



**Australian  
Competition &  
Consumer  
Commission**

# **FUTURE SCOPE OF THE LOCAL CARRIAGE SERVICE DECLARATION**

**An ACCC *Discussion Paper* examining the possible exemption of Telstra, and other carriers, from the standard access obligations applying to the Local Carriage Service and the appropriate timing for consideration of possible variations to the Local Carriage Service declaration.**

August 2000

# 1. Introduction

The Australian Competition and Consumer Commission has received an application for an individual exemption from the standard access obligations in relation to the local carriage service under s. 152AT of the *Trade Practices Act 1974* (the Act). In particular, the exemption relates to the supply of the local carriage service within the central business district (CBD) areas of Melbourne, Sydney, Brisbane, Adelaide and Perth.

The local carriage service involves the supply of voice bandwidth carriage service end-to-end between two points within a local call area; i.e. it is used to supply local calls between two end-users in the same standard charging zone. The Commission declared this service in July 1999.

In declaring the local carriage service the Commission noted that it was satisfied declaration of the local carriage service would promote the long-term interests of end-users (LTIE) of carriage services. However, it acknowledged that once the unconditioned local loop service was available to service providers and/or the local PSTN originating and terminating services could be used to supply local calls, the competitive significance of the local carriage service was likely to diminish. It suggested that, around that time, it may be appropriate to revoke or modify the scope of the declaration of the local carriage service.

The declaration means that a carrier supplying the local carriage service to itself or another person must also supply the service, upon request, to other carriage service providers. Declaration ensures that service providers have access to the inputs they need to supply competitive telecommunication services to end-users and in accordance with the standard access obligations set out in s. 152AR of the Act. The terms and conditions of supply can be agreed through commercial negotiations. If the carrier supplying the local carriage service and the service provider cannot agree on the terms and conditions of supply, either party can seek an arbitrated outcome from the Commission.

The Commission is currently arbitrating five access disputes in relation to the terms and conditions of supply of the local carriage service. These have been notified by Cable & Wireless Optus, AAPT, Macquarie Corporate Telecommunications, Primus Telecommunications and One.Tel, all against Telstra. The Commission has made an interim determination in the Cable & Wireless Optus/Telstra arbitration (on 30 June 2000).

## 1.1. Purpose of the Discussion Paper

On 7 June 2000 Telstra Corporation Limited (Telstra) lodged an application with the Commission for an exemption, under Part XIC of the Act (s. 152AT), from its obligations to supply the local carriage service to its competitors in the CBD<sup>1</sup> areas of Melbourne, Sydney,

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<sup>1</sup> For the purpose of this exemption, Telstra defined the CBD of a city as the area which comprises the Exchange Service Areas it classifies as CBD for the purpose of the ordering and provisioning procedures set out in Telstra's Ordering and Provisioning Manual as amended from time to time. It is noted that the Commission is unlikely to accept, nor has the power to accept, a definition that can be varied by Telstra. Therefore, the

Brisbane, Adelaide and Perth. The application notes that this is to be one of several applications for exemption orders designed to phase out Telstra's standard access obligations with respect to the local carriage service over a 12 month period. Telstra envisage that the next application will seek an exemption in respect of the CBD's of Canberra, Hobart and Darwin and the metropolitan areas of each capital city in Australia. A final application would seek an exemption in respect of all other areas within Australia.

Additionally, the Commission has also decided to consider, in conjunction with the individual exemption application from Telstra, a class exemption. This is intended to exempt other carriers on similar terms as set out in Telstra's application; i.e. to exempt current and future carriers supplying the local carriage service in the CBD areas of Melbourne, Sydney, Brisbane, Adelaide and Perth from the standard access obligations in those areas. If an individual exemption is provided to Telstra, it is appropriate to consider a class exemption, as the reasons for providing an individual exemption to the largest carrier may suggest that other carriers should likewise be exempted.

Further, as noted above, the Commission indicated when declaring the local carriage service that it may be appropriate, at some point in the future, to vary or revoke the scope of the declaration if it became apparent there were substitutes for the service. The Commission considers there to be merit in indicating when it is likely to hold an inquiry into possible variations to the scope of the local carriage service declaration. In doing so, the Commission would only be indicating when the matter would be considered (i.e. whether the scope of the declaration is varied is a matter for the inquiry itself). However, signalling when it is likely to hold a public inquiry should assist in informing industry of the timing of any considerations regarding possible variations of the declaration. This could also assist carriers supplying the local carriage service in deciding whether to make future applications for exemption from the standard access obligations.

Therefore, the Commission considers that issuing this Discussion Paper also provides it with an opportunity to seek comments on the appropriate timing for consideration of possible variations to, and even eventual revocation of, the local carriage service declaration.

The purpose of this Discussion Paper is to:

- identify the issues which, in the Commission's opinion, are relevant to the decisions about whether to provide an individual or class exemption and the appropriate timing for consideration of possible variations to the local carriage service declaration, if any;
- set out background material about, and discussion of, those issues which the Commission thinks should be considered in this process, and on which the Commission seeks comments from industry participants, other stakeholders and from the public more generally; and
- outline the process and timetable for the consideration of these issues.

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Commission would consider locking the CBD definition to a point in time when considering whether to accept, reject, or accept subject to certain conditions or limitations the exemption application.

**Section Two** outlines the timetable and the process for the Commission's inquiries.

**Section Three** sets out the legislative background to the access regime.

**Section Four** sets out the matters that the Commission would like the submissions to deal with in relation to providing an individual and/or class exemption to carriers supplying the local carriage service.

**Section Five** sets out matters that the Commission would like the submissions to deal with in relation to the appropriate timing for consideration of possible variations to the declaration of the local carriage service, if any.

## 2. The process and timetable

As outlined in section 1.1, the purpose of this Discussion Paper is to consider Telstra's individual exemption application and at the same time, a class exemption for the local carriage service. In addition, the paper provides an opportunity to seek comments on the appropriate timing for consideration of possible variations to the service declaration.

The Commission is, therefore, seeking submissions from industry participants and the general public in regard to these three related issues. The process and timetable for each issue is outlined below.

### 2.1 The individual exemption application

Under s. 152AT of the Act a carrier or carriage service provider may apply to the Commission for a written order exempting it from any or all of the standard access obligations, referred to in s. 152AR, that apply to a declared service. If the Commission is of the opinion that an order made in respect of an application for an individual exemption is likely to have a material effect on the interests of a person, the Commission must publish the application and invite submissions on whether the application should be accepted.

