



Variation of WLR, LCS and PSTN OA class exemptions

Final Decision

November 2009

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Glossary

ACCC	Australian Competition and Consumer Commission
CBD	central business district
c-i-c / CIC	commercial-in-confidence
CSP	carriage service provider
ESA	exchange service area
LCS	local carriage service
LTIE	long-term interests of end-users
PSTN OA	public switched telephone network originating access
POI	point of interconnection
SAO	standard access obligation
TPA	<i>Trade Practices Act 1974 (Cth)</i>
ULLS	unconditioned local loop service
WLR	wholesale line rental

Summary

The ACCC has decided to vary the class exemptions in respect of the wholesale line rental (WLR) service, local carriage service (LCS) and public switched telephone network originating access (PSTN OA) service.

Specifically, the ACCC has decided to vary the expiry date, the date the exemptions take practical effect and the ESAs to which the WLR, LCS and PSTN OA class exemptions apply to ensure these are consistent with the individual exemptions granted to Telstra in recent Australian Competition Tribunal proceedings. As a result, all access providers of the WLR, LCS and PSTN OA services will have the same access obligations in any given service area.

It is the ACCC's view that alignment between the class exemptions and the individual exemption orders would provide regulatory certainty and promote the LTIE.

This decision confirms a draft decision that was issued in October 2009 for consultation purposes.

1. Introduction

A class exemption provides that a specified class of carriers or carriage service providers may be exempt from the standard access obligations (SAOs) in section 152AR of the *Trade Practices Act 1974* (TPA) that apply to a declared service.

In August and October 2008, the Australian Competition and Consumer Commission (ACCC) made class exemptions in respect of the wholesale line rental (WLR) service, local carriage service (LCS) and public switched telephone network originating access (PSTN OA) service.

The WLR and LCS class exemptions took effect on 22 August 2009 in 248 metropolitan exchange service areas (ESAs). The PSTN OA class exemption is to take effect on 29 October 2009 in the same 248 metropolitan ESAs as the WLR/LCS class exemptions, as well as a further 17 ESAs in CBD areas.

When made, these class exemptions reflected the ACCC's decisions in response to Telstra's applications for individual exemptions from the SAOs in respect of the WLR, LCS and PSTN OA services. The ACCC had decided to grant individual exemption orders to Telstra in respect of the WLR, LCS and PSTN OA (metropolitan and CBD), subject to a number of conditions and limitations.

The class exemptions were to apply to other carriers or carriage service providers to exempt them from the SAOs in the same ESAs and to take effect for the same time period as the individual exemption orders. The ACCC considered this would promote competition in the fixed voice market and ensure that providers other than Telstra also had incentives to invest in their own infrastructure in the exemption areas to provide wholesale voice service.

Review was sought of the ACCC's individual exemption orders in the Australian Competition Tribunal (the Tribunal). In August and September 2009 the Tribunal issued final individual exemption orders varying the individual exemption orders granted by the ACCC. However, Part XIC of the TPA does not confer jurisdiction on the Tribunal to undertake merits review of class exemptions.

Therefore, the ACCC has decided to vary the expiry date, the date the class exemptions take practical effect and the ESAs to which the class exemptions apply, to ensure that the WLR, LCS, and PSTN OA class exemptions are consistent with the individual exemption orders handed down by the Tribunal.

1.1 Process

The ACCC released a draft decision on 14 October 2009 proposing to vary the date the class exemptions take practical effect, the expiry date and the ESAs to which the class exemptions apply. The ACCC received submissions from TransACT and Optus in response to the draft decision.

After considering submissions, the ACCC has decided to vary the class exemptions. Copies of the (unsigned) variation instruments are at **Appendices B, E and H** and the explanatory statements for the variation instruments are at **Appendices C, F and I** to this decision. Signed copies of the variation instruments will be available on the ACCC's website at www.accc.gov.au.

2. Background

2.1 The regulated services

The LCS, WLR and PSTN OA services are declared services under section 152AL of the TPA.¹

The PSTN OA service is the carriage of telephone calls from the calling party to a point of interconnection (POI) with an access seeker's network. Currently a POI is usually located at a trunk or transit exchange. Access seekers currently use the PSTN OA service to provide: national long-distance calls; international calls; fixed network to mobile network (FTM) calls; and local calls to end-users.

The LCS is a wholesale local call service that allows access seekers to resell local calls without deploying substantial alternative infrastructure. It involves the carriage of a telephone call from one end-user to another end-user in the same standard zone.

The WLR service involves the provision of a basic line rental service that allows the end-user to connect to the access provider's PSTN. The end-user is provided with:

- the ability to make and receive standard PSTN voice calls such as local, national long distance, international, fixed-to-mobile or mobile-to-fixed calls, and
- a telephone number.

The LCS and WLR services are not regulated in CBD areas.² The PSTN OA service is declared in both CBD and metropolitan areas.

Together, the WLR, LCS and PSTN OA can be used by an access seeker to supply a fixed voice bundle (consisting of line rental, local calls, national long-distance calls, FTM calls and international calls) to end-users.

2.2 The exemptions

The class exemptions

In August 2008, the ACCC made class exemptions in respect of the WLR and LCS services which took effect on 22 August 2009 in 248 metropolitan ESAs. In October 2008, the ACCC made a class exemption in respect of the PSTN OA service which is to take effect on 29 October 2009 in the same 248 metropolitan ESAs as the WLR/LCS class exemptions, as well as a further 17 ESAs in CBD areas.

¹ In July 2009, declarations for the WLR, LCS and PSTN OA were extended for 5 years. ACCC, *Fixed Services Review Declaration Inquiry for the ULLS, LSS, PSTN OA, PSTN TA, LCS and WLR Final decision*. July 2009.

² In 2002 the ACCC granted an individual exemption to Telstra in respect of the LCS in CBD areas: ACCC, *Future scope of the local carriage service – final decision*, July 2002. When the WLR and LCS declarations were reviewed in 2006, CBD areas were excluded from both declarations: ACCC, *Local Services Review – Final Decision*, July 2006.

These class exemptions reflected the decisions the ACCC made in response to Telstra's applications for individual exemptions from the SAOs in respect of the WLR, LCS and PSTN OA services. The ACCC had decided to grant individual exemption orders to Telstra in respect of the WLR, LCS and PSTN OA services, subject to a number of conditions and limitations.

The ACCC considered that making the class exemptions (after granting individual exemption orders to Telstra) would ensure that incentives for other competitors to provide wholesale voice services and invest in infrastructure would not diminish. That is, without the class exemptions in place, other access providers could potentially have the SAOs enforced against them by access seekers in ESAs where the individual exemptions applied to Telstra.

These class exemptions can be found at **Appendices A, D and G** to this decision.

The individual exemption orders

On 9 July 2007 and 12 October 2007 Telstra lodged applications seeking individual exemptions from the SAOs in 387 ESAs in respect of the WLR and LCS services. Additionally, on 8 October 2007 Telstra lodged applications seeking exemption from the SAOs in respect of the PSTN OA service in the same 387 metropolitan ESAs (PSTN OA metropolitan exemption application) and a further 17 CBD ESAs (PSTN OA CBD exemption application). The WLR and LCS are not regulated in CBD areas.

After a lengthy consultation process, the ACCC made individual exemption orders pursuant to section 152AT of the TPA, in respect of the WLR, LCS and PSTN OA services, subject to conditions and limitations. The WLR and LCS individual exemption orders were to come into effect on 22 August 2009 in 248 metropolitan ESAs. The PSTN OA individual exemption orders were to come into effect on 29 October 2009 in the same 248 metropolitan ESAs (PSTN OA metropolitan exemption order) and in a further 17 CBD ESAs (PSTN OA CBD exemption order).

Review of the individual exemption orders in the Tribunal

Access seekers sought review in the Australian Competition Tribunal (the Tribunal) of the ACCC's individual exemption orders in respect of the LCS, WLR and PSTN OA. However, Part XIC of the TPA does not confer jurisdiction on the Tribunal to undertake merits review of class exemptions.

On 22 December 2008, the Tribunal set aside the ACCC's individual exemption orders in respect of WLR and LCS. Telstra then sought judicial review of the Tribunal's decision in the Full Federal Court. On 11 March 2009, the Full Federal Court set aside the Tribunal's decision and remitted the matter back to the Tribunal for further hearing.

In May 2009, the Tribunal decided to grant individual exemptions to Telstra in respect of the WLR and LCS, subject to conditions and limitations which are different to those originally imposed by the Commission. On 24 August 2009, the Tribunal decided to grant individual exemption orders in respect of the PSTN OA (in metropolitan and CBD areas respectively).

The drafting of the PSTN OA individual exemption orders was finalised on 9 September 2009. The PSTN OA metropolitan exemption order applies to the same ESAs and is subject to the same conditions as the WLR and LCS individual exemption orders. The Tribunal affirmed the ACCC's PSTN OA CBD order, except for a minor variation to the expiry date.

The Tribunal's PSTN OA CBD exemption order applies to the same 17 CBD ESAs as the ACCC's PSTN OA CBD exemption order. However, it is not yet clear in which ESAs the Tribunal's WLR, LCS and PSTN OA (metropolitan) exemption orders will apply. This is because the Tribunal's WLR, LCS and PSTN OA (metropolitan) exemption orders require the ACCC to calculate a list of exempt ESAs twice a year according to a prescribed formula. Therefore, the exemption ESA footprint is likely to change over time.

The ACCC has decided to vary the WLR, LCS and PSTN OA class exemptions to ensure the date and areas in which the class exemptions take effect are consistent with the Tribunal's individual exemption orders. Having the class exemptions operate in the same ESAs and at the same time as Telstra's individual exemption orders would ensure that incentives for other competitors to provide wholesale voice services and invest in infrastructure would not diminish. That is, without the class exemptions in place, other access providers could potentially have the SAOs enforced against them by access seekers in ESAs where the individual exemptions applied to Telstra.

3. Relevant legislation

The WLR, LCS and PSTN OA class exemption determinations were made pursuant to section 152AS of the TPA, which provides that:

(4) The Commission must not make a determination under this section unless the Commission is satisfied that the making of the determination will promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services.

The ACCC proposes to vary the class exemption determinations. Subsection 33(3) of the *Acts Interpretation Act 1901* (Cth) states:

Where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws) the power shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

As such, the ACCC is able to vary the class exemption determinations in the same manner by which it made the class exemptions in the first instance.

Accordingly, the ACCC must be satisfied that the proposed variation of the class exemption determinations will promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services (LTIE).

Finally, section 152AB of the TPA states that in determining whether a particular thing promotes the LTIE:

(2)...regard must be had to the extent to which the thing is likely to result in the achievement of the following objectives:

- (c) the objective of promoting competition in markets for listed services;
- (d) the objective of achieving any-to-any connectivity in relation to carriage services that involve communication between end-users;
- (e) the objective of encouraging the economically efficient use of, and the economically efficient investment in:
 - (i) the infrastructure by which telecommunications services are supplied and
 - (ii) any other infrastructure by which telecommunications services are, or are likely to become, capable of being supplied.

