Principal Determination, item 1 replaces the date ‘30 June 2012’ at clause 3 with the new date ‘30 June 2014’.

This amendment is consistent with the recommendations made by the Department of Broadband, Communications and the Digital Economy (the Department) in its final report of the *Retail Price Controls Review* (the Review Report).

Item 2 – Subclause 5(1), after the definition of connection

Item 2 inserts a definition of ‘connection service product’ into subclause 5(1) of the Principal Determination. This term is defined to mean the specified connection services listed in new Schedule 3. This definition is consequential to the effective cessation of calculation of price movements for the fourth basket of services (connection services) at the end of 30 June 2012. From 1 July 2012, calculation of price movements and applicable caps will apply to each individual connection service product listed in column 2 of the table at Schedule 3, rather than by average weightings to the fourth basket of services.

Under this new price arrangement, from 1 July 2012, Telstra Corporation Limited (Telstra) may only increase within a price-cap period, the prices for each component product by an amount equal to the Consumer Price Index (CPI).
Prior to 1 July 2012, Telstra was permitted to vary some products within the fourth basket of services in excess of the CPI (and any accrued credits), provided these were offset with reductions for other connection services products so the overall price cap was not breached. Under the new methodology accrued credits and offsets no longer apply. The new methodology effectively fixes Telstra’s PSTN connection charges at current price points in real terms until 30 June 2014 and removes complexity from the application, monitoring and reporting of the arrangements.

The explanatory notes to items 5, 12, 13, 15, 25, 28, 29, 31 and 36 further explain the cessation of the concept of the ‘fourth basket of services’ and the movement to the concept of a ‘connection services product’.

Item 3 – Subclause 5(1), after the definition of CPI number

Item 3 inserts a definition of ‘designated superfast telecommunications network’ into subclause 5(1) of the Principal Determination. This definition is intended to capture fixed-line networks which are equivalent to the ‘National Broadband Network’ (NBN), and which fall within the level playing field rules set out in Parts 7 and 8 of the Telecommunications Act 1997 (the Tel Act). Those provisions require owners of superfast networks that are rolled out, upgraded or altered, to offer over their local access lines, a wholesale Layer 2 bitstream service. These arrangements are based on those applying to the NBN.

This definition is used in conjunction with the definition for the NBN where networks other than Telstra’s networks may or may not be subject to the application of price cap arrangements, or notification and disallowance requirements. See the explanatory notes to items 10, 11, 15, 17, 20, and 21 below where this term is inserted into the Principal Determination.

The requirement for a network to be wholesale-only ensures that the limited retail price control arrangements which apply to Telstra services supplied using the NBN also apply only to those networks which are equivalent to the NBN and offer similar opportunities for competition by other service providers. The definition of ‘designated superfast telecommunications network’ for the purposes of the Principal Determination (as amended) excludes any network subject to an exemption under Part 8 of the Tel Act under subsection 141A(1) of that Act which allows the network owner to supply retail services on the network.

This would mean that if Telstra supplied services over such non-Telstra networks, the existing price control arrangements would continue to apply. Similarly, specified vertically integrated Telstra Velocity networks mentioned in the Telecommunications (Network Exemption—Telstra Specified Velocity Networks) Instrument 2012 do not meet the definition of a ‘designated superfast telecommunications network’. As the explanatory notes to new paragraph 10A(1)(a) explain (see item 11 below), however, as the fixed fibre networks are owned by Telstra, services supplied over Velocity networks are subject to price control arrangements in the Principal Determination (as amended).
Item 3 also inserts a definition of ‘designated VOIP service’ into subclause 5(1) of the Principal Determination. The insertion of this term is consequential to the amendments to clause 9 and subclauses 13(2) and (9) (see items 10, 15, 16 and 17 below).

**Item 4 – Subclause 5(1), definition of Extended Zone**

Item 4 omits the definition of ‘Extended Zone’ from subclause 5(1) of the Principal Determination. This is a consequential amendment as a result of the removal of clause 15 (see item 18 below).