The Commission is of the opinion that the making of an order in respect of Telstra's individual exemption application is likely to have a material effect on a person. It is the Commission's understanding that the local carriage service is supplied in CBD areas, and a decision to exempt Telstra from the standard access obligations that apply to this service is likely to have a material effect on service providers and ultimately end-users. As such, pursuant to sub-s. 152AT(9), the Commission must publish Telstra's application and invite submissions on this matter. The Commission is publishing Telstra's application by way of including it as an attachment (Attachment A) to this Discussion Paper.

Under s. 152AT(9) the Commission can specify the timeframe within which it will receive submissions for consideration. In the case of Telstra's application, the Commission considers that a submission period of 4 weeks provides a reasonable opportunity for the return of written submissions. Accordingly, the Commission requests that written submissions are provided to the Commission by no later than **5.00pm, Monday 4 September 2000**.

The process for considering an individual exemption application under s. 152AT differs from the declaration process, and a full public inquiry is not required. It would still be open to the Commission to hold a public hearing or roundtable discussion on the matter. However, at this stage the Commission does not intend to do so.

After considering an application, and any submissions received in response to an application, the Commission must make a written order exempting the carrier or carriage service provider from one or more of the standard access obligations, or refuse the application. In this respect, it is noted that the Commission must not make any orders exempting the carrier or carriage service provider, unless it is satisfied that such an order will promote the LTIE of the carriage services or services provided by means of carriage services.

Where the Commission makes an order exempting the carrier or carriage service provider, the order may be unconditional, or subject to such conditions or limitations as are specified in the order.

It is noted that where the Commission makes a decision refusing an application, the Commission must provide the carrier or carriage service provider with a statement of reasons as to why the application has been refused.

Telstra's application for an individual exemption requests, at paragraph 2(b), that the exemption be given effect from 1 September 2000. Due to the need to provide sufficient time to comment on the application, and the Commission's need to fully assess the issues, the Commission does not expect to make an order under s. 152AT by that time. At the very earliest it would expect to make a decision by the end of October 2000. Depending on the information received from submissions, the Commission's decision may be even later. This will be particularly so if the Commission decides a 'facilities audit' is necessary to determine the level of facilities based competition in the CBD areas named or it otherwise needs to obtain additional information.

## 2.2 The class exemption

Under s. 152AS of the Act, the Commission can determine that each member of a specified class of carrier (e.g. current and future carriers supplying the local carriage service in specified CBD areas), or a specified class of carriage service providers, are exempt from any or all of the standard access obligations, referred to in s. 152AR, that apply to a declared service.

In its report on *Local Telecommunications Services*<sup>2</sup> the Commission noted that Cable & Wireless Optus also operated a network that enabled the local carriage service to be supplied. Accordingly, the Commission has decided to consider, in conjunction with Telstra's application for an individual exemption, a class exemption intended to exempt all current and future carriers supplying the local carriage service in the CBD areas of Melbourne, Sydney, Brisbane, Adelaide and Perth from the standard access obligations.

Under s. 152AS(5) the Commission is required to publish a draft determination and invite submissions on whether the draft determination should be made where the Commission is of the opinion that it is likely to have a material effect on the interests of a person.

At this stage, the Commission has decided to seek preliminary submissions on the making of a class exemption on terms similar to those expressed in the Telstra's individual exemption application. The Commission requests these preliminary written submissions be provided to the Commission by no later than **5.00pm, Monday 4 September 2000**. Depending on the views in the submissions received, the Commission expects that it will then publish a draft determination in respect of the class exemption and seek further submissions in relation to the

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<sup>2</sup> *Local Telecommunication Services – a report on the declaration of an unconditioned local loop service, local PSTN originating and terminating services and a local carriage service under Part XIC of the Trade Practices Act 1974*, ACCC, July 1999.

draft determination. The exact date for the final submissions on the draft determination will be announced upon publication of the draft determination.

Like the process for considering an individual exemption application, a full public inquiry is not required to consider a class exemption under s. 152AS. It would still be open to the Commission to hold a public hearing or roundtable discussion on the matter. However, at this stage the Commission does not intend to do so.

After considering any submissions received in response to the draft determination, the Commission may make a written determination exempting the specified class of carrier, or carriage service providers, from one or more of the standard access obligations. The Commission must not make a determination unless it is satisfied that such a determination will promote the LTIE of the carriage service or services provided by means of carriage services.

Where the Commission makes a determination exempting a specified class of carriers, or carriage service providers, the order may be unconditional, or subject to such conditions or limitations as are specified in the determination. Furthermore, a class exemption is a disallowable instrument for the purposes of s. 46A of the *Acts Interpretation Act 1901*.

### **2.3 Future variations to the declaration of the local carriage service**

Following a request by any person, or on its own initiative, the Commission may hold a public inquiry into whether to declare a new service, revoke a declaration, or vary the definition/scope of a service that is already declared. Although the Commission can declare a service on the recommendation of the Telecommunications Access Forum without the need to hold a public inquiry, any variation or revocation of an existing declared service, unless the variation is of a minor nature, can only be made after the Commission has first held a public inquiry. The purpose of the inquiry is to assist the Commission to determine whether it is satisfied that declaring, varying or revoking a particular service would promote the LTIE of carriage services or services provided by means of carriage services.

In this regard, the Commission must:

- hold a public inquiry in accordance with Part 25 of the *Telecommunications Act 1997* on whether to make the proposed declaration, variation or revocation of a declaration;
- prepare and publish a report setting out the Commission's findings as a result of that public inquiry; and
- be satisfied that varying, or revoking, the service declaration or declaring the service will promote the LTIE of carriage services or of services provided by means of carriage services.

The variation, revocation or declaration must be made within 180 days of the publication of the report.

As noted in section 1.1 of this Discussion Paper, Telstra's individual exemption application suggests that this is to be one of several applications for exemption orders designed to phase out Telstra's standard access obligations with respect to the local carriage service over a 12 month period. This raises the issue of whether it would be preferable for the Commission to consider a further series of exemption applications or alternatively hold a public inquiry into possible variations to the local carriage service declaration.

The Commission declared the local carriage service in July 1999 as it was satisfied that declaration would promote the LTIE of carriage services. At that time, the Commission recognised that competition in the local telephony market might evolve to a point where it would be appropriate to vary or revoke the local carriage service declaration:

The Commission is satisfied that declaration of the local carriage service will promote the long-term interests of end-user of carriage services. Once the unconditioned local loop service is available to service providers and/or the local PSTN originating and terminating services can be used to supply local calls, the competitive significance of the local carriage service is likely to diminish. Around that time it may be appropriate to revoke or modify the scope of the declaration of the local carriage service.<sup>3</sup>

While it is potentially difficult to predict the timing and nature of future market developments, the Commission notes that by establishing a future timeframe in which it would consider possible variations to the local carriage service declaration (i.e. in which it would hold a public inquiry), it is likely to increase certainty for carriers and service providers. This may be particularly important for the future investment decisions of existing carriers and new entrants.