3.1 Proposed legislative amendments

On 15 September 2009, the Minister for Broadband, Communications and the Digital Economy tabled the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009* (the bill).

Under the bill, section 152AS (which currently relates to class exemptions) is to be repealed.³ However, the bill also provides transitional provisions in relation to existing class exemptions, so that a class exemption determination which is in force immediately before commencement of the transitional provisions will remain in effect

³ Item 93, Schedule 1, Part 2, Division 1, Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009.

until an access determination under the new legislation in relation to that declared service comes into force.⁴

If passed by Parliament, the relevant transitional provisions of the bill will commence the day after the new Act receives Royal Assent.⁵ Thereafter, the ACCC will no longer be able to vary or revoke an existing class exemption determination. The class exemption determination will only cease to have effect when the first access determination under the new legislation relating to access to that declared service comes into force.

⁴ Item 150, Schedule 1, part 2, Division 2, Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009.

⁵ Section 2, Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009.

4. Would varying the class exemptions to apply at the same time and in the same area as the Tribunal's individual exemption orders promote the LTIE?

In the draft decision, the ACCC's draft view was that it would promote the LTIE to vary the WLR, LCS and PSTN OA class exemption determinations in relation to:

- the date the class exemptions take practical effect and expire and
- the area in which the class exemptions will take effect

so that the class exemptions are consistent with the Tribunal's WLR, LCS and PSTN OA individual exemption orders.

Optus and TransACT both submit that they agree with the ACCC's proposal to vary the class exemption determinations so that they are consistent with the individual exemption orders for these services.⁶

A class exemption should only be varied if the proposed variation would promote the LTIE. In determining whether the proposed variation would promote the LTIE, the ACCC must have regard to whether varying the class exemption is likely to result in the following objectives:

- promoting competition in markets for listed services;
- achieving any-to-any connectivity in relation to carriage services that involve communication between end-users; and
- encouraging the economically efficient use of, and the economically efficient investment in, the infrastructure by which telecommunications services are supplied and any other infrastructure by which telecommunications services are, or are likely to become, capable of being supplied.⁷

In granting the WLR, LCS and PSTN OA class exemptions in 2008, the ACCC considered that the class exemptions would promote competition in the fixed voice market, with flow-on benefits to end-users in terms of greater innovation in services and more competitive prices, and promote the more efficient use of and investment in infrastructure.

The ACCC considered that the class exemptions should apply in the same geographic areas (same ESAs) as the individual exemption orders, and should commence on the same day as the individual exemption orders.⁸

⁶ Optus, *Draft decision on proposed variation of WLR, LCS and PSTN OA class exemptions*, 23 October 2009. TransACT Capital Communications Pty Ltd, *Submission on Australian Competition and Consumer Commission Proposed variation of WLR, LCS and PSTN OA class exemptions draft decision*, October 2009, p. 2.

⁷ *Trade Practices Act 1974* (Cth), section 152AB.

⁸ ACCC, *Telstra's local carriage service and wholesale line rental exemption applications Final Decision and Class Exemption*, August 2008, pp 135-136.
ACCC, *Telstra's PSTN Originating Access exemption applications – CBD and Metropolitan areas, Final Decision and Class Exemption*, October 2008, pp 158-159.

The Tribunal has now varied the WLR, LCS and PSTN OA (metropolitan) individual exemption orders so that they will take practical effect at a different date and, most likely, in different ESAs to the current class exemptions for these services.

In varying the individual exemptions, the Tribunal noted that promoting competition is typically achieved by increasing the number of firms serving a market or by increasing the degree of competition between existing players in the market through increasing the opportunities for interactive rivalry in the price-product-service package.⁹ The Tribunal considered that competition is likely to be promoted if deregulation (i.e. granting the individual exemptions) takes place in a market where an entrant or small current player has taken, or has the physical capacity and willingness to take, market share from the large or dominant incumbent, by offering end-users a better price-product-service package.¹⁰ The Tribunal was of the opinion that if competition is promoted then efficient investment will be encouraged.¹¹ The Tribunal noted that granting the individual exemptions would have no impact on any-to-any connectivity.¹²

The ACCC notes TransACT's submission in relation to the interpretation of 'Exemption ESA' and 'Aggregate Market Share' in the individual exemption orders. The ACCC considers that TransACT's views relate to the substance of the individual exemption orders rather than the desirability of aligning the operation of the class exemption orders with the individual exemption orders, which TransACT supports. The purpose of the variation is to ensure consistency between the class and individual exemption orders. Therefore, the ACCC's changes to the class exemption orders are limited in nature and there have been no variations to the definitions of 'Exemption ESA' or 'Aggregate Market Share'.

The ACCC's view is that it will promote the LTIE to have class exemptions in respect of the WLR, LCS and PSTN OA services which operate in the same areas and at the same time as the individual exemption orders in favour of Telstra for these services.

In particular, the ACCC considers that the varied class exemptions will ensure incentives for other access providers to supply wholesale voice services are maintained, thereby promoting competition in related fixed voice markets and encouraging efficient investment in infrastructure.

Therefore, the ACCC's view is that varying the class exemptions so that they apply in the same ESAs and take practical effect at the same time as the Tribunal's individual exemptions orders will promote the LTIE.

Copies of the unsigned variation instruments are at **Appendices B, E and H** with accompanying explanatory statements at **Appendices C, F and I**.

⁹ Application by Chime Communications Pty Ltd (No 2) [2009] ACompT 2 (27 May 2009) at [150].

¹⁰ Application by Chime Communications Pty Ltd (No 2) [2009] ACompT 2 (27 May 2009) at [159].

¹¹ Application by Chime Communications Pty Ltd (No 2) [2009] ACompT 2 (27 May 2009) at [165].

¹² Application by Chime Communications Pty Ltd (No 2) [2009] ACompT 2 (27 May 2009) at [[164].

APPENDIX A: COPY OF WLR CLASS EXEMPTION

TRADE PRACTICES ACT 1974

Determination under subsection 152AS(1) by the Australian Competition and Consumer Commission

Class exemption from standard access obligations in respect of WLR

1. Title

This Determination may be cited as Class Exemption Determination No. 2 of 2008.

2. Commencement and Expiry

- (1) This Determination comes into effect 12 months after the date of release of the Commission's Final Decision on Telstra's applications for an individual exemption from the Standard Access Obligations in respect of WLR lodged on 9 July 2007 and 12 October 2007.
- (2) This Determination will expire on 31 December 2012 or the expiry or revocation of the WLR Declaration or the ULLS Declaration, whichever occurs first.

3. Interpretation

- (1) Unless the contrary intention appears, where the words or phrases used in this Determination are defined in the Act, the *Telecommunications Act 1997*, or the instrument declaring the declared service, those words or phrases have the same meaning in this Determination.
- (2) In this Determination, unless the contrary intention appears –

Attachment A ESAs means the ESAs listed in Attachment A to this Determination.

Commission means the Australian Competition and Consumer Commission.

Declared Service means LCS.

Exchange Service Area or ESA has the meaning given to that phrase by the Australian Communications Industry Forum Limited definition in ACIF C559:2006, Part 1.

Specified Class of Carriage Service Provider means the class of carriage service provider specified in Item 5 of this Determination.

Specified Class of Carrier means the class of carrier specified in Item 4 of this Determination.

Standard Access Obligations means the standard access obligations in section 152AR of the Act.

Telstra means Telstra Corporation Limited (ACN 051 775 556)

the Act means the *Trade Practices Act 1974*.

ULLS means the Unconditioned Local Loop Service declared by the Commission under subsection 152AL(3) of the Act pursuant to the ULLS Declaration.

ULLS Declaration means the declaration made by the Commission under section 152AL(3) of the Act in respect of the ULLS with effect from 1 August 2006 and published in the Commonwealth of Australia Gazette No. GN31 of 9 August 2006, as varied from time to time.

Note: The Commission may extend or further extend the expiry date of the ULLS Declaration under subsection 152ALA(4) of the Act.

WLR means the Line Rental Service (also known as Wholesale Line Rental) declared by the Commission under subsection 152AL(3) of the Act pursuant to the WLR Declaration.

WLR Declaration means the declaration made by the Commission under section 152AL(3) of the Act in respect of the WLR with effect from 1 August 2006 and published in the *Commonwealth of Australia Gazette* No. GN 31 of 9 August 2006, as varied from time to time.

Note: The Commission may extend or further extend the expiry date of the WLR Declaration under subsection 152ALA(4) of the Act.

4. Specified class of carrier

The class of carrier which is specified for the purpose of this Determination is the class of all carriers except Telstra.

5. Specified class of carriage service provider

The class of carriage service provider which is specified for the purpose of this Determination is the class of all carriage service providers except Telstra.

6. Exemption

Each member of the Specified Class of Carrier and each member of the Specified Class of Carriage Service Provider is exempt from the Standard Access Obligations in respect of the supply of WLR within the Attachment A ESAs.



.....
Chairperson

DATED: 22 August 2008

ATTACHMENT A

ESA Code	ESA NAME	STATE
AARE	ACACIA RIDGE	QLD
ABON	ALBION	QLD
ACOT	ASCOT	QLD
APPX	APPLECROSS	WA
ARMD	ARMADALE	WA
ASCT	ASCOT	VIC
ASHF	ASHFIELD	NSW
ASOT	ASCOT	WA
ATTA	ATTADALE	WA
BALC	BALACLAVA	VIC
BALG	BALGOWLAH	NSW
BALM	BALMAIN	NSW
BANK	BANKSTOWN	NSW
BATA	BATEMAN	WA
BAYR	BAYSWATER	VIC
BBEG	BUNDABERG	QLD
BEEL	BEENLEIGH	QLD
BELG	BELGRAVE	VIC
BELM	BELMONT	VIC
BEND	BENDIGO	VIC
BKWD	BLACKWOOD	SA
BLAC	BLACKTOWN	NSW
BLBN	BLACKBURN	VIC
BLCN	BELCONNEN	ACT
BOND	BONDI	NSW
BOTA	BOTANY	NSW
BRAT	BALLARAT	VIC
BRIH	BRIGHTON	SA
BRUK	BRUNSWICK	VIC
BSDN	BASSEDEAN	WA
BURD	BURWOOD	NSW
BURL	BURLEIGH HEADS	QLD
CAMP	CAMPSIE	NSW
CANN	CANNINGTON	WA
CARR	CARRAMAR	NSW
CAST	CASTLE HILL	NSW
CAUL	CAULFIELD	VIC
CBRG	COBURG	VIC
CBTN	CAMPBELLTOWN	NSW
CFSH	COFFS HARBOUR	NSW
CHAT	CHATSWOOD	NSW
CHDE	CHERMSIDE	QLD
CHPL	CHAPEL HILL	QLD
CLAY	CLAYTON	VIC
CLVL	CLEVELAND	QLD
CMLL	CAMBERWELL	VIC
CNVL	CANNING VALE	WA

