
Dated

23 December 2005

**TELSTRA ACCESS
UNDERTAKING TO THE
AUSTRALIAN COMPETITION
AND CONSUMER
COMMISSION UNDER
DIVISION 5 OF PART XIC OF
THE TRADE PRACTICES
ACT 1974 (CTH)**

**Telstra Corporation Limited
(ABN 33 051 775 556)
("Telstra")**

in favour of

**Australian Competition and
Consumer Commission
("ACCC")**

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TELSTRA ACCESS UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION UNDER DIVISION 5 OF PART XIC OF THE TRADE PRACTICES ACT 1974 (CTH)

Date: 23 December 2005

Parties: **TELSTRA CORPORATION LIMITED (ABN 33 051 775 556)**
having its registered office at 242 Exhibition Street, Melbourne,
Victoria, 3000 ("Telstra")

in favour of:

**AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION** being a body corporate established under section 6A
of the *Trade Practices Act 1974 (Cth)* ("ACCC")

Recitals:

- A. Telstra holds a carrier licence and is a carriage service provider under the *Telecommunications Act 1997 (Cth)* ("**Telecommunications Act**").
- B. Telstra gives this undertaking pursuant to Division 5 of Part XIC of the *Trade Practices Act 1974 (Cth)* ("**TPA**") in relation to the Unconditioned Local Loop Service (the "**Declared Service**") which was declared by the ACCC under section 152AL(3) of the TPA.
- C. For the avoidance of doubt, the terms and conditions specified in this Undertaking:
 - (a) principally relate to matters of pricing, and do not cover other matters relating to the supply of the Service upon which Telstra and the Access Seeker must reach agreement prior to the supply of the Service; and
 - b) do not apply to, and should not be taken as indicative of, any terms and conditions on which Telstra may decide to offer to comply with its standard access obligations in relation to any other declared services.

Operative provisions:

1 Definitions and Interpretation

- 1.1 The following terms shall have the meanings set out below unless the context otherwise requires:

Access Seeker means a carrier or carriage service provider seeking the supply of one or more of the Services by Telstra.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Legislative Event means:

- (a) the enactment, amendment, replacement or repeal of the Telecommunications Act, the TPA, the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth) or other telecommunications related legislation or subordinate legislation;
- (b) the registration, making, promulgation, issue, amendment or replacement of any code with which Telstra is required or obliged to comply;
- (c) the making of a determination or finding by a Regulator or a court of law that all or any part of this Undertaking contravenes any provision of any law, except to the extent that the making of such determination or finding constitutes a Regulatory Event; or
- (d) the determination, addition, variation or removal of a Service Provider Rule (as defined in section 98 of the Telecommunications Act) applicable to Telstra.

Regulator means the ACCC, the Australian Communications and Media Authority or the Minister administering Part XIB and Part XIC of the Trade Practices Act or the Minister administering the *Australian Communications and Media Authority Act 2005* (Cth) or the Minister administering the Telecommunications Act, as the context requires.

Regulatory Event means:

- (a) the issue of a Competition Notice by the ACCC to Telstra; or
- (b) the grant of an injunction against Telstra in relation to a breach or alleged contravention of the TPA (if any); or
- (c) the declaration, addition, variation or removal of a condition applying to Telstra's Carrier Licence; or
- (d) the giving of a lawful directive to Telstra by a Regulator; or



- (e) the giving of a direction to Telstra by the Minister.

Service means the Telstra Unconditioned Local Loop Service.

Telstra Unconditioned Local Loop Service means the access service specified in Attachment A.

Undertaking means this ordinary access undertaking to the ACCC under Division 5 of Part XIC of the TPA.

1.2 In this Undertaking unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) a reference to an agreement or another instrument includes any variation or replacement of either of them;
- (c) a reference to a Recital, Schedule or Attachment is a reference to a recital, schedule or attachment to this Undertaking and a reference to this Undertaking includes a Recital, Schedule or Attachment;
- (d) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) the word person includes a firm, body corporate, unincorporated association or an authority;
- (f) a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and permitted assigns;
- (g) all dollar amounts are expressed in Australian dollars;
- (h) a reference to a period of time:
 - (A) which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
 - (B) which commences on a given day or the day of an act or event is to be calculated inclusive of that day; and
- (i) an expression which is given a particular meaning in the Telecommunications Act or the TPA and which is not otherwise defined in this Undertaking has that meaning in this Undertaking.