Given the nature of Telstra's individual exemption application, and for the reasons outlined above, the Commission considers that this Discussion Paper is a suitable opportunity to seek comments on the appropriate timing for consideration of possible variations to the local carriage service declaration, if any. The Commission requests written submissions on whether and when it should consider variations to the local carriage service declaration by no later than **5.00pm, Monday 4 September 2000**.

The Commission will consider indicating its preliminary views on the appropriate timing for consideration of possible variations to the local carriage service declaration, if any, by the end of the year.

## **2.4 Summary of process and timetable**

The Commission seeks comment from all industry participants as well as from the general public. It encourages industry participants, other stakeholders and the public more generally to consider the matters set out in this Discussion Paper and make submissions to assist the Commission in determining whether to grant an individual exemption or class exemption and whether and when to consider future variations in respect of the local carriage service.

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<sup>3</sup> *Local Telecommunication Services*, ACCC, July 1999 p 107



All written submissions will be publicly available from the Commission to foster an informed, robust and consultative process. Accordingly, submissions will be treated as public documents unless otherwise specified. It is preferred that where industry participants wish to submit confidential information they should provide confidential and non-confidential versions of their submission. In such circumstances, the confidential version will need to highlight any such information.

Submissions should be addressed to:

Ken Walliss  
Director – Regulatory  
Telecommunications  
Australian Competition and Consumer Commission  
GPO Box 520J  
Melbourne VIC 3001

Fax: 03 9663 3699

In addition to a hard copy, people making submissions are encouraged to provide an electronic copy of the submission to [ken.walliss@accc.gov.au](mailto:ken.walliss@accc.gov.au).

Enquiries about this Discussion Paper, or about the making of submissions, can be directed to Ken Walliss on (03) 9290 1869.

## 3. Legislative background

### 3.1 The access regime

Part XIC of the Trade Practices Act establishes a regime for regulated access to carriage services and services which facilitate the supply of carriage services. Following the declaration of a service, standard access obligations (as set out in s. 152AR of the Act) exist for any carrier or carriage service provider providing that service, whether to themselves or to other persons. As such, the declared service must be provided to service providers, along with specified ancillary services, on request. The access regime thus enables service providers to supply carriage or content services to end-users without the (potentially anti-competitive) restriction of key services by upstream providers.

### 3.2 The Commission's approach to the LTIE test

As discussed in section 2 of this Discussion Paper, the key test in considering Telstra's individual exemption application, the class exemption, and possible variation or variations to the local carriage service declaration is whether these actions will promote the LTIE. The following provides an indication of what the Commission must consider (and only consider) in determining whether this objective is met.

Section 152AB(2) requires that, with respect to the LTIE, the Commission consider the following criteria:

- promotion of competition in markets for listed (that is, telecommunication) 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 listed carriage services are supplied.

#### *Promoting competition*

Section 152AB(4) requires that, in interpreting this objective, regard must be had to, but is not limited to, the extent to which the arrangements will remove obstacles to end-users gaining access to carriage services. The Explanatory Memorandum to Part XIC of the Act states that:

...it is intended that particular regard be had to the extent to which the...[exemption]... would enable end-users to gain access to an increased range or choice of services.<sup>4</sup>

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<sup>4</sup> *Trade Practices (Telecommunications) Amendment Act 1997*, Explanatory Memorandum, p 41.

### ***Any-to-any connectivity***

Section 152AB(8) provides that the objective of any-to-any connectivity is achieved if, and only if, each end-user who is supplied with a carriage service that involves communication between end-users is able to communicate, by means of that service, or a similar service, with each other whether or not they are connected to the same network.

### ***Efficient use of, and investment in, infrastructure***

Section 152AB(6) provides that, in interpreting this objective, regard must be had to, but is not limited to, the following:

- whether it is technically feasible for the services to be supplied and charged for, having regard to:
  - the technology that is in use or available;
  - whether the costs that would be involved in supplying, and charging for, the services are reasonable; and
  - the effects, or likely effects, that supplying, and charging for, the services would have on the operation or performance of telecommunications networks;
- the legitimate commercial interests of the supplier or suppliers of the service, including the ability of the supplier or suppliers to exploit economies of scale and scope; and
- the incentives for investment in the infrastructure by which the services are supplied.

These matters are interrelated. In many cases, the LTIE may be promoted through the achievement of two or all of these criteria simultaneously. In other cases, the achievement of one of these criteria may involve some trade-off in terms of another criteria, and the Commission will need to weigh up the different effects to determine whether or not providing an exemption, or varying the declaration, promotes the LTIE. In this regard, the Commission will interpret long-term to mean a balancing of the flow of costs and benefits to end-users over time in relation to the criteria. Thus, it may be in the LTIE to receive a benefit for even a short period of time if its effect is not outweighed by any longer term costs.

## **3.2.1 Promoting competition**

The concept of competition is of fundamental importance to the Act and has been discussed many times in connection with the operation of Part IIIA, Part IV, Part XIB and Part XIC of the Act.

In general terms, competition is the process of rivalry between firms, where each market participant is constrained in its price and output decisions by the activity of other market participants. The Trade Practices Tribunal (now the Australian Competition Tribunal) stated that:

In our view effective competition requires both that prices should be flexible, reflecting the forces of demand and supply, and that there should be independent rivalry in all dimensions of the price-product-service packages offered to consumers and customers.

Competition is a process rather than a situation. Nevertheless, whether firms compete is very much a matter of the structure of the markets in which they operate.<sup>5</sup>

Competition can provide benefits to end-users including lower prices, better quality and a better range of services over time. Competition may be inhibited where the structure of the market gives rise to market power. Market power is the ability of a firm, or firms, to profitably constrain or manipulate the supply of products from the levels and quality that would be observed in a competitive market for a significant period of time.

The establishment of a right for third parties to negotiate access to certain services on reasonable terms and conditions can operate to constrain the use of market power that could be derived from the control of these services. Accordingly, access regimes, such as those in Part IIIA or Part XIC of the Act, attempt to change the *structure* of a market, to *limit* or reduce the sources of market power and consequent anti-competitive *conduct*, rather than directly regulating conduct which may flow from its use, which is the role of Part IV and Part XIB of the Act. Nonetheless, in any given challenge to competition, both Parts XIB (or IV) and XIC may be necessary to address anti-competitive behaviour.