ESA Code	ESA NAME	STATE
COOG	COOGEE	NSW
CPHL	CAMP HILL	QLD
CPRO	COORPAROO	QLD
CRBY	CANTERBURY	VIC
CRCF	CRACE	ACT
CREM	CREMORNE	NSW
CRON	CRONULLA	NSW
CRSX	CAIRNS	QLD
CRYD	CROYDON	SA
CSEA	CHELSEA	VIC
CTAM	CHELTENHAM	VIC
CTOE	COTTESLOE	WA
CTON	CARLTON	VIC
CVIC	CIVIC	ACT
CWOD	COLLINGWOOD	VIC
DAND	DANDENONG	VIC
DBLV	DOUBLEVIEW	WA
DEEW	DEE WHY	NSW
DKIN	DEAKIN	ACT
DONC	DONCASTER	VIC
EAST	EAST	NSW
EDGE	EDGECLIFF	NSW
EDWN	EDWARDSTOWN	SA
ELSK	ELSTERNWICK	VIC
ELTM	ELTHAM	VIC
EMPS	EIGHT MILE PLAINS	QLD
EPPI	EPPING	NSW
ERPK	EDENSOR PARK	NSW
ESPK	ERSKINE PARK	NSW
EWOO	EASTWOOD	NSW
EZBH	ELIZABETH	SA
FIVE	FIVE DOCK	NSW
FMTL	FREMANTLE	WA
FREN	FRENCHS FOREST	NSW
FSRY	FOOTSCRAY	VIC
FTON	FLEMINGTON	VIC
GBRH	GREENSBOROUGH	VIC
GEEM	GEELONG	VIC
GIRR	GIRRAWHEEN	WA
GLEB	GLEBE	NSW
GLLG	GLENELG	SA
GNGE	GOLDEN GROVE	SA
GPCS	GEPPS CROSS	SA
GRAN	GRANVILLE	NSW
GSFD	GOSFORD	NSW
GUGA	GLENUNGA	SA
GULL	GULLIVER	QLD
HAMN	HAMILTON	NSW
HAMS	HAMERSLEY	WA

ESA Code	ESA NAME	STATE
HARB	HARBORD	NSW
HAWN	HAWTHORN	VIC
HDBG	HEIDELBERG	VIC
HGTT	HIGHETT	VIC
HILN	HILTON	WA
HNLY	HENLEY BEACH	SA
HOLS	HOLSWORTHY	NSW
HOME	HOME BUSH	NSW
HORN	HORNSBY	NSW
HPSD	HAMPSTEAD	SA
HTLL	HARTWELL	VIC
HURS	HURSTVILLE	NSW
IALA	INALA	QLD
INGL	INGLEBURN	NSW
IPSW	IPSWICH	QLD
JKOT	JANDAKOT	WA
JREE	JAMBOREE HEIGHTS	QLD
KELL	KELLYVILLE	NSW
KENS	KENSINGTON	NSW
KLGR	KALLANGUR	QLD
KOGA	KOGARAH	NSW
KSLY	KINGSLEY	WA
KYNG	KOOYONG	VIC
LAKE	LAKEMBA	NSW
LANE	LANE COVE	NSW
LCHE	LUTWYCHE	QLD
LIDC	LIDCOMBE	NSW
LIVE	LIVERPOOL	NSW
LNYN	LANYON	ACT
MADD	MADDINGTON	WA
MALV	MALVERN	VIC
MANL	MANLY	NSW
MARO	MAROUBRA	NSW
MASC	MASCOT	NSW
MAYM	MAYLANDS	WA
MCHN	MITCHELTON	QLD
MDBY	MODBURY	SA
MDLD	MIDLAND	WA
MENA	MENAI	NSW
MGAT	MOUNT GRAVATT	QLD
MHAW	MOUNT HAWTHORN	WA
MILD	MILDURA	VIC
MILL	MILLER	NSW
MINT	MINTO	NSW
MIRA	MIRANDA	NSW
MITM	MITCHAM	VIC
MLBA	MELBA	ACT
MLEY	MORLEY	WA

ESA Code	ESA NAME	STATE
MLND	MORELAND	VIC
MLOC	MORDIALLOC	VIC
MLOO	MULLALOO	WA
MNNG	MANNING	WA
MONA	MONA VALE	NSW
MOSM	MOSMAN	NSW
MWSN	MAWSON	ACT
NALE	NORTH ADELAIDE	SA
NAWN	NARRE WARREN	VIC
NCOE	NORTHCOTE	VIC
NDAH	NUNDAH	QLD
NDLN	NEDLANDS	WA
NEWT	NEWTOWN	NSW
NLTN	NEW LAMBTON	NSW
NMEL	NORTH MELBOURNE	VIC
NMKT	NEWMARKET	QLD
NPAR	NORTH PARRAMATTA	NSW
NPRT	NEWPORT	VIC
NRWD	NORWOOD	SA
NRYD	NORTH RYDE	NSW
NSYD	NORTH SYDNEY	NSW
NWFM	NEW FARM	QLD
OAKL	OAKLEIGH	VIC
ORGF	ORANGE	NSW
ORMD	ORMOND	VIC
PARR	PARRAMATTA	NSW
PDTN	PADDINGTON	QLD
PEND	PENDLE HILL	NSW
PENN	PENNANT HILLS	NSW
PETE	PETERSHAM	NSW
PMEL	PORT MELBOURNE	VIC
PNTH	PENRITH	NSW
PRDS	PARADISE	SA
PROT	PROSPECT	SA
PRTN	PRESTON	VIC
PTAD	PORT ADELAIDE	SA
PYMB	PYMBLE	NSW
QUAK	QUAKERS HILL	NSW
RAND	RANDWICK	NSW
RCMD	RICHMOND	VIC
REDF	REDFERN	NSW
RELA	REYNELLA	SA
REVE	REVESBY	NSW
RIVT	RIVERTON	WA
ROCK	ROCKDALE	NSW
ROOT	ROOTY HILL	NSW
RSVR	RESERVOIR	VIC
RWOD	RINGWOOD	VIC

ESA Code	ESA NAME	STATE
RYDA	RYDALMERE	NSW
RYDE	RYDE	NSW
SALA	SALISBURY	SA
SALB	ST ALBANS	VIC
SCLN	SCULLIN	ACT
SCOY	SCORESBY	VIC
SEAF	SEAFORD	VIC
SEMC	SEMAPHORE	SA
SEVE	SEVEN HILLS	NSW
SHPN	SHEPPARTON	VIC
SILV	SILVERWATER	NSW
SLAC	SLACKS CREEK	QLD
SMEL	SOUTH MELBOURNE	VIC
SMRN	SOUTH MORANG	VIC
SOAK	SOUTH OAKLEIGH	VIC
SOPT	SOUTHPORT	QLD
SOTH	SOUTH BRISBANE	QLD
SPLE	SPRINGVALE	VIC
SPTH	SOUTH PERTH	WA
SRWD	SHERWOOD	QLD
SSBY	SALISBURY	QLD
STKA	ST KILDA	VIC
STLE	ST LEONARDS	NSW
STMA	ST MARYS	NSW
STMF	ST MARYS	SA
STPE	ST PETERS	SA
SUBT	SUBIACO	WA
SURF	SURFERS PARADISE	QLD
SYBK	SUNNYBANK	QLD
SYRA	SOUTH YARRA	VIC
THTN	THOMASTOWN	VIC
TMNE	TULLAMARINE	VIC
TNBY	THORNBURY	VIC
TOBF	TOOWOOMBA	QLD
TRAK	TOORAK	VIC
TUTT	TUART HILL	WA
TWOG	TOOWONG	QLD
TYHO	TALLY HO	VIC
UNDE	UNDERCLIFFE	NSW
UNLY	UNLEY	SA
VICP	VICTORIA PARK	WA
VLLY	VALLEY	QLD
WAVE	WAVERLEY	NSW
WDVL	WOODVILLE	SA
WESA	WEST ADELAIDE	SA
WETH	WETHERILL PARK	NSW
WHLL	WHEELERS HILL	VIC
WIRC	WINDSOR	VIC

ESA Code	ESA NAME	STATE
WLGG	WOLLONGONG	NSW
WMBY	WEMBLEY	WA
WOBB	WOOLLOONGABBA	QLD
WOLF	WOLFE	NSW
WOYY	WOY WOY	NSW
WRNA	WANTIRNA	VIC
YRGA	YERONGA	QLD
ZMRE	ZILLMERE	QLD

APPENDIX B: COPY OF WLR CLASS EXEMPTION VARIATION INSTRUMENT

TRADE PRACTICES ACT 1974

Variation of Determination made under subsection 152AS(1) by the Australian Competition and Consumer Commission

Variation of Class exemption from standard access obligations in respect of WLR

1. Title

This Determination may be cited as Class Exemption (Variation) Determination No. 1 of 2009.

2. Commencement

This Determination comes into effect on the date this Determination is made.

3. Variation

Class Exemption Determination No. 2 of 2008 is hereby varied as set out below.

- (1) Paragraph 2(2) is deleted and the following paragraph is substituted in its place:

“This Determination will expire

- (a) five years after 24 August 2009; or
- (b) upon revocation of either the WLR Declaration, or the ULLS Declaration, whichever first occurs.”

- (2) In respect of paragraph 3(2), the definition of *Attachment A ESAs* is deleted and the following definition for *Exemption ESA List* is inserted:

“*Exemption ESA List* means the list of Exemption ESAs published by the Commission on its website pursuant to paragraph 6.1(b) of the Australian Competition Tribunal’s 2009 WLR Individual Exemption Order dated 24 August 2009.”

(3) Paragraph 6 is deleted and the following paragraphs are substituted in its place:

“Exemption

6. Subject to paragraph 7, each member of the Specified Class of Carrier and each member of the Specified Class of Carriage Service Provider is exempt from the Standard Access Obligations in respect of the supply of WLR within those ESAs included in the list of Exemption ESAs published by the Commission on its website pursuant to paragraph 6.1(b) of the Australian Competition Tribunal’s 2009 WLR Individual Exemption Order dated 24 August 2009.

7. The Exemption does not have effect with respect to a particular ESA until 6 months after the publication date of the Exemption ESA List on which that ESA first appears.”

(4) Attachment A is deleted.

[Signed]

.....

Graeme Julian Samuel

Chairman

DATED: 2009

APPENDIX C: EXPLANATORY STATEMENT

EXPLANATORY STATEMENT

Issued by the Australian Competition and Consumer Commission

**Class Exemption (Variation) Determination No. 1 of 2009 in respect
of WLR**

Trade Practices Act 1974

Legislative Provisions

Section 152AS of the *Trade Practices Act 1974* (the TPA) provides that the Australian Competition and Consumer Commission (ACCC) may make, by written instrument, a class determination exempting each of the members of a specified class of carrier or of a specified class of carriage service provider from any or all of the standard access obligations (SAOs) referred to in section 152AR of the TPA.

