

# EXPLANATORY STATEMENT

**Prepared by the Australian Communications and Media Authority**

## ***Telecommunications (Annual Carrier Licence Charge) Determination 2013***

*Telecommunications (Carrier Licence Charges) Act 1997*

The *Telecommunications (Annual Carrier Licence Charge) Determination 2013* (the Determination) is made by the Australian Communications and Media Authority (the ACMA) under subsection 14(1) of the *Telecommunications (Carrier Licence Charges) Act 1997* (the Act).

### **Background**

Section 12 of the Act provides that a charge is imposed by Part 3 on a carrier licence that is in force at the beginning of a financial year (an annual carrier licence charge).

Subsection 14(1) of the Act provides that the amount of an annual carrier licence charge imposed on a carrier licence is the amount ascertained in accordance with a written determination made by the ACMA.

Subsection 15(1) of the Act provides that the total of the annual carrier licence charges that are imposed on carrier licences in force at the beginning of a financial year must not exceed the sum of the amounts determined under paragraphs 15(1)(a) to (d).

On 4 July 2011 the Minister for Broadband, Communications and the Digital Economy issued the *Australian Communications and Media Authority (Annual Carrier Licence Charge) Direction 2011* (the Ministerial Direction). The Ministerial Direction requires the ACMA to make such determinations as are necessary under subsection 14(1) of the Act to have the effect of imposing an annual carrier licence charge of \$0 on a carrier licence that is:

- in force at the beginning of a relevant financial year; and
- held by a carrier that was a “USO non-participating person” within the meaning of the *Telecommunications (Participating Persons) Determination 2011 (No. 1)* for the eligible revenue period immediately preceding that financial year.

The Ministerial Direction defines relevant financial year as the financial year that begins on 1 July 2011 and each later financial year.

### **Purpose**

The purpose of the Determination is to set out a method for ascertaining the amount of annual carrier licence charge imposed on each carrier licence that was in force at the beginning of the 2012-2013 financial year, in accordance with subsection 15(1) of the Act and the Ministerial Direction.

## **Operation**

The Determination applies to carrier licences that were in force at the beginning of the 2012-2013 financial year.

The Determination has the effect of imposing an annual carrier licence charge of \$0 on a carrier licence that was held by a carrier that was a USO non-participating person for the eligible revenue period that began on 1 July 2011 and ended on 30 June 2012.

The Determination sets out a method for ascertaining the amount of annual carrier licence charge on each other carrier licence that was in force at the beginning of the 2012-2013 financial year. (Further information about that method is set out below in the notes on section 6 of the Determination.)

## **Regulation Impact**

On 15 April 2013 the Office of Best Practice Regulation advised that a Regulation Impact Statement was not required for the Determination then proposed to be made on the basis that the changes would be minor in nature (reference number ID 2013/14937).

## **Consultation**

Consultation was not undertaken before making the Determination. The ACMA considered that consultation was unnecessary on the basis that the Determination is minor in nature and does not substantially alter existing arrangements.

The provisions of the Determination which impose an annual carrier licence charge of \$0 on certain carrier licences are in accordance with the Ministerial Direction by which the ACMA is bound.

The provisions of the Determination which set out a method for ascertaining the amount of annual carrier licence charge imposed on other carrier licences is the same as the method set out in the *Telecommunications (Annual Carrier Licence Charge) Determination 2012* (which was used to ascertain the amount of annual carrier licence charge imposed on carrier licences in force at the beginning of the 2011-2012 financial year).

The method had been the subject of consultation as part of a review of the ACMA's cost recovery arrangements in late 2011. A discussion paper for that review dated October 2011 explained how there would be a change in the method used to calculate the amount of annual carrier licence charge imposed as a consequence of the Ministerial Direction and noted that the change would have an impact on the calculation of the charge for the 2011-2012 financial year and onwards.

The method as changed was also described in detail in the Cost Recovery Impact Statement for the charging period 1 July 2011 to 30 June 2012 (the CRIS), which is publicly available on the ACMA's website. The CRIS indicated that the method was part of the ACMA's cost recovery arrangements and would be used to calculate estimated cost recovery revenue and expenses for a five year period ending on 30 June 2017.