To assist in determining the impact of potential individual or class exemptions from the standard access obligations on downstream markets, the Commission will need to identify the relevant market(s) and assess the likely effect of the exemption(s) on competition in each market.

Section 4E of the Act provides that the term ‘market’ includes a market for the goods or services under consideration and any other goods or services that are substitutable for, or otherwise competitive with, those goods or services. The Commission’s approach to market definition is discussed in its *Merger Guidelines* (June 1999) and is canvassed in its information paper *Anti-competitive Conduct in Telecommunications Markets* (August 1999).

It should be noted, however, that the Commission’s approach to market definition in relation to service declaration does not require the determination of a definitive or determinative market definition as is the case in a Part IV or Part XIB case. This approach was also recently endorsed by Wilcox J in his recent decision to uphold the validity of certain broadcasting access declarations by the Commission.<sup>6</sup>

The second step is to assess the likely effect of the potential exemptions or variations on competition in each relevant market. As noted above, s. 152AB(4) requires that regard must be had to the extent to which the potential exemptions or variations will remove obstacles to end-users gaining access to carriage services.

The term ‘obstacles’ is best read, in the Commission’s view, as a reference to barriers facing new entrants in the markets for services arising from the need to use the network infrastructure services to be able to compete. In this regard, an access regime can remove

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<sup>5</sup> *Queensland Co-operative Milling Association Ltd and Defiance Holdings Ltd* (1976), Australian Trade Practices Reporter 40-012, at p. 17,246.

<sup>6</sup> *Foxtel Management Pty Ltd v Australian Competition and Consumer Commission*, 2000, Federal Court of Australia Transcript 589, at p. 65.

those obstacles by facilitating entry and therefore providing end-users with a choice of suppliers from which to obtain services.

Where existing market conditions already provide for the competitive supply of services, the access regime should not impose regulated access.<sup>7</sup> This recognises the costs of providing access, such as administration and compliance, as well as potential disincentives to investment. Regulated provision of services will only be desirable where it leads to benefits in terms of lower prices, better services or improved service quality for end-users that outweigh any costs of regulation.

In the context of considering whether an individual or class exemption from the standard access obligations for the local carriage service will create an environment in which competition will be facilitated, it is appropriate to examine the impact of the reduced access obligations on each relevant market, and compare the state of competition in that market before and after the proposed individual or class exemption. The Commission considers that competition will be facilitated when market structures are altered such that the exercise of market power becomes more difficult; for example, because barriers to entry have been lowered (permitting more efficient competitors to enter a market and thereby constrain the pricing behaviour of the incumbents) or because the ability of firms to raise rival's costs is restricted.

### **3.2.2 Any-to-any connectivity**

The objective of 'any-to-any' connectivity is achieved if, and only if, each end-user of a service that involves communication between end-users is able to communicate, by means of that service or a similar service, with each other even where they are connected to different telecommunications networks.<sup>8</sup> The reference to 'similar' services in the Act enables this objective to apply to services with analogous, but not identical, functional characteristics, such as fixed and mobile voice telephony services or Internet services which may have differing characteristics.

The any-to-any connectivity requirement is particularly relevant when considering services that involve communications between end-users.<sup>9</sup> When considering other types of services (such as carriage services that are inputs to an end-to-end service or distribution service such as the carriage of pay television), the Commission considers that this criterion will be given less weight compared to the other two criteria.

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<sup>7</sup> *Trade Practices (Telecommunications) Amendment Act 1997*, Explanatory Memorandum, p.41.

<sup>8</sup> *Trade Practices Act 1974* s. 152AB(8).

<sup>9</sup> *Trade Practices (Telecommunications) Amendment Act 1997*, Explanatory Memorandum p. 41.

### **3.2.3 Efficient use of, and investment in, infrastructure**

The third objective under s. 152AB is to encourage the economically efficient use of, and economically efficient investment in, the infrastructure used for the supply of carriage service.

Economic efficiency has three components:

- productive efficiency refers to the efficient use of resources within each firm such that all goods and services are produced using the least cost combination of inputs;
- allocative efficiency refers to the efficient allocation of resources across the economy such that the goods and services that are produced in the economy are the ones most valued by consumers. It also refers to the distribution of production costs amongst firms within an industry to minimise industry-wide costs; and
- dynamic efficiency refers to the efficient deployment of resources between present and future uses such that the welfare of society is maximised over time. Dynamic efficiency incorporates efficiencies flowing from innovation leading to the development of new services, or improvements in production techniques.

The Commission must ensure that the access regime does not discourage investment in networks, or network elements, where it is efficient. However, where it is inefficient to require investment in a number of networks, or network elements, the access regime may play an important role in ensuring that existing infrastructure is used efficiently. For instance, even where a higher utilisation of a network may be more efficient, a network owner with market power may deny access, in the absence of an access regime.

Section 152AB(6)(a) requires that the Commission to have regard to a number of specific matters in applying this criterion and these matters are discussed below.

#### ***The technical feasibility of supplying and charging for particular services***

This incorporates a number of elements, including the technology that is in use or available, the costs of supplying, and charging for, the services and the effects on the operation of telecommunications networks.

In many cases, the technical feasibility of supplying and charging for particular services given the current state of technology may be clear, particularly where there is a history of providing access. The question will be more difficult where there is no prior access, or where conditions have changed. Experience in other jurisdictions, taking account of relevant differences in technology or network configuration, will be helpful. Generally the onus will be on the potential access provider to demonstrate that supply is not technically feasible.

The costs of supplying and charging for the services, and potential spillover costs in terms of network integrity, will also be considered by the Commission. In identifying costs involved in supplying and charging for a service, however, the Commission only needs to consider the direct costs.

***The legitimate commercial interests of the supplier or suppliers, including the ability of the supplier to exploit economies of scale and scope***

A supplier's legitimate commercial interests encompass its obligations to the owners of the firm, including the need to recover the cost of providing services and to earn a commercial return on the investment in infrastructure. The Commission will also consider the need for appropriate incentives for the access provider to maintain, improve and invest in the efficient provision of the service.

A significant issue relates to whether or not capacity should be made available to an access seeker. Where there is spare capacity within the network, not assigned to current or planned services, allocative efficiency would be promoted by obliging the owner to release capacity for competitors.

