

ORDER in respect of Telstra's PSTN OA Metropolitan individual exemption application of 8 October 2007

TRADE PRACTICES ACT 1974

**Order under paragraph 152AT(3)(a)
by the Australian Competition and Consumer Commission**

**Individual exemption from standard access obligations
in respect of PSTN OA**

1. Title

This Order may be cited as Individual Exemption Order No. 5 of 2008.

2. Commencement and Expiry

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

3. Interpretation

- (1) Unless the contrary intention appears, where words or phrases used in this Order are defined in the Act, the *Telecommunications Act 1997* or the instrument declaring the Declared Service, those words or phrases have the same meaning in this Order.

- (2) In this Order, unless the contrary intention appears –

Access means access by an Access Seeker to an Exchange Building for the purpose of taking supply of the ULLS from Telstra.

Access Seeker has the same meaning as in section 152AG of the Act.

ACMA means the Australian Communications and Media Authority.

Act means the *Trade Practices Act 1974*.

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

Bundled Fixed Voice and Broadband Service means a voice service provided together with a broadband service to an End User both of which are supplied by means of Telstra's copper-based public switched telephone network.

Capped Exchange means an Exchange Building which Telstra has determined is unavailable for Access by Access Seekers for any reason, including without limitation those Exchange Buildings listed by Telstra in the

TEBA Capped List as 'MDF capped', 'Racks capped' or 'Racks and MDF capped'.

Carrier or Carriage Service Provider Specific Access Code means:

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

Commencement Date means the date on which this Order comes into effect in accordance with Item 2 of this Order.

Commission means the Australian Competition and Consumer Commission.

Constructively Capped Exchange means an Exchange Building other than a Capped Exchange which the ACCC has determined that Telstra requires as a condition of Access improvements to be made to an Exchange Building at an Access Seeker's cost where such improvements go beyond the standard costs required for Access by the Access Seeker.

Declared Service means the PSTN OA.

End User means an end-user of carriage services or other services supplied by means of carriage services, rather than the suppliers of these services.

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

Exchange Building means a telecommunications exchange building owned, operated or controlled by Telstra.

Exemption means the exemption specified in Item 4 of this Order.

First Queued Access Seeker means the Queued Access Seeker in respect of an Exchange Building that lodged its PSR first in time in respect of that Exchange Building.

Joint Completion Inspection or **JCI** means an inspection of an Exchange Building by representatives of Telstra and an Access Seeker conducted following the completion of construction works in that Exchange Building by that Access Seeker.

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

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

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

LSS means the Line Sharing Service declared by the Commission under subsection 152AL(3) of the Act pursuant to the LSS Declaration.

LSS Declaration means the declaration made by the Commission under section 152AL(3) of the Act in respect of the LSS, the extension of which became effective on 29 October 2007 and was published in the Commonwealth of Australia Gazette No. S214 of 29 October 2007, as varied from time to time.

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

MDF means the Main Distribution Frame.

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

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

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

Potentially Capped Exchange means a Telstra Exchange Building which Telstra has determined may be unavailable for Access by Access Seekers for any reason. This includes without limitation Exchange Buildings listed in the TEBA Capped List as 'Potential'.

Preliminary Study Request or **PSR** means a request by an Access Seeker to Telstra for Access to an Exchange Building.

Prescribed LSS to ULLS Migration Process means a process developed and implemented by Telstra for the migration by Telstra, at the request of an Access Seeker, of End Users from LSS to ULLS in Attachment A ESAs.

Queued Access Seeker means an Access Seeker who:

- a. submitted a PSR before the Commencement Date in respect of Access to an Exchange Building within an Attachment A ESA that has not been rejected by Telstra and has not been withdrawn by the Access Seeker at any subsequent time; and
- b. has not passed JCI in relation to that PSR.

For the avoidance of doubt:

- a. a PSR has not been rejected by Telstra while it is still under consideration by Telstra; and
- b. Queued Access Seeker includes without limitation a First Queued Access Seeker.

Special Services Global Code means:

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

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

Standard Telephone Service has the meaning given by section 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).

TEBA Capped List means the document that Telstra publishes from time to time that lists those Exchange Buildings that Telstra regards as Capped Exchanges or Potentially Capped Exchanges.

Telstra means Telstra Corporation Limited (ACN 051 775 556).