A class determination under section 152AS of the TPA may be unconditional or subject to such conditions or limitations as are specified in the determination.

The ACCC must not make a class determination under section 152AS of the TPA unless the ACCC is satisfied that the making of the determination will promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services (LTIE), as further defined in section 152AB of the TPA.

The instrument setting out the class determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Purpose

The purpose of the variation instrument is to vary the existing WLR class determination made by the ACCC in August 2008, to align it with the WLR individual exemption order made by the Australian Competition Tribunal on 24 August 2009.

Background

The wholesale line rental (WLR) service involves the provision of a basic line rental service that allows the end-user to connect to the access provider's public switched telephone network (PSTN). It provides the end-user with:

- the ability to make and receive standard PSTN voice calls; and
- a telephone number.

The ACCC decided to extend the expiry date of the declaration of the WLR under section 152ALA of the TPA from 31 July 2009 for five years. The WLR had previously been declared by the ACCC in July 1999 and August 2006. Declaration means that an access provider supplying the WLR is subject to a number of SAOs pursuant to section 152AR of the TPA. Terms of access can be governed by commercial negotiation, the terms of an access undertaking or, in the absence of an accepted access undertaking, by ACCC determination in an access dispute.

On 9 July 2007 and 12 October 2007, Telstra Corporation Limited (Telstra) lodged two applications with the ACCC under section 152AT of the TPA seeking individual exemptions from the SAOs in respect of the supply by Telstra of the WLR in a total of 387 Exchange Service Areas (ESAs) in metropolitan areas of Australia (the Exemption Applications).

At that time, the ACCC decided to consider whether a class determination should be granted to members of a specified class of carrier or of a specified class of carriage service provider from any or all of the SAOs in conjunction with its consideration of whether to make the orders sought by Telstra in its Exemption Applications.

The ACCC decided to make individual exemption orders under section 152AT with respect to Telstra's supply of the WLR (the WLR individual exemption orders), but specified a number of conditions.

Following consultation with parties, the ACCC determined that making a class exemption in favour of carriers and carriage service providers other than Telstra under section 152AS of the TPA would promote the LTIE as it would promote competition in the fixed voice market (principally by the promotion of Unconditioned Local Loop Service-based competition), with flow-on competition benefits to end-users, and would promote more efficient use of and investment in infrastructure.

The ACCC found that it would promote the LTIE to grant a class exemption from the SAOs as they relate to the supply of the WLR in those Exchange Service Areas (ESAs) covered by the WLR individual exemption orders.

The ACCC also found that the class exemption should commence on the same day as Telstra's WLR individual exemption orders. It would not promote the LTIE for the class exemption to commence any earlier than Telstra's WLR individual exemption orders because such an outcome would undermine the rationale for granting the exemptions.

The ACCC was also of the view that the LTIE would be promoted without the imposition of conditions on the class determination. Accordingly, the class determination was not made subject to conditions.

Following review in the Australian Competition Tribunal (the Tribunal) of the ACCC's decision to grant WLR individual exemption orders, the Tribunal decided to vary the WLR individual exemption orders.

There are two aspects of the Tribunal's decision that are of particular relevance to the ACCC's original WLR class exemption. The first is that the Tribunal's decision varies the process for determining which ESAs are exempt under the WLR individual

exemption orders. This is likely to result in a different exemption footprint under the Tribunal's WLR individual exemption orders than that specified in the ACCC's original WLR class exemption. The second is that the Tribunal's decision changes the dates under which the WLR individual exemption comes into practical operation with the result that the dates of practical operation of the individual exemption orders and the ACCC's original class exemption no longer align.

Variation to WLR Class Exemption Determination

The ACCC has decided to vary the WLR class exemption determination to ensure it is consistent with the Tribunal's WLR individual exemption orders in relation to the ESAs subject to the orders and the dates of practical operation of the orders.

The ACCC's view is that varying the class exemption in this manner ensures incentives for other potential access providers to invest in infrastructure and provide wholesale voice services are not diminished. The ACCC's view is that such incentives promote competition and efficient investment in infrastructure. Therefore, the ACCC's view is that the proposed variation would promote the LTIE.

The variations are set out below.

- Item 1 varies paragraph 2 of the original class exemption determination. The expiry date is varied to be consistent with that specified in the Tribunal's WLR individual exemption orders.
- Item 2 varies paragraph 3 of the original class exemption determination. The definition of 'Attachment A' is deleted and the definition of 'Exemption ESA List' (adopting the same definition as that contained in the Tribunal's WLR individual exemption orders) is inserted.
- Item 3 deletes paragraph 6 of the original class exemption determination and inserts new paragraphs 6 and 7. This ensures the area in which the class exemption applies and when it takes practical effect are the same as the Tribunal's WLR individual exemption orders. The new paragraph 6 adopts as the class exemption footprint the list of Exemption ESAs as published by the ACCC on its website pursuant to the WLR individual exemption orders. The new paragraph 7 provides that the class exemption does not have effect with respect to a particular ESA until 6 months after its first appearance on that list of Exemption ESAs.
- Item 4 deletes Attachment A. This ensures the geographic area in which the class exemption applies is the same as the Tribunal's WLR individual exemption orders.

Tribunal's WLR individual exemption order

The Tribunal's WLR individual exemption order as referenced in the variation instrument was made on 24 August 2009 following an application for merits review of the ACCC's WLR individual exemption orders. The Tribunal's WLR individual exemption order is available on the ACCC's website at <http://intranet.accc.gov.au/content/index.phtml/itemId/1085943>.

Consultation

On 14 October 2009, the ACCC published the proposed variation to the class exemption determination for public comment. The variation instrument setting out the proposed variation to the class exemption determination was published on the ACCC's website (www.accc.gov.au) and a media release was issued. Interested stakeholders were asked to make submissions to the ACCC by 5.00pm, 23 October 2009.

The ACCC received two submissions - one from TransACT Capital Communications and one from Optus. Both submissions supported the proposed variation.

The ACCC considered the submissions in deciding to vary the class exemption determination.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not necessary for the variations to this class exemption determination.

APPENDIX D: COPY OF LCS CLASS EXEMPTION

TRADE PRACTICES ACT 1974

Determination under subsection 152AS(1) by the Australian Competition and Consumer Commission

Class exemption from standard access obligations in respect of LCS

1. Title

This Determination may be cited as Class Exemption Determination No. 1 of 2008.

2. Commencement and Expiry

- (1) This Determination comes into effect 12 months after the date of release of the Commission's Final Decision on Telstra's applications for an individual exemption from the Standard Access Obligations in respect of LCS lodged on 9 July 2007 and 12 October 2007.
- (2) This Determination will expire on 31 December 2012 or the expiry or revocation of the LCS Declaration or the ULLS Declaration, whichever occurs first.

3. Interpretation

- (1) Unless the contrary intention appears, where the words or phrases used in this Determination are defined in the Act, the *Telecommunications Act 1997*, or the instrument declaring the declared service, those words or phrases have the same meaning in this Determination.
- (2) In this Determination, unless the contrary intention appears –

Attachment A ESAs means the ESAs listed in Attachment A to this Determination.

Commission means the Australian Competition and Consumer Commission.

Declared Service means LCS.

Exchange Service Area or *ESA* has the meaning given to that phrase by the Australian Communications Industry Forum Limited definition in ACIF C559:2006, Part 1.

LCS means the Local Carriage Service declared by the Commission under subsection 152AL(3) of the Act pursuant to the LCS Declaration.

LCS Declaration means the declaration made by the Commission under section 152AL(3) of the Act in respect of the LCS with effect from 1 August

2006 and published in the *Commonwealth of Australia Gazette* No. GN 31 of 9 August 2006, as varied from time to time.

Note: The Commission may extend or further extend the expiry date of the LCS Declaration under subsection 152ALA(4) of the Act.

Specified Class of Carriage Service Provider means the class of carriage service provider specified in Item 5 of this Determination.

Specified Class of Carrier means the class of carrier specified in Item 4 of this Determination.

Standard Access Obligations means the standard access obligations in section 152AR of the Act.

Telstra means Telstra Corporation Limited (ACN 051 775 556)

the Act means the *Trade Practices Act 1974*.

ULLS means the Unconditioned Local Loop Service declared by the Commission under subsection 152AL(3) of the Act pursuant to the ULLS Declaration.

ULLS Declaration means the declaration made by the Commission under section 152AL(3) of the Act in respect of the ULLS with effect from 1 August 2006 and published in the *Commonwealth of Australia Gazette* No. GN31 of 9 August 2006, as varied from time to time.

Note: The Commission may extend or further extend the expiry date of the ULLS Declaration under subsection 152ALA(4) of the Act.

4. Specified class of carrier

The class of carrier which is specified for the purpose of this Determination is the class of all carriers except Telstra.

5. Specified class of carriage service provider

The class of carriage service provider which is specified for the purpose of this Determination is the class of all carriage service providers except Telstra.

6. Exemption

Each member of the Specified Class of Carrier and each member of the Specified Class of Carriage Service Provider is exempt from the Standard Access Obligations in respect of the supply of LCS within the Attachment A ESAs.



.....
Chairperson
DATED: 22 August 2008

ATTACHMENT A

ESA Code	ESA NAME	STATE
AARE	ACACIA RIDGE	QLD
ABON	ALBION	QLD
ACOT	ASCOT	QLD
APPX	APPLECROSS	WA
ARMD	ARMADALE	WA
ASCT	ASCOT	VIC
ASHF	ASHFIELD	NSW
ASOT	ASCOT	WA
ATTA	ATTADALE	WA
BALC	BALACLAVA	VIC
BALG	BALGOWLAH	NSW
BALM	BALMAIN	NSW
BANK	BANKSTOWN	NSW
BATA	BATEMAN	WA
BAYR	BAYSWATER	VIC
BBEG	BUNDABERG	QLD
BEEL	BEENLEIGH	QLD
BELG	BELGRAVE	VIC
BELM	BELMONT	VIC
BEND	BENDIGO	VIC
BKWD	BLACKWOOD	SA
BLAC	BLACKTOWN	NSW
BLBN	BLACKBURN	VIC
BLCN	BELCONNEN	ACT
BOND	BONDI	NSW
BOTA	BOTANY	NSW
BRAT	BALLARAT	VIC
BRIH	BRIGHTON	SA
BRUK	BRUNSWICK	VIC
BSDN	BASSENDEAN	WA
BURD	BURWOOD	NSW
BURL	BURLEIGH HEADS	QLD
CAMP	CAMPSIE	NSW
CANN	CANNINGTON	WA
CARR	CARRAMAR	NSW
CAST	CASTLE HILL	NSW
CAUL	CAULFIELD	VIC
CBRG	COBURG	VIC
CBTN	CAMPBELLTOWN	NSW
CFSH	COFFS HARBOUR	NSW
CHAT	CHATSWOOD	NSW
CHDE	CHERMSIDE	QLD
CHPL	CHAPEL HILL	QLD
CLAY	CLAYTON	VIC
CLVL	CLEVELAND	QLD
CMLL	CAMBERWELL	VIC