1.3 Headings are included for convenience and do not affect the interpretation of this Undertaking.

2 Commencement and Duration

- 2.1 This Undertaking comes into operation upon the later of:
- (a) acceptance of the Undertaking by the ACCC under Division 5 of Part XIC of the TPA; and
 - (b) 1 January 2006,
- and continues, subject to paragraph 3.2(b), until the earlier to occur of:
- (c) 30 June 2007; or
 - (d) termination or withdrawal in accordance with the TPA.
- 2.2 For the avoidance of doubt, this Undertaking (including, without limitation, any prices in this Undertaking) has no effect in respect of any services that:
- (a) have been supplied by Telstra to an Access Seeker prior to the date on which the Undertaking is accepted by the ACCC under Division 5 of Part XIC of the TPA; or
 - (b) are being supplied by Telstra to an Access Seeker under an existing agreement on the date on which the Undertaking is accepted for as long as that agreement remains on foot.

3 Undertaking Terms and Conditions

- 3.1 Telstra undertakes to the ACCC that during the period this Undertaking is in effect pursuant to clause 2.1 it will comply with the terms and conditions specified in Attachments A, B and C of this Undertaking in relation to the standard access obligations applicable to Telstra in respect of the Declared Service.
- 3.2 For the avoidance of any doubt, this Undertaking:
- (a) does not specify all the terms and conditions on which Telstra will comply with the standard access obligations that are applicable to it in respect of the Declared Service referred to in clause 3.1, but only some of them, and therefore does not constitute an offer by Telstra to provide the Service to an Access Seeker; and
 - (b) does not apply to the Declared Service to the extent that there are no standard access obligations applicable to Telstra in respect of the Declared Service for reasons including, without limitation, the granting of an exemption by the ACCC under section 152AT of the TPA in respect of the Declared Service, the variation or revocation of a declaration by the ACCC under section 152AO of the TPA in respect of the Declared Service



or the expiry of a declaration in accordance with the TPA or a determination by the Regulator.

4 Notice of Withdrawal, Replacement and Variation of this Access Undertaking

- 4.1 If the ACCC varies a declaration relating to the Declared Service, Telstra may give the ACCC notice of a variation of this Undertaking under section 152BY of the TPA to effect variations of an equivalent nature, and to the extent reasonably necessary, to maintain consistency between this Undertaking and the varied declaration.
- 4.2 If:
- (a) a Legislative Event occurs and that Legislative Event materially affects the rights or obligations of Telstra under this Undertaking; or
 - (b) a Regulatory Event occurs in relation to Telstra; or
 - (c) a Regulator or Telstra considers that a part of this Undertaking contravenes any provision of the Telecommunications Act, the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997 (Cth)*, the *Telstra Corporation Act 1991 (Cth)*, the *Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth)* or the TPA,

Telstra may give the ACCC notice of a variation of this Undertaking under section 152BY of the TPA or notice of a replacement of this Undertaking under section 152CB of the TPA to effect such variations as are necessary or appropriate to comply with or address the Legislative Event or Regulatory Event or the concerns set out in clause 4.2(c), as the case may be.

- 4.3 Nothing in this clause 4 is to be taken as limiting Telstra's rights or the ACCC's powers and responsibilities in relation to this Undertaking under Division 5 of Part XIC of the TPA.



5 Notices


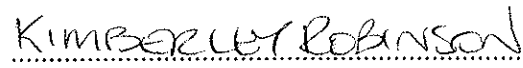
5.1 Any communications in respect of this Undertaking should be made in writing to:

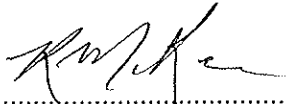
Attention: Deputy Group Managing Director
Public Policy and Communications

Address: Telstra Corporation Limited
Level 11
231 Elizabeth Street
Sydney NSW 2000

Facsimile: (02) 9261 8390

Execution page

SIGNED by KATE MCKENZIE)
)
as authorised representative for)
TELSTRA CORPORATION)
LIMITED (ABN 33 051 775 556) in the)
presence of:)
)
.....)
Signature of witness)
)
.....)
Name of witness (block letters)