**Item 5 – Subclause 5(1), after the definition of fourth basket of services**

To aid the reader, item 5 inserts a note at the end of the definition of ‘fourth basket of services’ in subclause 5(1) of the Principal Determination. As outlined in item 2 above, the concept of the ‘fourth basket of services’ ceases to apply at the end of 30 June 2012, with price control arrangements for connections dealt with through connection service products listed in new Schedule 3.

**Item 6 – Subclause 5(1), definition of line rental**

The previous definition of ‘line rental’ is tied to the Telstra network. This meant that the concept of line rental could potentially exclude services supplied using the NBN or equivalent wholesale-only networks (i.e. designated superfast telecommunications networks). Accordingly, item 6 modifies the definition of ‘line rental’ in subclause 5(1) by omitting ‘Telstra Network’ and substituting references to a ‘telecommunications network’.

**Item 7 – Subclause 5(1), after the definition of national and international operator call connection service**

Item 7 inserts a definition of ‘National Broadband Network’ into subclause 5(1) of the Principal Determination, using the definition from section 5 of the *National Broadband Network Companies Act 2011*. This definition is used in the same clauses and for the same reasons as ‘designated superfast telecommunications network’ described in item 3 above.

The term ‘the NBN’ is intended to capture each of the following types of networks owned or operated by NBN Co Limited, NBN Tasmania Limited, or any other NBN corporation:

- the fixed optical fibre line network;
- the next generation wireless network; and
- the satellite network.

**Item 8 – Subclause 5(1), after the definition of subscription pricing package**

Item 8 inserts a definition of ‘superfast carriage service’ into subclause 5(1) of the Principal Determination. This term is defined as having the same meaning as in subsection 141(10) of the Tel Act. The term ‘superfast carriage service’ is used in the...
new definition of ‘designated superfast telecommunications network’, described in item 3 above. By virtue of paragraph 141(10)(c), a ‘designated superfast telecommunications network’ must be a fixed-line network.

Item 8 also inserts a definition of ‘telephony-only service’ into subclause 5(1) of the Principal Determination. It refers to a service that includes the supply of a standard telephone service (STS), but does not include services where an internet carriage service is supplied. If Telstra supplied an end-user with an STS and also internet services (i.e. a bundled service), then this would not be considered a ‘telephony-only’ service.

The concept of STS covers both voice telephony, and an equivalent form of communication (such as a teletypewriter (TTY) that enables text based communication), that would be required to be supplied to an end-user with a disability to comply with the Disability Discrimination Act 1992.

**Item 9– Subclause 5(2)**

Item 9 makes a minor, consequential amendment by inserting the terms ‘internet carriage service’ and ‘Layer 2 bitstream service’, into the list of definitions that have the same meaning as in the Tel Act in subclause 5(2) of the Principal Determination. The term ‘Layer 2 bitstream service’ is used in the new definition of ‘designated superfast telecommunications network’, described in item 3 above. The term ‘internet carriage service’ is used in the new definition of ‘telephony-only service’ as inserted by item 8.

**Item 10 – Clause 9**

Item 10 amends subclause 9(1) of the Principal Determination, to provide that VOIP services are not excluded from application, if supplied by Telstra in relation to a ‘designated VOIP service’.

Because of the reference to a ‘designated VOIP service’ where Telstra supplies a VOIP service in fulfilment of the universal service obligation, or in compliance with obligations arising under a contract or grant entered into under section 13 of the Telecommunications Universal Service Management Agency Act 2012 (TUSMA Act), relating to policy objectives set out in section 11 of the TUSMA Act, such a service will not be excluded from consideration. The purpose of this change is to recognise that from 1 July 2012, it is expected that Telstra will progressively become a contractor or grant recipient under the TUSMA Act, responsible for policy objectives that mirror the universal service obligation.