Section 152AB(6)(b) also requires the Commission to have regard to whether the access arrangement may affect the owner's ability to realise economies of scale or scope. Economies of scale arise from a production process in which the average (or per unit) cost of production decreases as the firm's output increases. Economies of scope arise from a production process in which it is less costly in total for one firm to produce two (or more) products than it is for two (or more) firms to each separately produce each of the products.

Potential effects from access on economies of scope are likely to be greater than on economies of scale. A limit in the capacity available to the owner may constrain the number of services that the owner is able to provide using the infrastructure and thus prevent the realisation of economies of scope associated with the production of multiple services. In contrast, economies of scale may simply result from the use of the capacity of the network and be able to be realised regardless of whether that capacity is being used by the owner or by other carriers and service providers. Nonetheless, the Commission will assess the effects of the supplier's ability to exploit both economies of scale and scope on a case-by-case basis.

***The impact on incentives for investment in infrastructure***

Firms should have the incentive to invest efficiently in infrastructure. Various aspects of efficient investment have been discussed already. It is also important to note that while access regulation may have the potential to diminish incentives for some businesses to invest in infrastructure, it also ensures that investment is efficient, reduces the barriers to entry for other (competing) businesses, or barriers to expansion by competing businesses.

There is also a need to consider the effects of any expected disincentive to investment with any anticipated increases in competition to determine the overall effect on the LTIE. The Commission will be careful to ensure that services are not declared where there is a risk that incentives to invest may be dampened, such that there is little subsequent benefit to end-users from the access arrangements.

## **4. Relevant considerations for individual and class exemptions that submissions should address**

The Commission will decide to provide an individual and/or class exemption after having regard to the LTIE and therefore the legislative criteria in s. 152AB of the Act (as discussed in section 3 of this Discussion Paper). Accordingly, submissions should address the legislative criteria, where possible, to assist the Commission. Outlined below are more specific issues that the Commission considers may be important in assisting it to determine whether providing an individual and/or class exemption would be in the LTIE.

To consider the likely result of providing an individual or class exemption, in terms of the LTIE, the Commission is of the view that it will be helpful to use a ‘with and without test’, which is a test it also considered during the declaration process. This will involve the Commission considering the future without an exemption and comparing it to the future with an exemption. As noted when the test is used in the context of considering the declaration of a service, it is not a test in its own right but is useful in isolating the effects which are likely to occur as a result of the exemption.

### **4.1 Market definition**

Identifying the relevant markets affected by an individual and class exemption will allow the Commission to analyse the level of competition in those markets and the effect of providing such exemptions. The markets identified may be those in which the wholesale access services that are used in supplying local calls are provided to service providers (e.g. the local carriage service) or downstream markets such as those in which local calls are provided to end-users.

The Act directs the Commission’s attention to the markets in which competition may be promoted. In most cases, this is likely to be the market for downstream services rather than the market in which the eligible service is supplied (where these markets are separate). That said, the Act does not prohibit the Commission considering the markets in which the wholesale access services are supplied where this will assist in examining the impact of providing an individual or class exemption on competition.

The process of market definition begins with identifying the service under consideration and the firm supplying that service. Once the relevant service and sources of supply have been identified, they are described in terms of their product, functional, temporal and geographic dimensions. The market boundaries are then extended to include all other sources, and potential sources, of close substitutes with which the firm supplying the service would compete, and which would effectively constrain the price of that service. A discussion of these elements can be found in the Commission’s *Merger Guidelines* (June 1999).

In the *Local Telecommunications Services* report the Commission acknowledged that substitutability tests tend to be of limited use when delineating the geographical dimensions of telecommunications markets. For example, a local call made in Perth is unlikely to be a substitute for a local call made in Melbourne, and additionally the infrastructure used to



supply the local call is unlikely to be a substitute. In looking at the geographic dimensions of the local telephony market the Commission looked to factors such as the area over which the major suppliers operated. It is noted that Telstra's individual exemption application relates to the CBD areas of Melbourne, Sydney, Brisbane, Adelaide and Perth. Section 1.1 of this Discussion Paper outlines the CBD definition proposed by Telstra and the Commission's preliminary views as to the use of such a definition. To assist its considerations the Commission seeks comments on how CBD areas should be described.

In the Commission's report on *Local Telecommunications Services*, which considered the declaration of several services, the Commission noted that information received during the inquiry suggested that several markets were relevant. The following markets were identified:

- the customer access market - a national market for the supply of customer access services by service providers to themselves and other service providers. This was seen as a national wholesale market. It was noted that in the main these services are supplied by means of fixed networks (the unconditioned local loop). Some services, however, could be supplied by means of wireless networks such as those using a local multipoint distribution system (LMDS) which uses radio spectrum to carry all telecommunication services (including local calls) from central base stations to customer premises;
- the local telephony market - a national market for the supply of local telephony services (including fixed line calls and line rental) by service providers to end-users;
- the long distance telephony market - a national market for the supply of long distance telephony services by service providers to end-users; and
- the high bandwidth carriage service market - a national market for the supply of high bandwidth carriage services by service providers to end-users. In this market the unconditioned local loop would be used to supply high bandwidth carriage services by means of xDSL technology.

The report considered whether the declaration of the local carriage service would promote the LTIE in the local telephony market. The benefits of declaration were viewed as being likely to occur in this market, as declaration would constrain the ability of carriers supplying the local carriage service to influence the price of a local call.

The Commission's preliminary view is that it is necessary to consider the wholesale supply of the local carriage service in determining whether the proposed exemptions are in the LTIE. The Commission seeks comments on whether the supply of the local carriage service is a market that involves the supply of the local carriage service by carriers to themselves and other services providers.

The Commission notes that while it intends to consider the wholesale supply of the local carriage service by carriers, it will also consider the supply of local call resale at a retail level; i.e. the local telephony market. The Commission is aware that any decisions it makes in regards to the wholesale supply of the local carriage service will also have an impact downstream at a retail level. Local call resale is viewed as being relevant for this reason.

It would appear that there may be several substitute technologies that could be used to supply the local carriage service or that are substitutes for the local carriage service; i.e. are able to provide local calls. In this respect it is noted that substitutes need not be the local carriage service itself. The Commission generally considers substitutability in terms of a price elevation test. This test considers what the response would be on the demand, and supply, side of a relatively small percentage increase in the price of a good or service. Therefore, it is of interest to consider the degree of constraint imposed, on the price and output decisions of the carriers supplying the local carriage service at a wholesale level, by a small percentage increase in the price of a possible substitute.