.....
By executing this Undertaking the
signatory warrants that she is duly
authorised to execute this Undertaking
on behalf of **Telstra Corporation
Limited**



Attachment A - Service Schedule x 167 Telstra Unconditioned Local Loop Service



SERVICE SCHEDULE x167- TELSTRA UNCONDITIONED LOCAL LOOP SERVICE

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Service Schedule x167 - Telstra Unconditioned Local Loop Service

1 Definitions

1.1 **Authorised Equipment** means equipment that complies with the Network Deployment Rules for connection to the Telstra Unconditioned Local Loop Service.

CMUX means customer multiplexing unit.

Consumer Protection Act means the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth).

Emergency Network Upgrade means a Network Upgrade that is required to protect the security or integrity of Telstra's Network or the health or safety of any person.

IRIM means an integrated RIM.

MDF means main distribution frame.

Network means a system or series of systems capable of carrying communications by means of guided or unguided electromagnetic or optical energy.

Network Boundary means in relation to a line that enters a building on the ULL End Customer premises:

- (a) if there is an MDF in the building and the line is connected to the MDF- a two wire point on the side of the MDF nearest to the Telstra network; or
- (b) if paragraph (a) does not apply but the line is connected to a network termination device located in, on or within close proximity to, the building - the side of the device nearest to the ULL End Customer; or
- (c) if neither paragraph (a) nor (b) applies - the point ascertained in accordance with section 22 of the Telecommunications Act.

Network Deployment Rules means the Industry Code entitled *Unconditioned Local Loop Service - Network Deployment Rules* (ACIF C559:2005) registered by the ACMA under section 117 of the Telecommunications Act, as updated from time to time.

Network Upgrade has the meaning set out in clause 6.1.

RIM means a remote integrated multiplexer which is a pair gain system that employs multiplexing to derive circuits and which provides dial tone, ring current and battery feed.

RSS means a remote subscriber stage which provides dial tone, ring current and battery feed.

RSU means remote subscriber unit which performs an equivalent function to a RSS.

Telstra Customer Access Module (TCAM) is a device owned by Telstra that provides dial tone, ring current and battery feed to customer equipment. Examples include a RSS, a RSU and an IRIM.

Telstra Unconditioned Local Loop Service means the service provided by Telstra under this Service Schedule and described in paragraph 2.2.

ULL End Customer means an end customer or proposed end customer to whom the Access Seeker supplies or proposes to supply a telecommunications service using a Telstra Unconditioned Local Loop Service.

ULL End Customer Premises means premises of a ULL End Customer to which the Telstra Unconditioned Local Loop Service is or will be provided.

ULL Interconnection Cable means a cable connecting one or more twisted metallic pairs between a MDF at a Telstra local exchange or a TCAM, as the case requires, and the ULL POI.

ULL Ordering and Provisioning Code means the Industry Code entitled *Unconditioned Local Loop Service - Ordering, Provisioning and Customer Transfer* (ACIF C569:2005) published by the Australian Communications Industry Forum dated June 2005, as updated from time to time.

ULL POI means, in relation to a line, a point that is an agreed point of interconnection located at or with a TCAM and located on the ULL End Customer side of the TCAM.

ULL Service Fault Management Guideline means the Industry Guideline entitled *Unconditioned Local Loop Service - Fault Management* (ACIF G572:2001) prepared by the Australian Communications Industry Forum dated September 2001, as updated from time to time.

2 Service Description

Telstra Unconditioned Local Loop Service

- 2.1 The following service description is provided for Telstra Unconditioned Local Loop Service and applies to the provision of the Telstra Unconditioned Local Loop Service by Telstra to the Access Seeker.
- 2.2 Telstra Unconditioned Local Loop Service is a service for the use of a continuous metallic twisted pair between the Network Boundary at the ULL End Customer Premises and a ULL POI associated with the TCAM serving that ULL End Customer.

- 2.3 Telstra Unconditioned Local Loop Service will support a connection with DC continuity.