ESA Code	ESA NAME	STATE
CNVL	CANNING VALE	WA
COOG	COOGEE	NSW
CPHL	CAMP HILL	QLD
CPRO	COORPAROO	QLD
CRBY	CANTERBURY	VIC
CRCF	CRACE	ACT
CREM	CREMORNE	NSW
CRON	CRONULLA	NSW
CRSX	CAIRNS	QLD
CRYD	CROYDON	SA
CSEA	CHELSEA	VIC
CTAM	CHELTENHAM	VIC
CTOE	COTTESLOE	WA
CTON	CARLTON	VIC
CVIC	CIVIC	ACT
CWOD	COLLINGWOOD	VIC
DAND	DANDENONG	VIC
DBLV	DOUBLEVIEW	WA
DEEW	DEE WHY	NSW
DKIN	DEAKIN	ACT
DONC	DONCASTER	VIC
EAST	EAST	NSW
EDGE	EDGECLIFF	NSW
EDWN	EDWARDSTOWN	SA
ELSK	ELSTERNWICK	VIC
ELTM	ELTHAM	VIC
EMPS	EIGHT MILE PLAINS	QLD
EPPI	EPPING	NSW
ERPK	EDENSOR PARK	NSW
ESPK	ERSKINE PARK	NSW
EWOO	EASTWOOD	NSW
EZBH	ELIZABETH	SA
FIVE	FIVE DOCK	NSW
FMTL	FREMANTLE	WA
FREN	FRENCHS FOREST	NSW
FSRY	FOOTSCRAY	VIC
FTON	FLEMINGTON	VIC
GBRH	GREENSBOROUGH	VIC
GEEM	GEELONG	VIC
GIRR	GIRRAWHEEN	WA
GLEB	GLEBE	NSW
GLLG	GLENELG	SA
GNGE	GOLDEN GROVE	SA
GPCS	GEPPS CROSS	SA
GRAN	GRANVILLE	NSW
GSFD	GOSFORD	NSW
GUGA	GLENUNGA	SA
GULL	GULLIVER	QLD
HAMN	HAMILTON	NSW

ESA Code	ESA NAME	STATE
HAMS	HAMERSLEY	WA
HARB	HARBORD	NSW
HAWN	HAWTHORN	VIC
HDBG	HEIDELBERG	VIC
HGTT	HIGHETT	VIC
HILN	HILTON	WA
HNLY	HENLEY BEACH	SA
HOLS	HOLSWORTHY	NSW
HOME	HOME BUSH	NSW
HORN	HORNSBY	NSW
HPSD	HAMPSTEAD	SA
HTLL	HARTWELL	VIC
HURS	HURSTVILLE	NSW
IALA	INALA	QLD
INGL	INGLEBURN	NSW
IPSW	IPSWICH	QLD
JKOT	JANDAKOT	WA
JREE	JAMBOREE HEIGHTS	QLD
KELL	KELLYVILLE	NSW
KENS	KENSINGTON	NSW
KLGR	KALLANGUR	QLD
KOGA	KOGARAH	NSW
KSLY	KINGSLEY	WA
KYNG	KOOYONG	VIC
LAKE	LAKEMBA	NSW
LANE	LANE COVE	NSW
LCHE	LUTWYCHE	QLD
LIDC	LIDCOMBE	NSW
LIVE	LIVERPOOL	NSW
LNYN	LANYON	ACT
MADD	MADDINGTON	WA
MALV	MALVERN	VIC
MANL	MANLY	NSW
MARO	MAROUBRA	NSW
MASC	MASCOT	NSW
MAYM	MAYLANDS	WA
MCHN	MITCHELTON	QLD
MDBY	MODBURY	SA
MDLD	MIDLAND	WA
MENA	MENAI	NSW
MGAT	MOUNT GRAVATT	QLD
MHAW	MOUNT HAWTHORN	WA
MILD	MILDURA	VIC
MILL	MILLER	NSW
MINT	MINTO	NSW
MIRA	MIRANDA	NSW
MITM	MITCHAM	VIC
MLBA	MELBA	ACT

ESA Code	ESA NAME	STATE
MLEY	MORLEY	WA
MLND	MORELAND	VIC
MLOC	MORDIALLOC	VIC
MLOO	MULLALOO	WA
MNNG	MANNING	WA
MONA	MONA VALE	NSW
MOSM	MOSMAN	NSW
MWSN	MAWSON	ACT
NALE	NORTH ADELAIDE	SA
NAWN	NARRE WARREN	VIC
NCOE	NORTHCOTE	VIC
NDAH	NUNDAH	QLD
NDLN	NEDLANDS	WA
NEWT	NEWTOWN	NSW
NLTN	NEW LAMBTON	NSW
NMEL	NORTH MELBOURNE	VIC
NMKT	NEWMARKET	QLD
NPAR	NORTH PARRAMATTA	NSW
NPRT	NEWPORT	VIC
NRWD	NORWOOD	SA
NRYD	NORTH RYDE	NSW
NSYD	NORTH SYDNEY	NSW
NWFM	NEW FARM	QLD
OAKL	OAKLEIGH	VIC
ORGF	ORANGE	NSW
ORMD	ORMOND	VIC
PARR	PARRAMATTA	NSW
PDTN	PADDINGTON	QLD
PEND	PENDLE HILL	NSW
PENN	PENNANT HILLS	NSW
PETE	PETERSHAM	NSW
PMEL	PORT MELBOURNE	VIC
PNTH	PENRITH	NSW
PRDS	PARADISE	SA
PROT	PROSPECT	SA
PRTN	PRESTON	VIC
PTAD	PORT ADELAIDE	SA
PYMB	PYMBLE	NSW
QUAK	QUAKERS HILL	NSW
RAND	RANDWICK	NSW
RCMD	RICHMOND	VIC
REDF	REDFERN	NSW
RELA	REYNELLA	SA
REVE	REVESBY	NSW
RIVT	RIVERTON	WA
ROCK	ROCKDALE	NSW
ROOT	ROOTY HILL	NSW
RSVR	RESERVOIR	VIC

ESA Code	ESA NAME	STATE
RWOD	RINGWOOD	VIC
RYDA	RYDALMERE	NSW
RYDE	RYDE	NSW
SALA	SALISBURY	SA
SALB	ST ALBANS	VIC
SCLN	SCULLIN	ACT
SCOY	SCORESBY	VIC
SEAF	SEAFORD	VIC
SEMC	SEMAPHORE	SA
SEVE	SEVEN HILLS	NSW
SHPN	SHEPPARTON	VIC
SILV	SILVERWATER	NSW
SLAC	SLACKS CREEK	QLD
SMEL	SOUTH MELBOURNE	VIC
SMRN	SOUTH MORANG	VIC
SOAK	SOUTH OAKLEIGH	VIC
SOPT	SOUTHPORT	QLD
SOTH	SOUTH BRISBANE	QLD
SPLE	SPRINGVALE	VIC
SPTH	SOUTH PERTH	WA
SRWD	SHERWOOD	QLD
SSBY	SALISBURY	QLD
STKA	ST KILDA	VIC
STLE	ST LEONARDS	NSW
STMA	ST MARYS	NSW
STMF	ST MARYS	SA
STPE	ST PETERS	SA
SUBT	SUBIACO	WA
SURF	SURFERS PARADISE	QLD
SYBK	SUNNYBANK	QLD
SYRA	SOUTH YARRA	VIC
THTN	THOMASTOWN	VIC
TMNE	TULLAMARINE	VIC
TNBY	THORNBURY	VIC
TOBF	TOOWOOMBA	QLD
TRAK	TOORAK	VIC
TUTT	TUART HILL	WA
TWOG	TOOWONG	QLD
TYHO	TALLY HO	VIC
UNDE	UNDERCLIFFE	NSW
UNLY	UNLEY	SA
VICP	VICTORIA PARK	WA
VLLY	VALLEY	QLD
WAVE	WAVERLEY	NSW
WDVL	WOODVILLE	SA
WESA	WEST ADELAIDE	SA
WETH	WETHERILL PARK	NSW
WHLL	WHEELERS HILL	VIC

ESA Code	ESA NAME	STATE
WIRC	WINDSOR	VIC
WLGG	WOLLONGONG	NSW
WMBY	WEMBLEY	WA
WOBB	WOOLLOONGABBA	QLD
WOLF	WOLFE	NSW
WOYY	WOY WOI	NSW
WRNA	WANTIRNA	VIC
YRGA	YERONGA	QLD
ZMRE	ZILLMERE	QLD

APPENDIX E: COPY OF LCS CLASS EXEMPTION VARIATION INSTRUMENT

TRADE PRACTICES ACT 1974

Variation of Determination made under subsection 152AS(1) by the Australian Competition and Consumer Commission

Variation of Class exemption from standard access obligations in respect of LCS

1. Title

This Determination may be cited as Class Exemption (Variation) Determination No. 2 of 2009.

2. Commencement

This Determination comes into effect on the date this Determination is made.

3. Variation

Class Exemption Determination No. 1 of 2008 is hereby varied as set out below.

- (1) Paragraph 2(2) is deleted and the following paragraph is substituted in its place:

“This Determination will expire

- (a) five years after 24 August 2009; or
- (b) upon revocation of either the LCS Declaration, or the ULLS Declaration, whichever first occurs.”

- (2) In respect of paragraph 3(2), the definition of *Attachment A ESAs* is deleted and the following definition for *Exemption ESA List* is inserted:

“*Exemption ESA List* means the list of Exemption ESAs published by the Commission on its website pursuant to paragraph 6.1(b) of the Australian Competition Tribunal’s 2009 LCS Individual Exemption Order dated 24 August 2009.”

- (3) Paragraph 6 is deleted and the following paragraphs are substituted in its place:

“Exemption

6. Subject to paragraph 7, each member of the Specified Class of Carrier and each member of the Specified Class of Carriage Service Provider is exempt from the Standard Access Obligations in respect of the supply of LCS within those ESAs included in the list of Exemption ESAs published by the Commission on its website pursuant to paragraph 6.1(b) of the Australian Competition Tribunal’s 2009 LCS Individual Exemption Order dated 24 August 2009.

7. The Exemption does not have effect with respect to a particular ESA until 6 months after the publication date of the Exemption ESA List on which that ESA first appears.”

(4) Attachment A is deleted.

[Signed]

.....

Graeme Julian Samuel

Chairman

DATED: 2009

APPENDIX F: EXPLANATORY STATEMENT

EXPLANATORY STATEMENT

Issued by the Australian Competition and Consumer Commission

**Class Exemption (Variation) Determination No. 2 of 2009 in respect
of LCS**

Trade Practices Act 1974

Legislative Provisions

Section 152AS of the *Trade Practices Act 1974* (the TPA) provides that the Australian Competition and Consumer Commission (ACCC) may make, by written instrument, a class determination exempting each of the members of a specified class of carrier or of a specified class of carriage service provider from any or all of the standard access obligations (SAOs) referred to in section 152AR of the TPA.