Possible substitutes that could be used to supply the local carriage service, or are substitutes for the local carriage service include:

- unconditioned local loop services;
- the local PSTN originating and terminating services – where the point of interconnection is located with the local exchange closest to the end-user;
- the domestic PSTN originating and terminating services – where the point of interconnection is generally located with a gateway exchange;
- fibre optic loop services;
- services supplied by LMDS technology or other wireless local loop networks;
- services supplied by satellite technology; and
- services supplied using transmission capacity.

The Commission makes the following observations in relation to the substitutability of these services.

- In the Commission's report on *Local Telecommunications Services* the unconditioned local loop and services supplied by LMDS technology were included in the customer access market. While these two services were seen as substitutes for each other, they were not seen as being substitutable with other services such as the domestic PSTN originating and terminating services. In this respect, the Commission noted that such services involved the combination of other inputs with a particular transmission medium to form services that would be supplied at adjacent and subsequent functional stages of production. As such, they were unlikely to be regarded as close substitutes by most access seekers, who would prefer the unconditioned local loop service because of its unbundled properties (and the potential to combine it with xDSL technologies and therefore provide high bandwidth capacity).
- It was noted in the report that information received by the Commission indicated that the unconditioned local loop would be used by service providers as a component for the supply of high bandwidth end-to-end services for the carriage of voice or data. The Commission expects that once the unconditioned local loop service is available to service providers in August/September of this year, it will be used to provide a bundle of services, including voice services (local and long distance).

- It was also noted in the report that the local PSTN originating and terminating service could be used to supply local (and long distance) calls. However, a pre-selection determination by the Australian Communications Authority, enabling end-users to select a service provider for the carriage of local calls, was seen as being necessary to enable service providers to fully exploit the use of this service for local calls. As there continues to be no such pre-selection determination for local calls, the extent to which the local PSTN originating and terminating services would be used to supply local calls is not clear.
- The Commission would expect that the prices of services such as fibre optic loops and LMDS technology would exercise a greater constraint over the decisions of carriers supplying the local carriage service, than, say, satellite technology or transmission capacity.

***Questions to assist those preparing submissions:***

- Is there a market that involves the wholesale supply of the local carriage service by carriers to themselves and other carriers?
- How should CBD areas be described?
- What substitute technologies (which constrain the price and output decisions of carriers supplying the local carriage service) are currently used to provide the local carriage service, or are substitutes for the local carriage service, in the CBD areas? What technologies are likely to be used to supply the local carriage service or local calls in CBD areas in the foreseeable future?

## **4.2 Competition analysis**

As discussed in section 3.2.1 of this Discussion Paper, when considering the LTIE the Commission will consider whether there is effective competition in the market for the wholesale supply of the local carriage service. Where the Commission finds that the level of competition is not strong, it will further consider whether providing an individual and/or class exemption is likely to create an environment in which competition is likely to be facilitated. If it finds that competition is likely to be facilitated by an exemption, then it is likely to provide an exemption.

In general, the Commission would expect that a market in which there was an increasing number of carriers supplying the local carriage service at a wholesale level would be competitive. Having said that, a relatively small number of market participants in the market may be efficient due to economies of scale or scope. In these circumstances, the Commission will need to consider whether an exemption would promote the efficient utilisation of infrastructure.

In addition, the Commission would expect that low barriers to entry would facilitate competition. Where a market is characterised by low barriers to entry a carrier is likely to be

constrained by the threat of potential competition. Barriers to entry may include sunk costs, legal or regulatory requirements, economies of scale and scope, product differentiation and brand loyalty.

The extent of market growth is also an important consideration of the degree to which competition is likely to be facilitated by an individual and/or class exemption. The Commission would expect that dynamic and rapidly growing markets are more likely to see new entry and erosion of market share, thereby creating an environment in which competition is likely to improve.

#### **4.2.1 Market share, new entrants and network roll-out**

In its report on *Local Telecommunications Services* it was noted that Telstra was the main supplier of local call services. The Commission estimated that in 1998 Telstra held a market share of 94 per cent. Resale of Telstra's services was the major source of competition, although there was some competition from facilities based carriers such as Cable & Wireless Optus. This was limited, however, by Cable & Wireless Optus's market penetration into those locations where it had rolled out its network.

Since July 1999, when this report was written, it would appear to the Commission that the major source of competition remains that of resale of Telstra's services. To the Commission's knowledge, the following service providers re-sell Telstra's local carriage service (i.e. provide retail competition): Cable & Wireless Optus, AAPT, Primus, Macquarie, MCI Worldcom, RSL COM and One.Tel.

In declaring the local carriage service the Commission noted that declaration would facilitate entry for local call re-sellers and enable them to obtain information about demand characteristics in the market and the likely response of competitors. Entry by new re-sellers supplying local calls at the retail level was viewed as a stepping stone to the roll out of infrastructure and wholesale supply of the local carriage service.

It was noted in the *Local Telecommunications Services* report that while new networks were being rolled out in particular areas, they tended to involve the use of different transmission media such as optical fibre, coaxial cable and wireless technology. At the time the report was released Cable & Wireless Optus's HFC network, used for telephony and pay television services, passed about 2.2 million homes in Brisbane, Sydney and Melbourne. Several carriers, including Cable & Optus Wireless had also rolled out, or were in the process of rolling out, fibre optic loop services. For example PowerTel had deployed fibre optic networks in the CBD areas of Brisbane, Sydney and Melbourne. On a regional level, it was noted that there was discrete roll out, such as the Bass Shire Council establishing a wireless local loop in Victoria's South Gippsland region.

Untimed local calls are provided in CBD, metropolitan and regional areas at the same average price. However, carriers are likely to face different costs in rolling out a network across these areas and are likely to have different concentrations of customer types in each area. For example, there are lower costs associated with rolling out networks over smaller CBD areas and a higher concentration of business customers making relatively short calls in CBD areas. For these reasons the Commission would expect that roll out of new networks would initially occur in higher density CBD areas.

*Questions to assist those preparing submissions:*

- Since the Commission's report on *Local Telecommunications Services*, have new carriers begun supplying the local carriage service at a wholesale level? If so, what technologies are being used by the new carriers to supply the local carriage service, or local calls, and has entry occurred in CBD areas (if so, in which CBD areas)?
- Are there likely to be further new carriers supplying the local carriage service at a wholesale level in the foreseeable future? What type of technologies would new carriers be expected to use, and would entry be expected in the CBD areas (if so, in which areas)?
- What level of local call resale competition is occurring in CBD areas and is it expected to increase in the foreseeable future?
- Would providing an individual and/or class exemption change the incentives for carriers supplying the local carriage service at a wholesale level or new re-sellers supplying local calls at a retail level? If so, how?