Alternatively VOIP services will not be excluded from application if supplied by Telstra using either the NBN or a designated superfast telecommunications network. This amendment recognises that telephony services supplied using the NBN or a designated superfast telecommunications network will be delivered using internet protocol, and, as such, will be VOIP services. It is required in order to maintain consumer protections for telephony-only users of services supplied using these networks.
Subclause 9(2) of the Principal Determination provided that where Telstra supplied
VOIP services in fulfilment of the universal service obligation, definitions of certain
specified terms are to be read as if they were a reference to an STS on the domestic
public switched telephone network. Item 10 also amends subclause 9(2) to update the
reference to a ‘designated VOIP service’. This change is consequential to the change
to subclause 9(1).

To aid the reader, a reminder note is inserted that because of the new application
clause 10A, the Principal Determination (as amended by this Amending
Determination) has limited application to services supplied using the NBN or a
designated superfast telecommunications network. See item 11 below.

Item 11 – After Part 1

Item 11 inserts a new Part 1A into the Principal Determination.

New subclause 10A(1) provides the general rule that the price control arrangements
set out in Part 3 of the Principal Determination are only applicable to the supply of
the relevant services by Telstra using either:

- a fixed-line network owned by Telstra; or
- a non-fixed line network, (other than the NBN) that is used by Telstra in
fulfilment of the universal service obligation, or a contract or grant entered
into under section 13 of the TUSMA Act.

The reference in new paragraph 10A(1)(a) to a fixed-line network owned by Telstra
is intended to include Telstra’s copper customer access network, as well as fibre
networks, such as the Telstra Velocity service. This element of the general rule is
therefore consistent with the previous operation of the Principal Determination.

The reference in new paragraph 10A(1)(b) to specified types of non-fixed line
networks is intended to capture services supplied by a wireless network (such as the
wireless local loop service), as well as a satellite service. Relevant services may be
supplied by Telstra to fulfil the universal service obligation and from 1 July 2012, a
policy objective under section 11 of the TUSMA Act.

This provision does not require the network to be owned by Telstra, as in some
instances Telstra supplies relevant services using a wireless or satellite network that
is owned by another infrastructure provider.

As noted in the explanatory notes to item 8, a ‘designated superfast
telecommunications network’, must be a fixed-line network. Therefore, it is not
necessary to expressly refer to such networks in paragraph 10A(1)(b).

New subclause 10A(2) provides an exception to the general rule in new
subclause 10A(1), by providing that the price control arrangements in clause 16 (for
untimed local calls) also apply to Telstra’s supply of local calls using specified types
of non-fixed networks (i.e. wireless or satellite) to fulfil the universal service
obligation or a policy objective under section 11 of the TUSMA Act, the NBN, or a
designated superfast telecommunications network.
The increased level of competition and low barriers to entry on the NBN makes retail price controls on such networks unnecessary. However, some retail price control arrangements will be maintained in the interests of social inclusion and consumer protection. Telephony-only services which continue to be priced on a per-call basis are often taken up by low-income households as well as users who only require basic telecommunications services. For such services, retaining the cap on untimed local calls on all platforms used to supply telephony-only services is an important consumer protection and social equity measure.

Subclause 16(1) of the Principal Determination requires Telstra not to charge more than 50 cents for untimed local calls made from a public payphone. To clarify, it is anticipated that during the transition to the NBN, Telstra’s responsibilities for providing untimed local calls from a public payphone could potentially apply to payphones using the NBN (or a designated superfast telecommunications network). If Telstra chooses to provide public payphone services over the NBN, untimed local calls would be subject to the price cap of 50 cents.

The explanatory notes to items 19 and 20 below further clarify the limited application of price caps to untimed local calls over the NBN or a designated superfast telecommunications network, for the purposes of subclause 16(2) of the Principal Determination.

