

Commonwealth of Australia

Telecommunications Act 1997

**Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997
(Amendment No. 2 of 2005)**

I, HELEN LLOYD COONAN, Minister for Communications, Information Technology and the Arts, make the following Declaration under subsection 63(5) of the *Telecommunications Act 1997*.

Dated 3 August 2005.

HELEN COONAN

Minister for Communications, Information Technology and the Arts

1 Name of Declaration

This Declaration is the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 2 of 2005)*.

2 Commencement

This Declaration commences on the day after it is registered on the Federal Register of Legislative Instruments.

3 Amendment of the Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997

Schedule 1 amends the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997*.

Schedule 1 Amendment

(clause 3)

[1] After clause 31

insert

Licensee's obligation to maintain a local presence in regional, rural and remote parts of Australia

Local presence obligation

32. (1) The licensee must maintain a local presence in regional, rural and remote Australia, to the extent that this:

- (a) is broadly compatible with the licensee's overall commercial interests; and
- (b) is not unduly prescriptive and does not impose undue financial and administrative burdens on the licensee.

Preliminary requirements about local presence plans

(2) Within 120 days after the commencement of the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 2 of 2005)*, the licensee must give the Minister a draft local presence plan setting out the range of activities and strategies the licensee deploys or will deploy in regional, rural and remote Australia to fulfil the obligation under subclause (1).

(3) The Minister may give guidance in writing to the licensee as to particular matters the Minister considers relevant in formulating a draft local presence plan. The guidance must not be inconsistent with the requirements of subclause (1).

(4) The licensee must have regard to any guidance given under subclause (3).

(5) A copy of any guidance given under subclause (3) is to be published on the website of the Department of Communications, Information Technology and the Arts (www.dcita.gov.au).

(6) A draft plan must specify the period to which it relates. The period must run for no more than 3 years.

(7) The licensee must have a current local presence plan at all times except:

- (a) within the period mentioned in subclause (2); or
- (b) at any time when the licensee has submitted a draft plan to the Minister and the Minister has not yet approved that draft plan; or
- (c) at any time when the Minister has refused to approve a draft plan and has not approved a fresh draft local presence plan.

(8) For the purposes of subclause (7), the licensee has a current local presence plan if the licensee has given a draft plan to the Minister and the Minister has approved the draft plan, or is taken to have approved the draft plan, under subclause (13) or (14).

(9) A draft plan need not contain any commercially sensitive information.

(10) Notwithstanding subclause (9), the Minister may request the licensee to provide commercially sensitive information, or other information, to assist the Minister in deciding whether to approve a draft plan.

Public consultation on draft local presence plan

(11) Before giving the Minister a draft local presence plan, the licensee must:

- (a) publish a preliminary version of the draft plan and invite submissions to the licensee about the preliminary version within a specified period from:
 - (i) representatives of local government bodies in regional, rural and remote parts of Australia; and
 - (ii) representatives of end-users of telecommunications services in those parts of Australia; and
 - (iii) representatives of the interests of people in those parts of Australia; and
- (b) give consideration to any submissions received within that period from those persons; and
- (c) prepare a report for the Minister about the submissions and any changes made to the draft plan as a result of the submissions.

Note: The licensee's publication of a preliminary version of the draft plan should be consistent with the requirements of subclauses (36), (37) and (38), which deal with the publication of an approved local presence plan.

(12) The period specified in the invitation must run for at least 42 days.

Ministerial consideration of draft local presence plan

(13) If the licensee gives the Minister a draft local presence plan together with the report mentioned in paragraph (11)(c), the Minister must:

- (a) approve the draft plan; or
- (b) refuse to approve the draft plan.

(14) If the Minister neither approves, nor refuses to approve, the draft plan before the end of 120 days after the Minister receives the draft plan (the ***relevant period***), then the Minister is taken, at the end of the relevant period, to have approved the draft plan.

(15) If the Minister approves a draft plan, or is taken to have approved a draft plan, the draft plan becomes an approved local presence plan.

(16) If the Minister refuses to approve a draft plan, the Minister may, by written notice given to the licensee, direct the licensee to give the Minister a fresh draft local presence plan within the period specified in the notice. The notice may specify the matters that need to be addressed in the fresh draft local presence plan. The notice must not be inconsistent with the requirements of subclause (1).

(17) The notice may direct the licensee to undertake further consultation, including the manner in which the consultation is to be undertaken and the period of the consultation. If the notice does not specify the manner and the period of consultation, consultation is to be undertaken in accordance with subclauses (11) and (12).

(18) The licensee must comply with a direction under subclause (16) or (17).

(19) In deciding whether to approve a draft local presence plan, the Minister must have regard to the requirements of subclause (1) and any guidance given to the licensee under subclause (3) and consider the extent to which the draft plan addresses each of the following matters:

- (a) telecommunications service interests of the licensee's regional, rural and remote customers and potential customers, including:
 - (i) how the management structure and decision-making processes in the licensee will address these interests; and
 - (ii) how these interests will be represented within the licensee's management structure;
- (b) customer service and support to meet the telecommunications service interests of the licensee's customers in regional, rural and remote parts of Australia, including:

- (i) management of complaints from the licensee's customers in regional, rural and remote parts of Australia; and
- (ii) provision of telecommunications service information to the licensee's customers in regional, rural and remote parts of Australia;
- (c) coordination and management of the licensee's activities in regional, rural and remote parts of Australia, including:
 - (i) targeted application of the licensee's resources to meet the telecommunications service interests of the licensee's customers in regional, rural and remote parts of Australia; and
 - (ii) an integrated approach to telecommunications service connection, maintenance and repairs in regional, rural and remote parts of Australia;
- (d) support by the licensee through its service activities for broader community development in regional, rural and remote parts of Australia;
- (e) arrangements that the licensee currently has in place to address telecommunications service interests of regional, rural and remote customers, any changes to those arrangements during the period of the local presence plan and the consultation and other related processes that the licensee proposes to follow in relation to any such changes;
- (f) the licensee's measures for reporting on its performance in relation to the local presence plan and the local presence obligation mentioned in subclause (1).