#### **4.2.2 Barriers to entry**

In a market where significant barriers to entry exist it is unlikely that effective competition will occur. It is important, therefore, to identify whether there are significant barriers to entry that may deter new entrants.

Associated with the wholesale supply of the local carriage service are the large sunk costs of rolling out a new network and these may represent a significant barrier to entry. Sunk costs are those costs that cannot be recovered by a carrier if it ceases operation, even in the long term. The Commission would expect such costs to exist; however, the Commission is interested in comments about the extent of these costs and how they differ for different technologies (e.g. what are the sunk costs for carriers rolling out new fibre optic loop services and how do these compare to the roll out of other services such as LMDS).

A second type of barrier to entry may be the large market share of Telstra. In particular, the brand loyalty that end-users may have with Telstra in relation to the provision of local calls could possibly mean that new entrants find it difficult to gain market share.<sup>10</sup> It is noted in this respect that increasingly new entrants are 'loss leading' on local calls. This is the practice of pricing a good or service low, possibly even below costs, to attract end-users who are expected to buy other goods or services which will yield a profit. In such circumstances local calls and other call types (e.g. national long distance) are bundled together and low local call prices offered in order to gain market share. Thus re-sellers may be using 'loss leading' as a way of overcoming the barrier to entry that Telstra's market share possibly represents.

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<sup>10</sup> Although branding is a barrier to entry in the retail market, it would be expected to represent a barrier for wholesale entry for vertically integrated carriers.

It is noted, however, that the Commission was of the view that declaring the local carriage service would provide local call re-sellers with an opportunity to assess the demand characteristics of the retail market and the responses of competitors. This would provide existing and new local call re-sellers with more certainty on which to base any decisions about rolling out new infrastructure and therefore facilitate market entry. The Commission is also interested in comments about the extent to which retail competition is facilitating, or is likely to facilitate, market entry.

***Questions to assist those preparing submissions:***

- Are the sunk costs associated with rolling out new networks a significant barrier to entry for carriers supplying the local carriage service at a wholesale level in CBD areas? Do the sunk costs differ substantially between different technologies?
- Are there any other barriers to entry for new carriers supplying the local carriage service at the wholesale level in CBD areas, such as Telstra's market share?
- Are there any barriers to entry for new re-sellers supplying local calls at a retail level?

### **4.2.3 Market growth**

It was noted in the Commission's report on *Local Telecommunications Services* that fixed telephony services already had a high level of penetration in Australia (i.e. around 50 per cent of the population). Declaration was not expected to increase the penetration of telephony services, but rather provide end-users with additional choices in terms of local call re-sellers, increased competition on the retail service dimensions and possibly lead to lower priced local calls for end-users.

The Commission is interested in whether at the retail level there has been growth in the demand for local calls since the report, either as a result of declaration or for other reasons, and whether growth is expected over the foreseeable future. This is an important consideration, because if demand for local calls is growing then it is more likely that new local call re-sellers at the retail level will be able to enter the market and use it as a stepping stone towards investment in networks, further enhancing competition. That said, it is not necessarily the case that any market growth would be captured by new entrants particularly where incumbent carriers have economies of scale and lower per unit costs and/or where there are barriers to entry.

***Questions to assist those preparing submissions:***

- Has there been growth in the demand for local calls in CBD areas since the local carriage service was declared (if so, in which CBD areas)? If so, has the growth been captured by incumbent carriers or new market entrants?
- Is it expected that there will be growth in the demand for local calls in CBD areas over the foreseeable future (if so, in which CBD areas)?

## **4.3 The efficient use of, and investment in, infrastructure**

As discussed in section 3.2.3 of this Discussion Paper, when considering the LTIE the Commission will consider the efficient use of, and investment in, infrastructure. There are three matters that the Commission will generally consider:

- the technical feasibility of supplying and charging for a particular service;
- the legitimate commercial interests of the suppliers, including the ability of the supplier to exploit economies of scale; and
- the impact on incentives for investment in infrastructure.

In regard to the first of these matters, the report on *Local Telecommunication Services* noted that a study commissioned by the Commission concluded that it was feasible for Telstra to supply and charge for a local carriage service. In considering whether to provide an exemption, this does not appear to be an issue which requires further examination.

### **4.3.1 Legitimate commercial interests of carriers supplying the local carriage service**

The legitimate commercial interests of carriers supplying the local carriage service were considered in the Commission's report on *Local Telecommunications Services*. The report noted that it appeared declaration of the local carriage service would not impact adversely on a carrier's ability to exploit economies of scale and scope. In addition, it was found that declaration would not adversely affect the ability of a carrier to meet contractual commitments.

Furthermore, the legitimate commercial interests of carriers supplying the local carriage service include the ability of carriers to make a commercial return, but are unlikely to extend to achieving a higher than normal commercial return. The Commission's preliminary view is that the consideration of the legitimate commercial interests in regard to pricing is a matter for the relevant pricing principles concerned and may not go to whether an exemption is made. The Commission notes that it released draft pricing principles for the local carriage service<sup>11</sup> in April 2000, in which it outlined its draft view that the retail-minus pricing methodology was the most suitable pricing principle for the local carriage service. The Commission is currently finalising its report on the local carriage service pricing principles.

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<sup>11</sup> *Access Pricing Paper – Local Carriage service* (draft report), ACCC, April 2000.

***Questions to assist those preparing submissions:***

- Since the Commission's report on the *Local Telecommunications Services*, what has been the impact of declaration on the legitimate commercial interests of the carriers supplying the local carriage services at a wholesale level (Telstra and other carriers)?
- What would be the impact on the legitimate commercial interests of the carriers supplying the local carriage service at a wholesale level (Telstra and other carriers) if an individual and/or class exemption was provided?

### **4.3.2 Incentives for investment in existing and new infrastructure**

In declaring the local carriage service, the Commission was of the view that to the extent declaration encouraged entry of efficient providers of retail services, and improved the ability of local call re-sellers to use re-supply as a stepping stone to the roll out of their own infrastructure, then declaration would encourage economic efficiency. In this regard, declaration would facilitate market entry and enable local call re-sellers to obtain information about demand characteristics and the likely responses of competitors, thus reducing the risks associated with infrastructure deployment.

The report on *Local Telecommunications Services* noted that Telstra provided a different view, submitting that declaration would reduce competition by diminishing the incentives for the deployment and activation of alternative infrastructure. In this regard, it appeared that Telstra was concerned that too low an access price would occur as a result of declaration and that this would deter investment.