Previously the notification and disallowance requirements in Part 5 (i.e. clause 29 of the Principal Determination) only applied to a fixed-line network owned by Telstra. Item 11 also inserts new clause 10B into the Principal Determination to extend the application of clause 29 to directory assistance services to Telstra customers over specified types of non-fixed networks (i.e. wireless or satellite) to fulfil the universal service obligation or a policy objective under section 11 of the TUSMA Act, the NBN or a designated superfast telecommunications network. Directory assistance services are of greatest value to those end-users who do not have access to data services; likely to be low-income households as well as users who only require basic telecommunications services. The extension of clause 29 is an important consumer protection and social equity measure.

For the avoidance of any doubt, neither new clause 10A nor 10B has the effect of applying Part 4 of the Principal Determination (which relates to the principles for alteration of certain charges in clause 28, by reference to clause 24) to services supplied over the NBN or any designated superfast telecommunications network. The effect of new clause 10A is to apply the untimed local call price control to such networks.

Item 12 – After subclause 12(2)

Subclause 12(2) provided for applicable price-caps for the first, second, third and fourth baskets of services from the beginning of the 2007/2008 financial year and subsequent price cap-periods. Item 12 inserts new subclauses 12(3) and (4) into the Principal Determination.

New subclause 12(3) provides that price-caps cease to apply to the ‘fourth basket of services’ mentioned in paragraph 12(2)(d) at the end of 30 June 2012. To aid the
reader, a reminder note is included that from 1 July 2012, price control arrangements for connections are dealt with through ‘connection service products’, in new subclause 12(4).

New subclause 12(4) provides that from 1 July 2012, price-caps apply to each connection service product listed in new Schedule 3, where price movements are limited by the CPI. See the explanatory notes to item 37 for the applicable caps.

Item 13 – After subclause 13(1A)

Subclause 13(1) of the Principal Determination provided for calculation of price movements for the first, third and fourth basket of services. Item 13 inserts new subclause 13(1AA) into the Principal Determination. This provision provides that the calculation of price movements for the fourth basket of services in paragraph 13(1)(c) ceases to apply at the end of 30 June 2012. This change represents a consequential technical amendment flowing from the insertion of new subclause 13(1B) in item 14 below.

For the sake of clarity, there is no change to the applicable methodology for the fourth basket of services under paragraph 13(1)(c) for each of the following financial years:

- 2007/2008;
- 2008/2009;
- 2009/2010;
- 2010/2011;
- 2011/2012.

The rules determining price movement in the component services in the first and third baskets under subclause 13(1) remain unchanged.

Item 14 – After subclause 13(1A)

Item 14 inserts new subclause 13(1B) into the Principal Determination.

New subclause 13(1B) provides for the 2012/2013 financial year and each subsequent price-cap period that the price-cap of each connection service product is determined to be the price movement in the previous 12 months. The prices specified in new Schedule 3 are taken from the price applicable as at 1 June 2012, instead of the average price in the preceding 12 months (i.e. financial year). This amendment is in recognition that the previous methodology would have become increasingly inaccurate as customers migrate from the copper network to the NBN.

The effect of new subclause 13(1B) should be read in conjunction with amendments to clauses 12, 20, 22 and 23 for the fourth basket of services. See the explanatory notes to items 12, 24, 25, 28, 29, 30 and 31 respectively.

Item 15 – Subclause 13(2)

Subclause 13(2) of the Principal Determination provided that in calculating price movements in subclauses 13(1) and (1A), specified services are to be disregarded.
Firstly, item 15 inserts a reference to subclause 13(1B) into subclause 13(2) of the Principal Determination. This is a technical, consequential amendment following the insertion of new subclause 13(1B) into the Principal Determination by item 14.

Secondly, item 15 amends subclause 13(2) of the Principal Determination to provide that VOIP services other than designated VOIP services are excluded from the calculation of price movements. This mirrors the effect of item 10 above.

Thirdly, to aid the reader a note is included to explain that because of new clause 10A, paragraph 13(2)(b) does not include VOIP services supplied using the NBN or a designated superfast telecommunications network (see the explanatory notes to item 11).

