

**IN THE MATTER OF UNDERTAKINGS DATED  
23 DECEMBER 2005 PROVIDED BY TELSTRA  
CORPORATION LIMITED TO THE  
AUSTRALIAN COMPETITION AND  
CONSUMER COMMISSION IN RESPECT OF  
UNCONDITIONED LOCAL LOOP SERVICE  
(the “Access Undertaking”)**

**STATEMENT OF [c-i-c]**

On 28 July 2006, I, [c-i-c] of 300 La Trobe Street, Melbourne, in the State of Victoria, [c-i-c], state as follows:

1 [removed]

**Background**

2 I am [c-i-c]. One of my responsibilities is to draft and negotiate access arrangements between Telstra and its wholesale customers, including access arrangements for the supply by Telstra of the unconditioned local loop service (“ULLS”).

3 I have been in my current position for four years.

4 I have detailed knowledge of Telstra’s existing access arrangements for the supply by Telstra of ULLS and the rationale behind the inclusion of certain non-price terms such as the non-price terms relating to network modernisation.

5 I have been asked to comment on the network modernisation provisions that have been included in the Access Undertaking, the rationale for their inclusion and the length of Telstra’s existing access arrangements for the supply of ULLS.

6 I make this statement from my own knowledge.

**Telstra’s existing agreed contractual provisions for network modernisation**

7 Telstra’s standard access agreement for the supply by Telstra of ULLS (“**Standard Access Agreement**”) includes the following provisions (with slight variations in wording over time):

- (a) an acknowledgment from wholesale customers that the provision of ULLS does not “prevent, limit, or restrict” Telstra from modernising its network;

- (b) an acknowledgment from wholesale customers that network modernisation may include the installation of RIMs and CMUXs closer to end-users than traditional exchange buildings;
- (c) an acknowledgment from wholesale customers that they may be, and have accepted the risk of being, required to relocate points of interconnect for the ULLS (“ULL POI”) from traditional exchange buildings to closer to the vicinity of relevant RIMs or CMUXs or alter the deployment classes of authorised equipment used on the ULLS as Telstra modernises its network; and
- (d) a requirement for Telstra to provide wholesale customers with no less than 15 weeks prior notice where they are required to relocate a ULL POI, alter the deployment class of authorised equipment, or install authorised equipment in the vicinity of a CMUX or a RIM as a result of Telstra’s network modernisation activity.

8 Since July 2005, I have been involved in reviewing and redrafting the network modernisation provisions in Telstra’s standard access arrangements for the supply by Telstra of ULLS and other Telstra services. The reasons for the review and redraft were:

- (a) to update outdated terminology in the terms and conditions to reflect advances in technology, such as the anticipated future launch of ADSL2+ by Telstra and its wholesale customers; and
- (b) to expand on and better explain:
  - (i) the consequences of network modernisation; and
  - (ii) the notification process for notifying wholesale customers of network modernisation activity, particularly network modernisation activity that impacts on wholesale services that are already being supplied.

9 The review and redraft of the network modernisation provisions in the standard access agreements commenced well before, and irrespective of, Telstra’s strategic review announcements in November 2005, which included the announcement of a proposed rollout of a fibre to the node (“FTTN”) network subject to Telstra obtaining a reasonable regulatory outcome.

### **Telstra's access undertaking provision for network modernisation**

- 10 Telstra included clauses 6.1 to 6.4 of the Access Undertaking to enable Telstra to provide for any modernisation of its network that affects ULLS customers.
- 11 In formulating an appropriate provision to enable Telstra to modernise its network, I was involved in considering a number of options, balancing the needs of access seekers for certainty of term and supply with Telstra's need to modernise its network.
- 12 In my view, in order to take account of the relevant interests of access seekers, Telstra had the option of agreeing to short term access arrangements designed to avoid impeding Telstra's network modernisation plans or a notification process to provide wholesale customers with adequate notice of Telstra's modernisation plans or a combination of both.
- 13 As a result of my experience in negotiating and drafting access arrangements, I believe that short term contracts of 6 months or less designed to avoid impeding network modernisation plans would be unacceptable to wholesale customers and would be impracticable commercially to put in place on an ongoing basis because:
- (a) it provides wholesale customers with no contractual certainty; and
  - (b) it would require, for each customer, a review of the contract and possible renegotiation every six months, which is an unjustifiable imposition on the day to day operations of Telstra and its wholesale customers' business.

In my view, the practical result of end dating contracts each 6 months or less would be to increase the likelihood of customers being out of contract at least some of the time, to the mutual detriment of Telstra and the customer.

- 14 Clause 6.3 of the Access Undertaking was drafted to provide wholesale customers with existing or ordered services affected by network modernisation activity with not less than 15 weeks notice (except for emergency upgrades) because:
- (a) this was the notice period that has been included in Telstra's standard access agreement for the supply of ULLS since the implementation of ULLS in 2000, without (to my knowledge) having caused significant concern until recently to wholesale customers signing up to acquire the ULLS; and

(b) the review mentioned in paragraph 9 of this statement was directed at identifying shortfalls in the existing network modernisation provision as noted in paragraph 9, and at further explaining the 15 week notice period.

15 Telstra did not undertake in clause 6.3 of the Access Undertaking to give any particular minimum notice period where network maintenance or a network upgrade is necessary as a result of an emergency, because this is standard industry practice and reflects the terms and conditions usually found in telecommunications contracts.

**Equivalence**

16 Telstra has in place internal procedures that require Telstra to provide notice of network maintenance or a network upgrade that has an impact on existing or ordered ULLS services, as soon as Telstra has firm plans to proceed with the network upgrade proposal.

17 In addition to the individual customer notifications described above, Telstra has also been working on providing notification of all planned network upgrades, whether or not affecting any existing or ordered ULLS services, by way of a website. The website is intended to be available to all wholesale customers and Telstra retail business units.

**Length of access arrangements for the supply of ULLS**

18 Based on my knowledge of Telstra’s existing arrangements for the supply of ULLS, [c-i-c]. Typically, Telstra’s access arrangements for the supply of ULLS which Telstra is able to negotiate [c-i-c].

**DATED** 28 July 2006.

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[c-i-c]