Cable & Wireless Optus submitted that extending the standard access obligations to carriers other than the incumbent carrier, Telstra, would adversely impact on economically efficient investment in infrastructure. Furthermore, it was also suggested that requiring a new entrant to supply the local carriage service to other local call re-sellers would impact on the viability of investment in alternative customer access infrastructure.

As noted in section 4.3.1 of this Discussion Paper, the Commission has released a draft report in which it confirmed its preliminary view that a retail-minus pricing approach is likely to be the Commission's approach to pricing the local carriage service in an assessment of an undertaking or an access dispute on the price of the local carriage service.

***Questions to assist those preparing submissions:***

- See the questions in section 4.2.1 of this Discussion Paper which deal with market share, new entrants and network roll out. These particularly go to the level of investment that has occurred since declaration, that which is expected to occur in the foreseeable future and the impact of an exemption (individual or class) on investment incentives.



## **5. Appropriate timing for the consideration of possible variations to the local carriage service declaration**

As discussed in section 2.3 of this Discussion Paper, the Commission indicated when declaring the local carriage service that it may be appropriate, at some point in the future, to vary or revoke the scope of the declaration if it became apparent there were wholesale substitutes for the service. The Commission considers that issuing this Discussion Paper provides it with an opportunity to seek comments on the appropriate timing for consideration of possible variations to, or even revocation of, the local carriage service declaration.

On receiving submissions in relation to this issue, the Commission will examine the matters raised and consider indicating its views on appropriate timing for consideration of potential variations to, or even revocation of, the local carriage service declaration, if any.

### **5.1 Examining the appropriate timing for the consideration of possible variations to the local carriage service declaration**

The Commission is seeking the views of industry participants and the general public as to the most appropriate timing for the consideration of possible variations to the local carriage service declaration, if any, and the reasons why. The Commission requests that in specifying a timeframe in which such considerations should be made, submissions also address the issues outlined in section 4 of this Discussion Paper. This framework should be used to support suggested timeframes.

It is noted, however, that in using this framework, submissions should address those issues associated with winding the declaration back even further than the CBD areas of Melbourne, Sydney, Brisbane, Adelaide and Perth. For example, submissions may consider what substitute technologies are used to provide the local carriage service, or substitutes for the local carriage service, outside the CBD areas and whether new carriers are expected to supply these services at the wholesale level in particular parts of Australia in the foreseeable future. This would be supported by, say, expectations that new carriers are likely to continue to roll out new infrastructure in these areas.

#### ***Questions to assist those preparing submissions:***

- What are the views of industry participants, and the general public, as to the appropriate timing for consideration of possible variations to the local carriage service declaration, if any? Using the same framework as provided in section 4 of this Discussion Paper, what considerations are used to support these views?
- Over what geographic areas should the inquiry, or inquiries, be focused?

# Attachment A – Telstra’s individual exemption application

## TRADE PRACTICES ACT 1974 - SUBSECTION 152AT

### APPLICATION FOR INDIVIDUAL EXEMPTION FROM STANDARD ACCESS OBLIGATIONS

**TO:** The Australian Competition and Consumer Commission (“**Commission**”)

Application is made under section 152AT of the Trade Practices Act 1974 (“**Act**”) for an individual exemption from standard access obligations set out in section 152AR of the Act in respect of the local carriage service, a service declared by the Commission pursuant to section 152AL of the Act.

**1 (a) Name of applicant:**

Telstra Corporation Ltd (ACN 051 775 556)

**(b) Short description of business carried on by applicant:**

Supply of telecommunications and media services.

**(c) Address in Australia for service of documents on the applicant:**

Ms Deena Shiff  
Director, Regulatory  
Telstra Corporation Ltd  
11/231 Elizabeth Street  
SYDNEY NSW 2000

**2 (a) Description of declared service to which this application relates:**

The local carriage service as described in Appendix 4 to the Commission’s report on the declaration of local telecommunications services dated July 1999.

**(b) Description of exemption applied for:**

The application is for an exemption from each of the standard access obligations relating to the supply of the local carriage service within the central business districts (“**CBD**”) of Sydney, Melbourne, Brisbane, Adelaide and Perth, with effect from 1 September 2000.

For the purpose of this exemption, “**CBD**” of a city is the area which comprises the Exchange Service Areas (“**ESA**”) classified by Telstra as CBD for the purpose of the ordering and provisioning procedures set out in Telstra’s Ordering and Provisioning Manual as amended from time to time.

**(c) Grounds for grant of exemption:**

The grounds for the grant of exemption are that the making of the order:

- (i) is likely to result in the achievement of objectives referred to in section 152AB(2) of the Act, namely:
  - the objective of promoting competition in markets for listed services (including local call services and other public switched telephone services supplied in conjunction with local call services); and
  - the objective of encouraging the economically efficient use of, and the economically efficient investment in, the infrastructure by which such services are supplied; and
- (ii) therefore, will promote the long term interests of end users of local call services such as to meet the criterion for the grant of an individual exemption in section 152AT(4).

**(d) Context of the exemption:**

This application seeks an exemption order to apply from 1 September 2000 in respect of the standard access obligations relating to the supply of local carriage service within the CBDs of Sydney, Melbourne, Brisbane, Adelaide and Perth.

This is one of several applications by Telstra for exemption orders designed to phase out Telstra's standard access obligations with respect to the local carriage service over an estimated 12-month period, reflecting the progressive availability over that period of facilities-based alternatives to the local carriage service as a means of competition for local services.

The remaining applications will seek, in a staged process, an exemption in relation to the supply of all local carriage services by Telstra throughout Australia.

The facts and contentions relied upon by Telstra in support of the exemption are contained in submissions to the ACCC which will follow this application.

**(e) Relevant considerations in granting an exemption**

The key consideration in granting an exemption in the specified CBD areas is the current or latent availability of choice of service provider for customers' local (and related) PSTN services. This is based on:

- the existence of extensive fibre loop infrastructure overbuild in the nominated CBD areas;
- the strong commercial case for service provision over new facilities - including fibre, microwave links and wireless local loops (LMDS); and
- the strong commercial case for service provision based on the leasing of (declared) transmission capacity from Telstra and other infrastructure operators.

A submission in support of this application will follow.

**3 Name and address of person authorised by the applicant to provide additional information in relation to this application:**

Ms Deena Shiff  
Director, Regulatory  
Telstra Corporation Ltd  
11/231 Elizabeth Street  
SYDNEY NSW 2000

**Dated.....[7 June 2000].....**

**Signed by/on behalf of applicant**

.....[ signed].....

**(Signature)**

.....[Deena Shiff].....

**(Full Name)**

.....[Director Regulatory].....

**(Description)**