Item 16 – Paragraph 13(9)(b)

Subclause 13(9) of the Principal Determination provided that in calculating revenue derived from a component product in subclause 13(8), specified services are to be disregarded.

Item 16 amends paragraph 13(9)(b) to exclude from calculation VOIP services other than designated VOIP services. This item mirrors the effect of item 15 above.

Item 17 – At the end of subclause 13(9)

As noted above, item 16 amends paragraph 13(9)(b) of the Principal Determination. To aid the reader, item 17 inserts a note at the end of subclause 13(9). This note is identical to the note inserted by item 15 and is inserted for the same reason.

Item 18 – Clause 15

Clause 15 provided that Telstra was bound by its agreement of 1 June 2001 with the Commonwealth, as amended from time to time, to offer an untimed local call rate (as specified in clause 16 of the Principal Determination) for calls in ‘Extended Zones’ as defined or to an adjacent Extended Zone (subclause 1), or for untimed local calls to Big Pond internet services in Extended Zones, except where it is made from a public payphone. Clause 15 also deals with preferential calls and related caps.

Item 18 removes clause 15 of the Principal Determination as it is considered redundant. Telstra will continue to fulfil its various obligations to offer untimed local call options (including caps on prices) to customers in extended zones under its agreement of 21 July 2011 (as amended) with the Commonwealth. Such an agreement satisfies the Minister’s obligations under section 107 of the Tel Act. It is expected that for the period of 1 July 2012 to 30 June 2013, the contractual arrangement will be administered (on behalf of the Commonwealth) by TUSMA.

Consistent with subsection 107(6A) of the Act, the Minister will ensure that untimed local call arrangements are in place in relation to extended zones beyond 30 June 2013.
Item 19 – Subclause 16(2)

Subclause 16(2) of the Principal Determination provides a general rule that Telstra must not charge more than 22 cents for untimed local calls (other than calls made using public payphones or calling cards). This rule is subject to the operation of subclauses 16(3) and (4).

Item 19 amends subclause 16(2) to provide that the general rule is also subject to new subclause 16(2A). This amendment is consequential to the inclusion of this new subclause as described in item 20 below.

Item 20 – After subclause 16(2)

Item 20 inserts new subclause 16(2A) into the Principal Determination.

The purpose of this new subclause is to generally exclude from the application of subclause 16(2) (see item 19 above), local calls offered as part of a bundled service by Telstra using the NBN or a designated superfast telecommunications network. Untimed local calls that are offered as a telephony-only service would be subject to the 22 cent cap.

The effect of this subclause is to treat STSs over the NBN (or a designated superfast telecommunications network) the same as on Telstra’s copper network. The reason for the imposition of this cap for these services is because telephony-only services which continue to be priced on a per-call basis are often taken up by low-income households as well as users who only require basic telecommunications services. For such services, retaining the cap on untimed local calls on all platforms used to supply telephony-only services is an important consumer protection and social equity measure.

If an end user was provided with a telephony service that was bundled with internet services over the NBN, the 22 cent price cap for local calls would not apply.

Item 21 – After subclause 16(9)

Item 21 inserts a note at the end of clause 16 of the Principal Determination to aid the reader. This note reminds readers that because of the application provision in new clause 10A, clause 16 applies to services supplied by Telstra over a fixed-line network owned by Telstra (such as the copper network), certain non-fixed line networks, the NBN or a designated superfast telecommunications network. See the explanatory note to item 11 above.

Item 22 – Paragraph 17(2)(a)

Item 23 – Paragraph 17(2)(c)

Subclause 17(2) of the Principal Determination provided for certain exceptions to the general rule in subclause 17(1) restricting Telstra from charging more than 22 cents for each call to an Internet service provider using a data network access service number commencing with ‘0198’. These exceptions did not apply to calls made from a public mobile telephone service or satellite service supplied by Telstra in fulfilment
of the universal service obligation (i.e. the rule in subclause 17(1) does apply when Telstra fulfils the universal service obligation using the specified call types).