Availability

- 2.4 The availability of Telstra Unconditioned Local Loop Service may vary depending on the geographic and technical capability of the Telstra Network at the time at which a request for Telstra Unconditioned Local Loop Service is made or the Telstra Unconditioned Local Loop Service is delivered.

Cable Plant Information

- 2.5 Telstra will, in accordance with the ULL Ordering and Provisioning Code, provide the Access Seeker with information in Telstra's records about the cable plant used to provide the Telstra Unconditioned Local Loop Service.
- 2.6 The Access Seeker acknowledges that the information provided to the Access Seeker by Telstra under paragraph 2.5 will be derived from Telstra's records and that Telstra makes no representation as to the accuracy of that information.

Industry Standards

- 2.7 The Access Seeker must comply with the applicable industry safety standards, including the specifications set out in the Network Deployment Rules for voltages and currents on the Telstra Unconditioned Local Loop Service.
- 2.8 The Access Seeker must install all necessary surge protection to safeguard against personal injury and damage to equipment.

3 Access Seeker Obligations

- 3.1 The Access Seeker must comply with the ULL Fault Management Guideline, the Network Deployment Rules and the ULL Ordering and Provisioning Code.

4 Facilities Access

- 4.1 The Access Seeker will need to enter into with Telstra such facilities access arrangements as are necessary in order for it to connect its network to a Telstra Unconditioned Local Loop Service at the ULL POI. However facilities access is not a matter dealt with by this Undertaking.

5 End Customer Billing

- 5.1 The Access Seeker is responsible for billing the ULL End Customer for the telecommunications service provided by the Access Seeker to the ULL End Customer.

6 Other Provisions

Network Modernisation

6.1 The Access Seeker agrees that:

- (a) Telstra has the right to maintain and upgrade its Network;
- (b) provision of the Telstra Unconditioned Local Loop Service does not prevent, limit or restrict Telstra from maintaining or upgrading its Network; and
- (c) the maintenance and upgrade of Telstra's Network includes remediation, reconfiguration, enablement, augmentation, maintenance and repair of the Network (including the removal, rearrangement, replacement or decommissioning (for example with fibre optic cable) of the continuous metallic pair used for the supply of the Telstra Unconditioned Local Loop Service to the Access Seeker) ("**Network Upgrades**").

6.2 The Access Seeker acknowledges that:

- (a) any such Network Upgrade by Telstra may include the installation of TCAMs closer to ULL End Customers than a Telstra exchange building;
- (b) any such Network Upgrade may require:
 - (i) the truncation of Telstra Unconditioned Local Loop Services provided from Telstra exchange buildings;
 - (ii) the establishment by Access Seekers of a new ULL POI or the relocation by Access Seekers of ULL POIs from one point to another (such as from a Telstra exchange building to the vicinity of relevant TCAMs); and/or
 - (iii) the alteration of deployment classes of Authorised Equipment used by Access Seekers on Telstra Unconditioned Local Loop Service; and
- (c) a Network Upgrade may result in the Telstra Unconditioned Local Loop Service no longer being able to be supplied or the quality of the Telstra Unconditioned Local Loop Service (or any services supplied by Access Seekers to their ULL End Customers using the Telstra Unconditioned Local Loop Service) being adversely affected; and
- (d) where a Network Upgrade does not result in the truncation of a Telstra Unconditioned Local Loop Service provided to the Access Seeker, but requires the alteration of the deployment class of Authorised Equipment used on the Telstra Unconditioned Local Loop Service, then subject to the required alteration being made to the deployment class, the Access Seeker may continue to access Telstra Unconditioned Local Loop Service.

6.3 Where a Telstra Unconditioned Local Loop Service has been activated or Telstra has received a ULLS Request (as that term is defined in the ULL Ordering and Provisioning Code) and:

- (a) the Network Upgrade will require the Access Seeker to take particular action in order to continue to use the Telstra Unconditioned Local Loop Service (such as that described in clause 6.2(b)); or
- (b) the Network Upgrade will result in the Telstra Unconditioned Local Loop Service no longer being able to be supplied,

Telstra will provide the Access Seeker with notice of the Network Upgrade. The type of notice given and the length of notice period given in the Network Upgrade notice will vary depending on the type of Network Upgrade, but in the case of Network Upgrades other than Emergency Network Upgrades, Telstra will provide the Access Seeker with not less than 15 weeks' prior notice of the Network Upgrade.