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

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

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

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

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

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

4. Exemption

Subject to the conditions and limitations specified in Item 5 below, Telstra is exempt from the Standard Access Obligations in respect of the supply of PSTN OA within the Attachment A ESAs, except where PSTN OA is being provided in conjunction with a call dialled using a Special Services Global Code or a Carrier or Carriage Service Provider Specific Access Code.

5. Conditions and Limitations

Under subsection 152AT(5) of the Act, the Exemption is subject to the following conditions and limitations:

- 5.1 Until the date on which the Commission publishes a Prescribed LSS to ULLS Migration Process on its website, the Exemption does not apply in respect of the supply by Telstra of PSTN OA to an Access Seeker in respect of any End User that, immediately prior to the Commencement Date, was supplied with a Bundled Fixed Voice and Broadband Service by the Access Seeker using the LSS, WLR, LCS and PSTN OA supplied by Telstra.
- 5.2 If Telstra develops and implements a Prescribed LSS to ULLS Migration Process and the Commission has published that Process on its website (as referred to in item 5.1), Telstra must comply with that Process.
- 5.3 Any Prescribed LSS to ULLS Migration Process developed and implemented by Telstra must provide for the migration of End Users from LSS to ULLS in a manner that ensures:
 - a. any period of time in which an End User is unable to receive a broadband service by means of the copper pair servicing their Standard Telephone Service by reason of that migration will be no longer than three (3) hours; and
 - b. End User involvement in that migration (including without limitation the making of a telephone call or sending of correspondence by the End User to Telstra) is not required.
- 5.4 Telstra must notify the Commission, if it develops and implements a Prescribed LSS to ULLS Migration Process. The notice must:
 - a. be in writing;
 - b. be addressed to the Group General Manager, Communications Group (or such other person as notified by the Commission);
 - c. include certification by an officer of Telstra that its Prescribed LSS to ULLS Migration Process satisfies the requirements of Item 5.3 of this Order;
 - d. detail each aspect of the Prescribed LSS to ULLS Migration Process (including without limitation details of how the LSS to ULLS migration will be engineered, timeframes within which the LSS to ULLS migration will take place and details of any administrative processes to be undertaken in conjunction with the LSS to ULLS migration);
 - e. be in a form appropriate for publication by the Commission on its website; and
 - f. not contain any confidential information.
- 5.5 The Exemption does not apply in respect of the supply of PSTN OA to any Queued Access Seeker in the Attachment A ESA in respect of which the Access Seeker is a Queued Access Seeker.

5.6 Telstra must provide notice to the Commission within 24 hours of an Exchange Building within any Attachment A ESA first becoming a Capped Exchange or a Potentially Capped Exchange. The notice must:

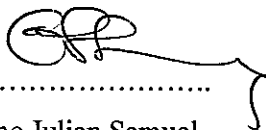
- a. be in writing;
- b. be addressed to the Group General Manager, Communications Group (or such other person as notified by the Commission);
- c. specify the Attachment A ESA within which the Exchange Building has become a Capped Exchange or Potentially Capped Exchange;
- d. specify whether the Exchange Building has become a Capped Exchange or a Potentially Capped Exchange;
- e. provide an explanation of why the Exchange Building has become a Capped Exchange or Potentially Capped Exchange;
- f. specify the date upon which the Exchange Building first became a Capped Exchange or Potentially Capped Exchange;
- g. be in a form appropriate for publication by the Commission on its website; and
- h. not contain any confidential information.

5.7 The Exemption ceases to apply within an Attachment A ESA from the date on which the Exchange Building within the Attachment A ESA first becomes a Capped Exchange, a Potentially Capped Exchange or a Constructively Capped Exchange.

5.8 The Exemption ceases to apply within an Attachment A ESA from the date on which Telstra first ceases to supply the ULLS whether to itself or to other persons within that Attachment A ESA

Note: Telstra will be taken to have ceased to supply the ULLS to itself or other persons if it ceases to be an access provider of the ULLS (within the meaning of subsection 152AR(2)) within the relevant Attachment A ESA.

5.9 For the avoidance of doubt, the Exemption will not apply in respect of PSTN OA provided under an agreement which is in force as at the Commencement Date for so long as that agreement remains in force.



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Graeme Julian Samuel

Chairman

DATED: 28th October 2008

ATTACHMENT A

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

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

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

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

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

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