Items 22 and 23 amend paragraphs 17(2)(a) and (c) to include references to compliance with a contract or grant under section 13 of the TUSMA Act. The reason for this consequential change to include the transition to contracts and grants administered by TUSMA from 1 July 2012 is discussed in the explanatory note to item 10.

Item 24 – Paragraph 20(2)(c)

Firstly, item 24 amends paragraph 20(2)(c) of the Principal Determination, replacing the reference to the ‘2011/2012’ financial year with the ‘2013/2014’ financial year. This change reflects the 24-month extension to the price control arrangements. Apart from the date changes, the substantive provisions of the subclause for the first, second and third baskets remain unchanged.

Secondly, item 24 removes a reference to the ‘fourth basket of services’ from paragraph 20(2)(c). This is consequential to the cessation of the concept at the end of 30 June 2012, as described in the notes to item 5 above.

Thirdly, a note is inserted to remind the reader that the concept of the ‘fourth basket of services’ ceases to have effect at the end of 30 June 2012. Item 25 deals with elections for connection service products from 1 July 2012 onwards.

Item 25 – At the end of subclause 20(2)

Item 25 inserts a new subclause 20(3) into the Principal Determination. This new subclause clarifies that in respect of any connection service product, Telstra may not elect to defer a price-cap in the 2012/2013 financial year, or any subsequent price-cap period. The cumulative effect of the amendments to paragraph 20(2)(c) and this new subclause is that Telstra cannot defer any accumulated credits in respect of the former fourth basket of services or connection service products from 1 July 2012. The reason for this change is because the new methodology is designed to be simple and targeted. It effectively fixes Telstra’s PSTN connection charges at current price points in real terms until 30 June 2014 and removes complexity from the application, monitoring and reporting of the arrangements.

This item should be read in conjunction with the changes to clause 22 by items 28 and 29 below.

Item 26 – Subclause 21(1)

Item 27 – Subclause 21(2)

Item 26 repeals subclause 21(1) of the Principal Determination. This repeals a redundant subclause as the reporting requirements imposed by this subclause have lapsed.
Item 27 renumbers subclause 21(2) of the Principal Determination as subclause 21(1). This is a consequential technical amendment to the repeal of former subclause 21(1).

Item 28 – Subclause 22(1)
Item 29 – Subclause 22(2)

Item 28 inserts a reference to new subclause 22(3), in subclause 22(1) of the Principal Determination. This is a consequential technical amendment to item 29 below.

Item 29 amends subclause 22(2) of the Principal Determination, replacing the reference to the ‘2011/2012’ financial year with the ‘2013/2014’ financial year. This mirrors the effect of paragraph 20(2)(c) in item 24 above.

Secondly, item 29 removes the reference to the ‘fourth basket of services’ for the same reason identified in item 24 above.

Thirdly, item 29 inserts a new subclause 22(3) into the Principal Determination. This new subclause clarifies that Telstra cannot accrue credits for price reductions in the 2012/2013, or 2013/2014 financial years in respect of any connection service products. The reason for this change is because the new methodology is designed to be simple and targeted. It effectively fixes Telstra’s PSTN connection charges at current price points in real terms until 30 June 2014 and removes complexity from the application, monitoring and reporting of the arrangements.

This item should be read in conjunction with the changes to clause 20 by items 24 and 25 above. Telstra is therefore subject to a fixed price-cap in ‘real’ terms from 1 July 2012 for each connection service product, with previously accrued credits for the fourth basket of services expiring and no new credits arising.

Item 30 – Subclause 23(2)

Clause 23 of the Principal Determination relates to the reconciliation of price movements above the set price cap. Subclause 23(2) provided that where the price movement for the first basket of services for the last price-cap year is greater for that year, and clauses 11, 12 and 13 of the Principal Determination still apply, the price cap for the relevant basket in the 2012/2013 financial year is to be varied by the difference.