A class determination under section 152AS of the TPA may be unconditional or subject to such conditions or limitations as are specified in the determination.

The ACCC must not make a class determination under section 152AS of the TPA unless the ACCC is satisfied that the making of the determination will promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services (LTIE), as further defined in section 152AB of the TPA.

The instrument setting out the class determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Purpose

The purpose of the variation instrument is to vary the existing LCS class determination made by the ACCC in August 2008, to align it with the LCS individual exemption order made by the Australian Competition Tribunal on 24 August 2009.

Background

The local carriage service (LCS) is a wholesale local call service. It involves the carriage of a telephone call from one end-user to another end-user in the same standard zone.

The ACCC decided to extend the expiry date of the declaration of the LCS under section 152ALA of the TPA from 31 July 2009 for five years. The LCS had previously been declared by the ACCC in July 1999 and August 2006. Declaration means that an access provider supplying the LCS is subject to a number of SAOs

pursuant to section 152AR of the TPA. Terms of access can be governed by commercial negotiation, the terms of an access undertaking or, in the absence of an accepted access undertaking, by ACCC determination in an access dispute.

On 9 July 2007 and 12 October 2007, Telstra Corporation Limited (Telstra) lodged two applications with the ACCC under section 152AT of the TPA seeking individual exemptions from the SAOs in respect of the supply by Telstra of the LCS in a total of 387 Exchange Service Areas (ESAs) in metropolitan areas of Australia (the Exemption Applications).

At that time, the ACCC decided to consider whether a class determination should be granted to members of a specified class of carrier or of a specified class of carriage service provider from any or all of the SAOs in conjunction with its consideration of whether to make the orders sought by Telstra in its Exemption Applications.

The ACCC decided to make individual exemption orders under section 152AT with respect to Telstra's supply of the LCS (the LCS individual exemption orders), but specified a number of conditions.

Following consultation with parties, the ACCC determined that making a class exemption in favour of carriers and carriage service providers other than Telstra under section 152AS of the TPA would promote the LTIE as it would promote competition in the fixed voice market (principally by the promotion of Unconditioned Local Loop Service-based competition), with flow-on competition benefits to end-users, and would promote more efficient use of and investment in infrastructure.

The ACCC found that it would promote the LTIE to grant a class exemption from the SAOs as they relate to the supply of the LCS in those Exchange Service Areas (ESAs) covered by the LCS individual exemption orders.

The ACCC also found that the class exemption should commence on the same day as Telstra's LCS individual exemption orders. It would not promote the LTIE for the class exemption to commence any earlier than Telstra's LCS individual exemption orders because such an outcome would undermine the rationale for granting the exemptions.

The ACCC was also of the view that the LTIE would be promoted without the imposition of conditions on the class determination. Accordingly, the class determination was not made subject to conditions.

Following review in the Australian Competition Tribunal (the Tribunal) of the ACCC's decision to grant LCS individual exemption orders, the Tribunal decided to vary the LCS individual exemption orders.

There are two aspects of the Tribunal's decision that are of particular relevance to the ACCC's original LCS class exemption. The first is that the Tribunal's decision varies the process for determining which ESAs are exempt under the LCS individual exemption orders. This is likely to result in a different exemption footprint under the Tribunal's LCS individual exemption orders than that specified in the ACCC's original LCS class exemption. The second is that the Tribunal's decision changes the dates under which the LCS individual exemption comes into practical operation with

the result that the dates of practical operation of the individual exemption orders and the ACCC's original class exemption no longer align.

Variation to LCS Class Exemption Determination

The ACCC has decided to vary the LCS class exemption determination to ensure it is consistent with the Tribunal's LCS individual exemption orders in relation to the ESAs subject to the orders and the dates of practical operation of the orders.

The ACCC's view is that varying the class exemption in this manner ensures incentives for other potential access providers to invest in infrastructure and provide wholesale voice services are not diminished. The ACCC's view is that such incentives promote competition and efficient investment in infrastructure. Therefore, the ACCC's view is that the proposed variation would promote the LTIE.

The variations are set out below.

- Item 1 varies paragraph 2 of the original class exemption determination. The expiry date is varied to be consistent with that specified in the Tribunal's LCS individual exemption orders.
- Item 2 varies paragraph 3 of the original class exemption determination. The definition of 'Attachment A' is deleted and the definition of 'Exemption ESA List' (adopting the same definition as that contained in the Tribunal's LCS individual exemption orders) is inserted.
- Item 3 deletes paragraph 6 of the original class exemption determination and inserts new paragraphs 6 and 7. This ensures the area in which the class exemption applies and when it takes practical effect are the same as the Tribunal's LCS individual exemption orders. The new paragraph 6 adopts as the class exemption footprint the list of Exemption ESAs as published by the ACCC on its website pursuant to the LCS individual exemption orders. The new paragraph 7 provides that the class exemption does not have effect with respect to a particular ESA until 6 months after its first appearance on that list of Exemption ESAs.
- Item 4 deletes Attachment A. This ensures the geographic area in which the class exemption applies is the same as the Tribunal's LCS individual exemption orders.

Tribunal's LCS individual exemption order

The Tribunal's LCS individual exemption order as referenced in the variation instrument was made on 24 August 2009 following an application for merits review of the ACCC's LCS individual exemption orders. The Tribunal's LCS individual exemption order is available on the ACCC's website at <http://intranet.accc.gov.au/content/index.phtml/itemId/1085943>.

Consultation

On 14 October 2009, the ACCC published the proposed variation to the class exemption determination for public comment. The variation instrument setting out the proposed variation to the class exemption determination was published on the ACCC's website (www.accc.gov.au) and a media release was issued. Interested stakeholders were asked to make submissions to the ACCC by 5.00pm, 23 October 2009.

The ACCC received two submissions - one from TransACT Capital Communications and one from Optus. Both submissions supported the proposed variation.

The ACCC considered the submissions in deciding to vary the class exemption determination.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not necessary for the variations to this class exemption determination.

APPENDIX G: COPY OF PSTN OA CLASS EXEMPTION

CLASS DETERMINATION in respect of the PSTN OA

TRADE PRACTICES ACT 1974

Determination under subsection 152AS(1) by the Australian Competition and Consumer Commission

Class exemption from standard access obligations in respect of PSTN OA

1. Title

This Determination may be cited as Class Exemption Determination No. 3 of 2008.

2. Commencement and Expiry

- (1) This Determination comes into effect on 29 October 2009.
- (2) This Determination will expire on 31 December 2012 or the expiry or revocation of the PSTN OA Declaration or the ULLS Declaration, whichever occurs first.

3. Interpretation

- (1) Unless the contrary intention appears, where the words or phrases used in this Determination are defined in the Act, the *Telecommunications Act 1997*, or the instrument declaring the declared service, those words or phrases have the same meaning in this Determination.
- (2) In this Determination, unless the contrary intention appears –

ACMA means the Australian Communications and Media Authority.

Attachment A ESAs means the ESAs listed in Attachment A to this Determination.

Carrier or Carriage Service Provider Specific Access Code means:

- i. an international Special Service Code (an 001X or 009X code or other equivalent code determined by ACMA); or
- ii. a VPN Access Code (an 188X code or other equivalent code determined by ACMA)

Commission means the Australian Competition and Consumer Commission.

Declared Service means PSTN OA.

Exchange Service Area or **ESA** has the meaning given to that phrase by the Australian Communications Industry Forum Limited definition in ACIF C559:2006, Part 1.

PSTN OA means the Domestic PSTN Originating Access service declared by the Commission under subsection 152AL(3) of the Act pursuant to the PSTN OA Declaration.

PSTN OA Declaration means the declaration made by the Commission under section 152AL(3) of the Act in respect of the Domestic PSTN OA with effect from 1 August 2006 and published in the *Commonwealth of Australia Gazette* No. GN 31 of 9 August 2006, as varied from time to time.

Note: The Commission may extend or further extend the expiry date of the PSTN OA Declaration under subsection 152ALA(4) of the Act.

Special Services Global Code means:

- a. a freephone service code (180X code)
- b. a charge card service code (189XX code)
- c. an information service code (190X code);
- d. a 13 and 1300 code; and
- e. other equivalent or replacement codes determined by ACMA.

Specified Class of Carriage Service Provider means the class of carriage service provider specified in Item 5 of this Determination.

Specified Class of Carrier means the class of carrier specified in Item 4 of this Determination.

Standard Access Obligations means the standard access obligations in section 152AR of the Act.

Telstra means Telstra Corporation Limited (ACN 051 775 556)

the Act means the *Trade Practices Act 1974*.

ULLS means the Unconditioned Local Loop Service declared by the Commission under subsection 152AL(3) of the Act pursuant to the ULLS Declaration.

ULLS Declaration means the declaration made by the Commission under section 152AL(3) of the Act in respect of the ULLS with effect from 1 August 2006 and published in the *Commonwealth of Australia Gazette* No. GN31 of 9 August 2006, as varied from time to time.

Note: The Commission may extend or further extend the expiry date of the ULLS Declaration under subsection 152ALA(4) of the Act.

4. Specified class of carrier

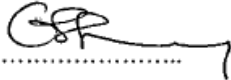
The class of carrier which is specified for the purpose of this Determination is the class of all carriers except Telstra.

5. Specified class of carriage service provider

The class of carriage service provider which is specified for the purpose of this Determination is the class of all carriage service providers except Telstra.

6. Exemption

Each member of the Specified Class of Carrier and each member of the Specified Class of Carriage Service Provider is exempt from the Standard Access Obligations in respect of the supply of PSTN OA within the Attachment A ESAs, except where PSTN OA is being provided in conjunction with a call dialled using a Special Services Global Code or a Carrier or Carriage Service Provider Specific Access Code.