(20) The Minister may have regard to any other relevant matters.

Notification of the Minister's decision

(21) After deciding whether to approve a draft local presence plan, the Minister must:

- (a) give a written notice setting out the decision to both the licensee and ACMA; and
- (b) if the Minister has approved the draft plan—give a copy of the approved plan to ACMA.

Note: It is intended that ACMA, in addition to Telstra, will publish the approved local presence plan. ACMA has a role in the enforcement of this and other licence conditions (see sections 68, 69, 70, 570 and 571 of the Act). ACMA is also required to monitor, and report each financial year to the Minister on, all significant matters relating to the performance of carriers and carriage service providers with particular reference to

consumer satisfaction, consumer benefits and quality of service (see section 105 of the Act).

(22) A copy of a notice under paragraph (21)(a) must be published in the *Gazette*.

(23) If the Minister has refused to approve a draft local presence plan, the Minister must give the licensee a written notice setting out the reasons for the refusal.

Variation of approved local presence plan

(24) If an approved local presence plan (the *current plan*) is in force and the licensee gives the Minister a draft variation of the plan, the Minister must:

- (a) approve the variation; or
- (b) refuse to approve the variation.

(25) Before deciding whether to approve the variation, the Minister may, if the Minister considers it appropriate, require the licensee:

- (a) to publish a preliminary version of the draft variation and invite submissions to the licensee about the preliminary version within a specified period from:
 - (i) representatives of local government bodies in regional, rural and remote parts of Australia; and
 - (ii) representatives of end-users of telecommunications services in those parts of Australia; and
 - (iii) representatives of the interests of people in those parts of Australia; and
- (b) to give consideration to any submissions received within that period from those persons; and
- (c) to prepare a report for the Minister about the submissions and any changes made to the draft variation as a result of the submissions.

(26) In deciding whether to approve any variation, the Minister must have regard to the requirements of subclause (1), any guidance given to the licensee under subclause (3) and the matters specified in paragraphs (19)(a) to (f).

(27) After deciding whether to approve a draft variation of an approved local presence plan, the Minister must:

- (a) give a written notice setting out the decision to both the licensee and ACMA; and

- (b) if the Minister has approved the variation—give a copy of the variation to ACMA.

Note: It is intended that ACMA, in addition to Telstra, will publish the approved variation of an approved local presence plan.

(28) A copy of a notice under paragraph (27)(a) must be published in the *Gazette*.

(29) If the Minister has refused to approve a draft variation, the Minister must give the licensee a written notice setting out the reasons for the refusal.

Minister may direct variation or replacement of approved local presence plan

(30) If an approved local presence plan (the **current plan**) is in force, the Minister may give the licensee a written notice that is not inconsistent with the requirements of subclause (1) requiring the licensee:

- (a) within the period set out in the notice, to give the Minister a draft variation of the current plan that addresses the matters (if any) specified in the notice; or
- (b) within the period set out in the notice, to give the Minister a fresh draft local presence plan that is expressed to replace the current plan and that addresses the matters (if any) specified in the notice.

(31) The licensee must comply with a notice given under subclause (30).

New draft local presence plan to be submitted before expiry of old plan

(32) If an approved local presence plan (the **current plan**) is in force, the licensee must give the Minister a new draft local presence plan 120 days before the expiry of the current plan.

Note: The consultation requirements in subclauses (11) and (12) apply to the new draft plan.

Replacement of approved local presence plan

(33) If an approved local presence plan (the **original plan**) is in force, a draft local presence plan must be expressed to replace the original plan.

(34) When the draft plan becomes an approved local presence plan, the original plan ceases to be in force.

Compliance with approved local presence plan

(35) If an approved local presence plan is in force, the licensee must take all reasonable steps to ensure that the plan is complied with.

Approved local presence plan to be made available to the public

(36) If an approved local presence plan is in force, the licensee must:

- (a) make copies of the plan available for inspection, or for inspection and purchase, by the public; and
- (b) make copies of extracts from the plan available for inspection, or for inspection and purchase, by the public.

(37) A plan or extracts must be reasonably accessible for inspection, or inspection and purchase, on the Internet.

(38) The price charged by the licensee for the purchase of a copy of a plan or extracts must not exceed the reasonable cost incurred by the licensee in making the copy of the plan or extracts available for purchase.

Annual compliance reports

(39) As soon as practicable, and in any event within 60 days, after the end of each financial year, the licensee must:

- (a) give the Minister and ACMA a report setting out details of the progress made by the licensee in implementing each approved local presence plan that was in force at any time during that year; and
- (b) make a summary of the report available to the public.

(40) The summary need not contain any commercially sensitive information.