The Determination is consistent with these arrangements.

### **Notes on Sections**

The provisions of the Determination are described in Attachment 1.

### **Statement of Compatibility with Human Rights**

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in Attachment 2.

## Notes on section of the Determination

### Section 1 - Name of Determination

This section provides that the name of the Determination is the *Telecommunications (Annual Carrier Licence Charge) Determination 2013*.

### Section 2 - Commencement

This section provides that the Determination commences on the later of the day after it is registered and the commencement of the *Telecommunications (Specification of Costs by the ACMA) Determination 2013*.

### Section 3 - Application

This section provides that the Determination applies to carrier licences that were in force at the beginning of the 2012-2013 financial year (i.e. on 1 July 2012).

### Section 4 - Definitions

This section sets out the definitions of key terms used in the Determination as follows:

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

**carrier licence** means a carrier licence to which the Determination applies, as provided by section 3.

**carrier licence charge** means charge within the meaning of Part 3 of the Act.

**eligible revenue period** has the same meaning as in the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

**exempt carrier licence** means a carrier licence that was held by a carrier that was a USO non-participating person for the eligible revenue period that began on 1 July 2011 and ended on 30 June 2012.

**USO non-participating person** has the same meaning as in the *Telecommunications (Participating Persons) Determination 2011 (No.1)*.

### Section 5 – Carrier licence charge – exempt carrier licences

This section provides that the amount of carrier licence charge imposed on an exempt carrier licence is \$0, in accordance with the Ministerial Direction.

### Section 6 – Method of ascertaining carrier licence charge – other carrier licences

This section sets out a method for ascertaining the amount of carrier licence charge imposed on a carrier licence that is not an exempt carrier licence (a relevant carrier licence).

The amount is ascertained, for a relevant carrier licence, using the following formula:

$$(\text{MCA} - \text{OTC}) \times \frac{\text{ER}}{\text{TER}}$$

Where:

- MCA (maximum charge amount) is the total sum of the amounts determined under subsection 15(1) of the Act
- OTC (other telecommunication costs) is an amount relating to costs that:
  - (a) are part of the proportion of the ACMA's costs for the 2011-2012 financial year that is attributable to the ACMA's telecommunications functions and powers; and
  - (b) have been recovered from telecommunications charges (other than annual carrier licence charges) or the ACMA considers are not appropriate to recover from carriers because of the nature of the activities with which the costs are associated
- ER (eligible revenue), for the holder of the relevant carrier licence, is the holder's eligible revenue for the 2011-2012 financial year
- TER (total eligible revenue) is the total sum of the eligible revenues for the 2011-2012 financial year for all holders of a relevant carrier licence.

The total charge amount is calculated by subtracting the other telecommunication costs from the maximum charge amount. The total charge amount is then allocated to each holder of a relevant carrier licence in the same proportion of that holder's eligible revenue to the total eligible revenue.

## Schedule 1

Schedule 1 sets out, for each holder of a relevant carrier licence, the holder's:

- name,
- ACN/ARBN/ABN, and
- eligible revenue for the 2011-2012 financial year as assessed by the ACMA under subsection 20F(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

**Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

***Telecommunications (Annual Carrier Licence Charge) Determination 2013***

This Legislative Instrument 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 Legislative Instrument**

Section 12 of the *Telecommunications (Carrier Licence Charges) Act 1997* (the Act) provides that a charge is imposed by Part 3 on a carrier licence that is in force at the beginning of a financial year (an annual carrier licence charge).

Subsection 14(1) of the Act provides that the amount of an annual carrier licence charge imposed on a carrier licence is the amount ascertained in accordance with a written determination made by the Australian Communications and Media Authority (the ACMA).

The *Telecommunications (Annual Carrier Licence Charge) Determination 2013* has been made by the ACMA to set out the method for ascertaining the amount of annual carrier licence charge imposed on each carrier licence that was in force at the beginning of the 2012-2013 financial year.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Australian Communications and Media Authority**