.....
Graeme Julian Samuel
Chairman

DATED: 16th October 2008

ATTACHMENT A

Table 1: Metropolitan ESAs

ESA Code	ESA NAME	STATE
AARE	ACACIA RIDGE	QLD
ABON	ALBION	QLD
ACOT	ASCOT	QLD
APPX	APPLECROSS	WA
ARMD	ARMADALE	WA
ASCT	ASCOT	VIC
ASHF	ASHFIELD	NSW
ASOT	ASCOT	WA
ATTA	ATTADALE	WA
BALC	BALACLAVA	VIC
BALG	BALGOWLAH	NSW
BALM	BALMAIN	NSW
BANK	BANKSTOWN	NSW
BATA	BATEMAN	WA
BAYR	BAYSWATER	VIC
BBEG	BUNDABERG	QLD
BEEL	BEENLEIGH	QLD
BELG	BELGRAVE	VIC
BELM	BELMONT	VIC
BEND	BENDIGO	VIC
BKWD	BLACKWOOD	SA
BLAC	BLACKTOWN	NSW
BLBN	BLACKBURN	VIC
BLCN	BELCONNEN	ACT
BOND	BONDI	NSW
BOTA	BOTANY	NSW
BRAT	BALLARAT	VIC
BRIH	BRIGHTON	SA
BRUK	BRUNSWICK	VIC
BSDN	BASSENDAN	WA
BURD	BURWOOD	NSW
BURL	BURLEIGH HEADS	QLD
CAMP	CAMPSIE	NSW
CANN	CANNINGTON	WA
CARR	CARRAMAR	NSW
CAST	CASTLE HILL	NSW
CAUL	CAULFIELD	VIC
CBRG	COBURG	VIC
CBTN	CAMPBELLTOWN	NSW
CFSH	COFFS HARBOUR	NSW
CHAT	CHATSWOOD	NSW
CHDE	CHERMSIDE	QLD
CHPL	CHAPEL HILL	QLD
CLAY	CLAYTON	VIC
CLVL	CLEVELAND	QLD
CMLL	CAMBERWELL	VIC

ESA Code	ESA NAME	STATE
CNVL	CANNING VALE	WA
COOG	COOGEE	NSW
CPHL	CAMP HILL	QLD
CPRO	COORPAROO	QLD
CRBY	CANTERBURY	VIC
CRCF	CRACE	ACT
CREM	CREMORNE	NSW
CRON	CRONULLA	NSW
CRSX	CAIRNS	QLD
CRYD	CROYDON	SA
CSEA	CHELSEA	VIC
CTAM	CHELTENHAM	VIC
CTOE	COTTESLOE	WA
CTON	CARLTON	VIC
CVIC	CIVIC	ACT
CWOD	COLLINGWOOD	VIC
DAND	DANDENONG	VIC
DBLV	DOUBLEVIEW	WA
DEEW	DEE WHY	NSW
DKIN	DEAKIN	ACT
DONC	DONCASTER	VIC
EAST	EAST	NSW
EDGE	EDGECLIFF	NSW
EDWN	EDWARDSTOWN	SA
ELSK	ELSTERNWICK	VIC
ELTM	ELTHAM	VIC
EMPS	EIGHT MILE PLAINS	QLD
EPPI	EPPING	NSW
ERPK	EDENSOR PARK	NSW
ESPK	ERSKINE PARK	NSW
EWOO	EASTWOOD	NSW
EZBH	ELIZABETH	SA
FIVE	FIVE DOCK	NSW
FMTL	FREMANTLE	WA
FREN	FRENCHS FOREST	NSW
FSRY	FOOTSCRAY	VIC
FTON	FLEMINGTON	VIC
GBRH	GREENSBOROUGH	VIC
GEEM	GEELONG	VIC
GIRR	GIRRAWHEEN	WA
GLEB	GLEBE	NSW
GLLG	GLENELG	SA
GNGE	GOLDEN GROVE	SA
GPCS	GEPPS CROSS	SA
GRAN	GRANVILLE	NSW
GSFD	GOSFORD	NSW
GUGA	GLENUNGA	SA
GULL	GULLIVER	QLD

ESA Code	ESA NAME	STATE
HAMN	HAMILTON	NSW
HAMS	HAMERSLEY	WA
HARB	HARBORD	NSW
HAWN	HAWTHORN	VIC
HDBG	HEIDELBERG	VIC
HGTT	HIGHETT	VIC
HILN	HILTON	WA
HNLV	HENLEY BEACH	SA
HOLS	HOLSWORTHY	NSW
HOME	Homebush	NSW
HORN	HORNSBY	NSW
HPSD	HAMPSTEAD	SA
HTLL	HARTWELL	VIC
HURS	HURSTVILLE	NSW
IALA	INALA	QLD
INGL	INGLEBURN	NSW
IPSW	IPSWICH	QLD
JKOT	JANDAKOT	WA
JREE	JAMBOREE HEIGHTS	QLD
KELL	KELLYVILLE	NSW
KENS	KENSINGTON	NSW
KLGR	KALLANGUR	QLD
KOGA	KOGARAH	NSW
KSLY	KINGSLEY	WA
KYNG	KOONYONG	VIC
LAKE	LAKEMBA	NSW
LANE	LANE COVE	NSW
LCHE	LUTWYCHE	QLD
LIDC	LIDCOMBE	NSW
LIVE	LIVERPOOL	NSW
LNYN	LANYON	ACT
MADD	MADDINGTON	WA
MALV	MALVERN	VIC
MANL	MANLY	NSW
MARO	MAROUBRA	NSW
MASC	MASCOT	NSW
MAYM	MAYLANDS	WA
MCHN	MITCHELTON	QLD
MDBY	MODBURY	SA
MDLD	MIDLAND	WA
MENAI	MENAI	NSW
MGAT	MOUNT GRAVATT	QLD
MHAW	MOUNT HAWTHORN	WA
MILD	MILDURA	VIC
MILL	MILLER	NSW
MINT	MINTO	NSW
MIRA	MIRANDA	NSW

ESA Code	ESA NAME	STATE
MITM	MITCHAM	VIC
MLBA	MELBA	ACT
MLEY	MORLEY	WA
MLND	MORELAND	VIC
MLOC	MORDIALLOC	VIC
MLOO	MULLALOO	WA
MNNG	MANNING	WA
MONA	MONA VALE	NSW
MOSM	MOSMAN	NSW
MWSN	MAWSON	ACT
NALE	NORTH ADELAIDE	SA
NAWN	NARRE WARREN	VIC
NCOE	NORTHCOTE	VIC
NDAH	NUNDAH	QLD
NDLN	NEDLANDS	WA
NEWT	NEWTOWN	NSW
NLTN	NEW LAMBTON	NSW
NMEL	NORTH MELBOURNE	VIC
NMKT	NEWMARKET	QLD
NPAR	NORTH PARRAMATTA	NSW
NPRT	NEWPORT	VIC
NRWD	NORWOOD	SA
NRYP	NORTH RYDE	NSW
NSYD	NORTH SYDNEY	NSW
NWFM	NEW FARM	QLD
OAKL	OAKLEIGH	VIC
ORGF	ORANGE	NSW
ORMD	ORMOND	VIC
PARR	PARRAMATTA	NSW
PDTN	PADDINGTON	QLD
PEND	PENDLE HILL	NSW
PENN	PENNANT HILLS	NSW
PETE	PETERSHAM	NSW
PMEL	PORT MELBOURNE	VIC
PNTH	PENRITH	NSW
PRDS	PARADISE	SA
PROT	PROSPECT	SA
PRTN	PRESTON	VIC
PTAD	PORT ADELAIDE	SA
PYMB	PYMBLE	NSW
QUAK	QUAKERS HILL	NSW
RAND	RANDWICK	NSW
RCMD	RICHMOND	VIC
REDF	REDFERN	NSW
RELA	REYNELLA	SA
REVE	REVESBY	NSW
RIVT	RIVERTON	WA

ESA Code	ESA NAME	STATE
ROCK	ROCKDALE	NSW
ROOT	ROOTY HILL	NSW
RSVR	RESERVOIR	VIC
RWOD	RINGWOOD	VIC
RYDA	RYDALMERE	NSW
RYDE	RYDE	NSW
SALA	SALISBURY	SA
SALB	ST ALBANS	VIC
SCLN	SCULLIN	ACT
SCOY	SCORESBY	VIC
SEAF	SEAFORD	VIC
SEMC	SEMAPHORE	SA
SEVE	SEVEN HILLS	NSW
SHPN	SHEPPARTON	VIC
SILV	SILVERWATER	NSW
SLAC	SLACKS CREEK	QLD
SMEL	SOUTH MELBOURNE	VIC
SMRN	SOUTH MORANG	VIC
SOAK	SOUTH OAKLEIGH	VIC
SOPT	SOUTHPORT	QLD
SOTH	SOUTH BRISBANE	QLD
SPLE	SPRINGVALE	VIC
SPTH	SOUTH PERTH	WA
SRWD	SHERWOOD	QLD
SSBY	SALISBURY	QLD
STKA	ST KILDA	VIC
STLE	ST LEONARDS	NSW
STMA	ST MARYS	NSW
STMF	ST MARYS	SA
STPE	ST PETERS	SA
SUBT	SUBIACO	WA
SURF	SURFERS PARADISE	QLD
SYBK	SUNNYBANK	QLD
SYRA	SOUTH YARRA	VIC
THTN	THOMASTOWN	VIC
TMNE	TULLAMARINE	VIC
TNBY	THORNBURY	VIC
TOBF	TOOWOOMBA	QLD
TRAK	TOORAK	VIC
TUTT	TUART HILL	WA
TWOG	TOOWONG	QLD
TYHO	TALLY HO	VIC
UNDE	UNDERCLIFFE	NSW
UNLY	UNLEY	SA
VICP	VICTORIA PARK	WA
VLLY	VALLEY	QLD
WAVE	WAVERLEY	NSW

ESA Code	ESA NAME	STATE
WDVL	WOODVILLE	SA
WESA	WEST ADELAIDE	SA
WETH	WETHERILL PARK	NSW
WHLL	WHEELERS HILL	VIC
WIRC	WINDSOR	VIC
WLGG	WOLLONGONG	NSW
WMBY	WEMBLEY	WA
WOBB	WOOLLOONGABBA	QLD
WOLF	WOLFE	NSW
WOYY	WOY WOY	NSW
WRNA	WANTIRNA	VIC
YRGA	YERONGA	QLD
ZMRE	ZILLMERE	QLD

Table 2: CBD ESAs

ESA Code	ESA NAME	STATE
BATM	BATMAN	VIC
BWER	BULWER	WA
CHLT	CHARLOTTE	QLD
CYSH	CITY SOUTH	NSW
DALL	DALLEY	NSW
EDSN	EDISON	QLD
EXHN	EXHIBITION	VIC
FLNF	FLINDERS	SA
HMKT	HAYMARKET	NSW
KNST	KENT	NSW
LONS	LONSDALE	VIC
PIER	PIER	WA
PITT	PITT	NSW
RASH	ROMA STREET	QLD
SGHL	SPRING HILL	QLD
WAYM	WAYMOUTH	SA
WLTE	WELLINGTON	WA

APPENDIX H: COPY OF PSTN OA CLASS EXEMPTION PROPOSED VARIATION INSTRUMENT

TRADE PRACTICES ACT 1974

Variation of Determination made under subsection 152AS(1) by the Australian Competition and Consumer Commission

Variation of Class exemption from standard access obligations in respect of PSTN OA

1. Title

This Determination may be cited as Class Exemption (Variation) Determination No. 3 of 2009.

2. Commencement

This Determination comes into effect on the date this Determination is made.

3. Variation

Class Exemption Determination No. 3 of 2008 is hereby varied as set out below.