As subclauses 23(2) of the Principal Determination contains multiple references to relevant dates, the entire subclause is, for clarity and ease of description, omitted and a new subclause, incorporating updated date references, is inserted at Item 30 of the Amending Determination. This has the effect of updating all date references in subclause 23(2). Specifically, all occurrences of the ‘2011/2012 financial year’ are updated to the ‘2013/2014 financial year’ and similarly, all occurrences of the ‘2012/2013 financial year’ to the ‘2014/2015 financial year’.
These changes are consistent with the 24-month extension to the price control arrangements. Apart from the date changes in this item, the substantive provisions of this subclause remain unchanged.

**Item 31 – Subclause 23(3)**

Clause 23 of the Principal Determination relates to the reconciliation of price movements above the set price cap. Subclause 23(3) provided that where the price movement for the second, third or fourth basket of services for the last price-cap year is greater for that year, and clauses 11, 12 and 13 of the Principal Determination still apply, the price cap for the relevant basket in the 2012/2013 financial year is to be varied by the difference.

Firstly, item 31 replaces subclause 23(3), with the effect of updating all occurrences of:

- the ‘2011/2012 financial year’ to the ‘2013/2014 financial year’;

These changes are consistent with the 24-month extension to the price control arrangements.

Secondly, item 31 removes the reference to the fourth basket of services.

To aid the reader, a note is included explaining that there are no applicable price-cap variations under clause 23 for each connection service product listed in new Schedule 3. This change is consistent with the amendments to clauses 20 and 22 (see items 24, 25, 28 and 29 respectively), in effectively providing that the cap on price for each connection service product is fixed in ‘real’ terms from 1 July 2012.

**Item 32 – At the end of clause 29**

Clause 29 of the Principal Determination provides that for the purposes of section 157 of the Act, charges for certain directory assistance services are subject to notification and disallowance.

Item 32 inserts a note at the end of clause 29 to remind readers that because of the application provision in new clause 10B, clause 29 applies to services supplied by Telstra over a fixed-line network owned by Telstra (such as the copper network), certain non-fixed line networks, the NBN or a designated superfast telecommunications network. See the explanatory note to item 11 above.

**Item 33 – Heading to Part 6**
**Item 34 – Heading to Clause 30**
**Item 35 – Clause 30**

Items 33 and 34 amend the headings to Part 6 and clause 30 of the Principal Determination respectively, to update references from the ‘2012/2013 financial year’ to the ‘2014/2015 financial year’. As the rollover provisions (as amended) are being extended by a further 24 months, it is necessary to change the date references in the
titles, which represents the financial year after expiry of the Principal Determination (as amended).

Item 35 updates the reference of ‘subclause 21 (2)’ to ‘subclause 21 (1)’. This represents a minor, consequential amendment because of the amendments to clause 21 in items 26 and 27.

**Item 36 – At the end of Schedule 2**

By virtue of subclause 12(2), Schedule 2 provides for price-caps for the first, second, third and fourth basket of services for the 2007/2008 financial year and subsequent price-cap periods.

To aid the reader, item 36 inserts a note at the end of Schedule 2 to remind readers that price control arrangements for the fourth basket of services cease at the end of 30 June 2012. See the explanatory notes to item 12 above for further explanation.

**Item 37 – After Schedule 2**

As noted above, new subclause 12(3) provides for price-caps for specified connection service products in new Schedule 3 (see item 12 above).

Item 37 inserts a new Schedule 3 into the Principal Determination. The effect of this new Schedule is that for 10 listed connection service products there are fixed price-caps specified for the 2012/2013 financial year. These prices specified are consistent with the prices applicable as at 1 June 2012. For each subsequent price-cap period, price movements are capped in ‘real’ terms in line with CPI movements. Schedule 3 reflects the connection services which are currently included under the ‘fourth basket of services’ until the end of 30 June 2012.