**EXPLANATORY STATEMENT**

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

*Australian Communications and Media Authority (Annual Carrier Licence Charge) Direction 2011*

*Australian Communications and Media Authority Act 2005*

Authority

The *Australian Communications and Media Authority (Annual Carrier Licence Charge) Direction 2011* (the Direction) is made by the Minister for Broadband, Communications, and the Digital Economy (the Minister) to the Australian Communications and Media Authority (ACMA) pursuant to section 14 of the *Australian Communications and Media Authority Act 2005* (ACMA Act).

Purpose

The purpose of the Direction is to require the ACMA to make determinations under subsection 14(1) of the *Telecommunications (Carrier Licence Charges) Act 1997* (Carrier Licence Charges Act) which have the effect of removing the annual carrier licence charge for a licence held by a carrier that was a ‘USO non-participating person’ pursuant to the *Telecommunications (Participating Persons) Determination 2011 (No.1)* (the Participating Persons Determination) for the eligible revenue period immediately preceding that financial year.

Background

On 15 September 2009, the Australian Government announced a package of reforms to telecommunications regulation in Australia which included the intention to remove unnecessary red tape by exempting smaller carriers from certain reporting obligations to the ACMA, and in effect, from paying annual carrier licence charges.

On 2 May 2011, the government released a consultation paper and exposure draft on the *Telecommunications (Participating Persons) Determination 2011* *(No.1)* (the Participating Persons Determination)*,* which will reduce red tape for smaller carriers by exempting carriers with revenues less than $25 million (either initial sales revenue, gross telecommunications sales revenue, or eligible revenue) from the requirement of lodging an eligible revenue return to the ACMA, and from contributing to the Universal Service Obligation (USO) and National Relay Service (NRS) levies. The consultation paper also confirmed the government’s intention that regulatory changes would be made to ensure that these smaller carriers would also be exempt from paying annual carrier licence charges.

Under section 13 of the Carrier Licence Charges Act, a holder of a telecommunications carrier licence is required to pay annual carrier licence charges. The annual carrier licence charge recovers the costs of regulating the telecommunications industry. The amount of the annual carrier licence charge is set by the ACMA annually in a written determination pursuant to section 14 of the Carrier Licence Charges Act. Section 5 of the ACMA’s determination for the 2009-10 financial year, the *Telecommunications (Annual Carrier Licence Charge) Determination 2010*, sets out the methodology used for the calculation of the annual carrier licence charge. This section specifies a formula for the calculation of the annual carrier licence charge, including a fixed and variable component.

The fixed component of the annual carrier licence charge is a cost recovery based administration charge. The variable component is calculated, in part, on the basis of the ACMA’s assessment of each carrier’s eligible revenue for the eligible revenue period under section 20F of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Act).

Under subsection 20(1) of the Act, carriers are required to submit to the ACMA a written return (eligible revenue return) setting out their eligible revenue for the eligible revenue period (financial year).

Operation of the Direction

The Direction requires the ACMA to make such determinations as necessary under subsection 14(1) of the Carrier Licence Charges Act whichhave the effect of removing the annual carrier licence charge for a licence held by a carrier that was a ‘USO non-participating person’ pursuant to the Participating Persons Determination for the eligible revenue period immediately preceding that financial year.

The Participating Persons Determination which is made under paragraph 20A(2)(b) of the Act enables the Minister to make a written determination specifying that a certain kind of person is not a ‘participating person’ for an eligible revenue period under the Act.

The effect of the Participating Persons Determination is to exempt carriers with eligible revenue of less than $25 million from the requirement of lodging eligible revenue returns to the ACMA and from paying the USO and NRS levies. In order to determine which carriers are exempt from these regulatory requirements, the Participating Persons Determinations introduces the concept of a ‘USO non-participating person’. A USO non-participating person is a carrier that has revenue below one of the three revenue thresholds (initial sales revenue, gross telecommunications sales revenue or eligible revenue) and provides the ACMA with an eligible statutory declaration (within a specified period of the end of the eligible revenue period) declaring that their revenue is below one of the three thresholds. More information about this can be found in the explanatory statement to the Participating Persons Determination.

The Direction is made to ensure that carriers that are USO non-participating persons for the eligible revenue period immediately preceding that financial year will not be required to pay any annual carrier licence charge. That is, if a carrier is a ‘USO non-participating person’ for the 2010-11 eligible revenue period pursuant to the Participating Persons Determination, then that carrier will not pay any annual carrier licence charges for the 2011-12 financial year.

Details of the accompanying Direction are set out in the Attachment A.

Consultation

The ACMA has been consulted in relation to the making of this Direction.

The Direction is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA)*.* However, as a result of item 41 of the table to subsection 44(2) of the LIA, the Determination is not subject to disallowance.

**ATTACHMENT A**

**Notes on Clauses**

**Clause 1 – Name of Direction**

Clause 1 provides that the name of the Direction is the *Australian Communications and Media Authority (Annual Carrier Licence Charge) Direction 2011*.

**Clause 2 – Commencement**

Clause 2 establishes when the Direction will commence. The Direction will commence immediately after the *Telecommunications (Participating Persons) Determination 2011 (No. 1)* (the Participating Persons Determination) commences, or the day after the Direction is registered on the Federal Register of Legislative Instruments (whichever occurs later in time).

The commencement of the Direction needs to occur after the commencement of the Participating Persons Determinationbecause clause 4 of the Direction adopts the term, ‘USO non-participating person’ as defined in subsection 4(4) of the Participating Persons Determination. Clause 4 of the Direction requires the ACMA to impose a $0 annual carrier licence charge to a USO non-participating person (as discussed below).

**Clause 3 - Definitions**

Clause 3 sets out the key definitions used in the Direction.

The term ***ACMA*** means the Australian Communications and Media Authority.

The term ***ACMA Act*** means the *Australian Communications and Media Authority Act 2005*.

The term ***annual carrier licence charge*** is defined by reference to Part 3 of the Carrier Licence Charges Act. Section 11 of the Carrier Licence Charges Act defines ‘charge’ for Part 3, by reference to a charge imposed on a carrier licence for a financial year. The amount of charge imposed on a carrier licence is the amount ascertained in accordance with a written determination made by the ACMA under section 14 of the Carrier Licence Charges Act.

The terms ***carrier*** and ***carrier licence*** are given the same meaning as in section 7 of the *Telecommunications Act 1997*.

The term ***Carrier Licence Charges Act*** means the *Telecommunications (Carrier Licence Charges) Act 1997*.

The term ***eligible revenue period*** has the same meaning as in section 20C of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. This refers to a financial year and each later financial year.

The term ***relevant financial year*** refers to the financial year that begins on 1 July 2011 and each later financial year.

The term***USO non-participating person*** has the same meaning as in subsection 4(4) of the Participating Persons Determination*.*

A USO non-participating person pursuant to subsection 4(4) of the Participating Persons Determination is a carrier (or a carriage service provider, if a determination under paragraph 20A(1)(b) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* is in force) that has revenue below one of three revenue thresholds (initial sales revenue, gross telecommunications sales revenue or eligible revenue below $25 million) and provides the ACMA with an eligible statutory declaration (within a specified period of the end of the eligible revenue period) declaring that their revenue is below one of the three thresholds.

**Clause 4 - Direction**

Clause 4 directs the ACMA to make such determinations as necessary under subsection 14(1) of the Carrier Licence Charges Act.

The determinations that the ACMA is to make are to have the effect of removing the annual carrier licence charge on each carrier licence:

* in force at the beginning of a relevant financial year; and
* held by a carrier that was a USO non-participating person for the eligible revenue period immediately preceding that financial year.