- (1) Paragraph 2(2) is deleted and the following paragraph is substituted in its place:

“This Determination will expire

(c) five years after 9 September 2009; or

(d) upon revocation of either the PSTN OA Declaration or the ULLS Declaration, whichever first occurs.”

- (2) The following definitions are to be inserted into paragraph 3(2):

Exemption ESA List means the list of Exemption ESAs published by the Commission on its website pursuant to paragraph 6.1(b) of the Australian Competition Tribunal’s 2009 PSTN OA Metropolitan Individual Exemption Order dated 9 September 2009.

International Special Service Code means a special services number (access code) in Part 2 of Schedule 4 of the *Telecommunications Numbering Plan 1997* (described in clause 3.18 of that instrument) as amended from time to time.

VPN Access Code means a special services number (access code) in Part 4 of Schedule 4 to the *Telecommunications Numbering Plan 1997* (described in clause 3.20 of that instrument) as amended from time to time.

- (3) Paragraph 6 is deleted and the following paragraphs are substituted in its place:

“Exemption: CBD areas

6. Each member of the Specified Class of Carrier and each member of the Specified Class of Carriage Service Provider is exempt from the Standard Access Obligations in respect of the supply of PSTN OA within the Attachment A ESAs, except where PSTN OA is being provided in conjunction with a call dialled using a Special Services Global Code or a Carrier or Carriage Service Provider Specific Access Code.

Exemption: Metropolitan areas

7. Subject to paragraphs 8 and 9, each member of the Specified Class of Carrier and each member of the Specified Class of Carriage Service Provider is exempt from the Standard Access Obligations in respect of the supply of PSTN OA within those ESAs included in the list of Exemption ESAs published by the Commission on its website pursuant to paragraph 6.1(b) of the Australian Competition Tribunal’s 2009 PSTN OA Metropolitan Individual Exemption Order dated 9 September 2009.

8. The Exemption does not have effect where PSTN OA is being provided in conjunction with a call dialled using a Special Services Global Code or a Carrier or Carriage Service Provider Specific Access Code.

9. The Exemption does not have effect with respect to a particular ESA until 6 months after the publication date of the Exemption ESA List on which that ESA first appears.”

- (4) Table 1 (“Metropolitan ESAs”) in Attachment A is deleted.

[Signed]

.....

Graeme Julian Samuel

Chairman

DATED: 2009

APPENDIX I: EXPLANATORY STATEMENT

EXPLANATORY STATEMENT

Issued by the Australian Competition and Consumer Commission

**Class Exemption (Variation) Determination No. 3 of 2009 in respect
of PSTN OA**

Trade Practices Act 1974

Legislative Provisions

Section 152AS of the *Trade Practices Act 1974* (the TPA) provides that the Australian Competition and Consumer Commission (ACCC) may make, by written instrument, a class determination exempting each of the members of a specified class of carrier or of a specified class of carriage service provider from any or all of the standard access obligations (SAOs) referred to in section 152AR of the TPA.

A class determination under section 152AS of the TPA may be unconditional or subject to such conditions or limitations as are specified in the determination.

The ACCC must not make a class determination under section 152AS of the TPA unless the ACCC is satisfied that the making of the determination will promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services (LTIE), as further defined in section 152AB of the TPA.

The instrument setting out the class determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Purpose

The purpose of the variation instrument is to vary the existing PSTN OA class determination made by the ACCC in October 2008, to align it with the PSTN OA CBD individual exemption order and PSTN OA metropolitan individual exemption order made by the Australian Competition Tribunal on 9 September 2009.

Background

The public switched telephone network originating access (PSTN OA) service is the carriage of telephone calls from the calling party (the A party) to a point of interconnection (POI) with an access seeker's network. The calling party must be assigned an end number from the geographic number ranges of the Australian Numbering Plan and be directly connected to the access provider's network.

The ACCC decided to extend the expiry date of the declaration of the PSTN OA under section 152ALA of the TPA from 31 July 2009 for five years. The PSTN OA had previously been declared by the ACCC in July 1999 and August 2006. Declaration means that an access provider supplying the PSTN OA is subject to a number of SAOs pursuant to section 152AR of the TPA. Terms of access can be governed by commercial negotiation, the terms of an access undertaking or, in the absence of an accepted access undertaking, by ACCC determination in an access dispute.

On 9 October 2007, Telstra Corporation Limited (Telstra) lodged two applications with the ACCC under section 152AT of the TPA seeking individual exemptions from the SAOs in respect of the supply by Telstra of the public switched telephone network originating access service in a total of 404 Exchange Service Areas (ESAs) in metropolitan and CBD areas of Australia (the Applications).

At that time, the ACCC decided to consider whether a class determination should be granted to members of a specified class of carrier or of a specified class of carriage service provider from any or all of the SAOs in conjunction with its consideration of whether to make the orders sought by Telstra in its Applications.

The ACCC decided to make individual exemption orders under section 152AT with respect to Telstra's supply of the PSTN OA service in 17 ESAs in CBD areas (the PSTN OA CBD individual exemption order) and 248 ESAs in metropolitan areas (the PSTN OA metropolitan individual exemption order) (collectively 'the PSTN OA individual exemption orders').

Following consultation with parties, the ACCC determined that making a class exemption in favour of carriers and carriage service providers other than Telstra under section 152AS of the TPA would promote the LTIE as it would promote competition in the fixed voice market (principally by the promotion of Unconditioned Local Loop Service-based competition), with flow-on competition benefits to end-users, and would promote more efficient use of and investment in infrastructure.

The ACCC found that it would promote the LTIE to grant a class exemption from the SAOs as they relate to the supply of the PSTN OA in those ESAs covered by the PSTN OA individual exemption orders.

The ACCC also found that the class exemption should commence on the same day as Telstra's PSTN OA individual exemption orders. It would not promote the LTIE for the class exemption to commence any earlier than Telstra's individual exemption orders because such an outcome would undermine the rationale for granting the exemptions.

The ACCC was also of the view that the LTIE would be promoted without the imposition of conditions on the class determination. Accordingly, the class determination was not made subject to conditions.

Following review in the Australian Competition Tribunal (the Tribunal) of the ACCC's decision to grant the PSTN OA individual exemption orders, the Tribunal decided to vary the PSTN OA metropolitan individual exemption order and PSTN OA CBD individual exemption order.

There are two aspects of the Tribunal's decision in relation to the PSTN OA metropolitan individual exemption order that are of particular relevance to the ACCC's original PSTN OA class exemption. The first is that the Tribunal's decision varies the process for determining which ESAs are exempt under the PSTN OA metropolitan individual exemption order. This is likely to result in a different exemption footprint under the Tribunal's PSTN OA metropolitan individual exemption order than that specified in the ACCC's original PSTN OA class exemption. The second is that the Tribunal's decision changes the dates under which the PSTN OA metropolitan individual exemption comes into practical operation with the result that the dates of practical operation of the PSTN OA metropolitan individual exemption order and the ACCC's original class exemption no longer align.

In relation to the PSTN OA CBD individual exemption order, the Tribunal made only a minor variation to the expiry date. Otherwise, the areas and dates of practical operation for the Tribunal's PSTN OA CBD individual exemption order are the same as in the ACCC's PSTN OA CBD individual exemption order and the ACCC's original PSTN OA class exemption.

Variation to PSTN OA Class Exemption Determination

The ACCC has decided to vary the PSTN OA class exemption determination to ensure it is consistent with the Tribunal's PSTN OA individual exemption orders in relation to the ESAs subject to the orders and the dates of practical operation of the orders.

The ACCC's view is that varying the PSTN OA class exemption in this manner ensures incentives for other potential access providers to invest in infrastructure and provide wholesale voice services are not diminished. The ACCC's view is that such incentives promote competition and efficient investment in infrastructure. Therefore, the ACCC's view is that the proposed variation would promote the LTIE.

The variations are set out below.

- Item 1 varies paragraph 2 of the original class exemption determination. The expiry date is varied to be consistent with that specified in the Tribunal's PSTN OA individual exemption orders.
- Item 2 varies paragraph 3 of the original class exemption determination. The definition of 'Exemption ESA List' (adopting the same definition as that contained in the Tribunal's PSTN OA metropolitan individual exemption order) is inserted. Definitions for 'International Special Service Code' and 'VPN Access Code' are inserted for clarification.
- Item 3 deletes paragraph 6 of the original class exemption determination and inserts new paragraphs 6, 7, 8 and 9.

New paragraph 6 provides that the class exemption operates in the CBD ESAs specified in Attachment A to the PSTN OA class exemption instrument. The exemption footprint in respect of CBD areas has not changed from the original class exemption. The PSTN OA class exemption will come into effect in CBD

areas from 29 October 2009. This is consistent with the Tribunal's PSTN OA CBD individual exemption order.

New paragraphs 7, 8 and 9 ensure that the PSTN OA class exemption operates in respect of metropolitan areas in the same ESAs as the Tribunal's PSTN OA metropolitan individual exemption order and takes practical effect at the same time as the Tribunal's metropolitan individual exemption order.

The new paragraph 7 adopts as the class exemption footprint in respect of metropolitan areas the list of Exemption ESAs as published by the ACCC on its website pursuant to the Tribunal's PSTN OA metropolitan individual exemption order.

The new paragraph 8 provides that the PSTN OA class exemption in respect of metropolitan areas does not apply to calls dialled using a Special Services Global Code or a Carrier or Carriage Service Provider Specific Access Code.

The new paragraph 9 provides that the class exemption in respect of metropolitan areas does not have effect in relation to a particular ESA until 6 months after its first appearance on the list of Exemption ESAs referred to in the new paragraph 7.

- Item 4 deletes Table 1 'Metropolitan ESAs' in Attachment A of the original class exemption determination. This ensures the geographic area in which the class exemption applies in respect of metropolitan areas is the same as the Tribunal's PSTN OA metropolitan individual exemption order.

Tribunal's PSTN OA CBD individual exemption order and PSTN OA metropolitan individual exemption order

The Tribunal's PSTN OA CBD individual exemption order and PSTN OA metropolitan individual exemption order as referenced in the proposed variation instrument was made on 9 September 2009 following an application for merits review of the ACCC's PSTN OA individual exemption orders. The Tribunal's PSTN OA CBD individual exemption order and PSTN OA metropolitan individual exemption order are available on the ACCC's website at <http://intranet.accc.gov.au/content/index.phtml/itemId/1085943>.

Consultation

On 14 October 2009, the ACCC published the proposed variation to the class exemption determination for public comment. The variation instrument setting out the proposed variation to the class exemption determination was published on the ACCC's website (www.accc.gov.au) and a media release was issued. Interested stakeholders were asked to make submissions to the ACCC by 5.00pm, 23 October 2009.

The ACCC received two submissions - one from TransACT Capital Communications and one from Optus. Both submissions supported the proposed variation.

The ACCC considered the submissions in deciding to vary the class exemption determination.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not necessary for the variations to this class exemption determination.