6.4 Where:

- (a) a Network Upgrade notice requires the Access Seeker to take particular action (such as that described in clause 6.2(b)) in order to continue to use the Telstra Unconditioned Local Loop Service and the Access Seeker fails to do so within the time specified in the notice; or
- (b) the Network Upgrade is one that will result in a Telstra Unconditioned Local Loop Service no longer being able to be supplied,

Telstra has the right to terminate that Telstra Unconditioned Local Loop Service and the Access Seeker must comply with any notice from Telstra for the Access Seeker to submit a Handback (as that term is defined in the ULL Ordering and Provisioning Code).



Attachment B - Price List for x 167 Telstra Unconditioned Local Loop Service



TELSTRA PRICE LIST FOR X167 TELSTRA UNCONDITIONED LOCAL LOOP SERVICE

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Telstra Price List for x167 Telstra Unconditioned Local Loop Service

1 Definitions

- 1.1 **Contestable Area** has the meaning given by the Universal Service Subsidies (2001-03 Contestable Areas) Determination (No.1) 2001 as amended from time to time or as otherwise determined by the ACMA or the Minister.
- 1.2 Other capitalised terms used in this Price List have the meanings set out in paragraph 1 of Service Schedule x167 - Telstra Unconditioned Local Loop Service which forms Attachment A to this Undertaking.

2 Charges for Telstra Unconditioned Local Loop Service

- 2.1 The charges payable by the Access Seeker to Telstra for Telstra Unconditioned Local Loop comprise:
- (a) a once only charge payable at connection ("**connection charge**") (although this charge is not a matter dealt with by this Undertaking);
 - (b) a monthly charge; and
 - (c) charges for operational aspects of the service such as service qualification inquiries and order withdrawals (although these charges are not a matter dealt with by this Undertaking).
- 2.2 The charges payable by the Access Seeker to Telstra for Telstra Unconditioned Local Loop Service are geographically averaged.

3 Monthly Charge

- 3.1 The monthly charge for each Telstra Unconditioned Local Loop Service is set out in Table x167.1. The monthly charge depends upon whether the Telstra Unconditioned Local Loop Service is connected at an IRIM/RIM/CMUX or an RSS/RSU.

4 Validity

- 4.1 The charges set out in Table x167.1 are valid from 1 January 2006 until 30 June 2007.

5 GST

- 5.1 The charges set out in Table x167.1 are exclusive of any applicable GST.

6 Scope of Price List

- 6.1 The charges in Table x167.1 do not apply to the supply by Telstra to the Access Seeker of Telstra Unconditioned Local Loop Service in a Contestable Area if the Access Seeker becomes approved as a competing universal service provider under the Act in respect of that Contestable Area. If the Access Seeker becomes so approved, the parties will enter into good faith negotiations with regard to the charges for the supply of Telstra Unconditioned Local Loop Service by Telstra to the Access Seeker in that Contestable Area.

7 Minimum Term

- 7.1 Each Unconditioned Local Loop Service must be acquired for a minimum term of 3 months. The charges set out in Table x167.1 are payable for the whole of that minimum term in the event that the Access Seeker cancels the Unconditioned Local Loop Service prior to the expiration of that period.

Table x167.1 Monthly Charges

Location of ULL POI	Monthly Charge
	1 January 2006 to 30 June 2007
RSS/RSU	\$30 per month
IRIM/RIM/CMUX	Not dealt with by this Undertaking given the limited demand at this point.



Attachment C - Standard Access Obligations

- 1.1 Insofar as a Service, or a part of a Service, is a Declared Service, then Telstra will, as required under Part XIC of the TPA, treat the Access Seeker on a non-discriminatory basis as required by the standard access obligations in relation to the supply of that Service or that part of the Service, including but not limited to, if requested by the Access Seeker:
- (a) taking all reasonable steps to ensure that the technical and operational quality of that Service or that part of the Service, is equivalent to that which Telstra provides to itself; and
 - (b) taking all reasonable steps to ensure that the Access Seeker receives, in relation to that Service or that part of the Service, fault detection, handling and rectification of a technical and operational quality and timing that is equivalent to that which Telstra provides to itself.