

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974

IN THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

APPLICATION FOR EXEMPTION FROM STANDARD ACCESS OBLIGATIONS MADE BY:	Telstra Corporation Limited
UNDER:	Trade Practices Act 1974 (Cth) section 152AT(1)
DATE OF APPLICATION FOR EXEMPTION:	9 July 2007
DECLARED SERVICES:	Local Carriage Service (LCS) and Wholesale Line Rental Service (WLR)

CONFIDENTIALITY UNDERTAKING

I, _____ of _____, undertake to Optus Networks Pty Limited (“**Optus**”) that:

1 Subject to the terms of this Undertaking, I will keep confidential at all times the information listed in Attachment 1 to this Undertaking (“**Confidential Information**”) that is in my possession, custody, power or control.

2 I acknowledge that:

- (a) this Undertaking is given by me to Optus in consideration for Optus making the Confidential Information available to me for the Approved Purposes (as defined below);
- (b) all intellectual property in or to any part of the Confidential Information is and will remain owned by Optus; and
- (c) by reason of this Undertaking, no licence or right is granted to me, or any other employee, agent or representative of [PARTY] in relation to the Confidential Information except as expressly provided in this Undertaking.

3 I will:

- (a) only use the Confidential Information for:

- (i) the purposes of the consultation process(es) (including making submissions or otherwise) of the ACCC in relation to the applications for exemption from the standard access obligations in respect of the declared Local Carriage Service and the Wholesale Line Rental Service lodged by Telstra on 9 July 2007 (“**Exemptions**”);
- (ii) the purposes of any application made to the Australian Competition Tribunal (the “**Tribunal**”) under section 152AV of the *Trade Practices Act 1974* for a review of a decision made by the ACCC in respect of the Exemptions; or
- (iii) any other purpose approved by Optus in writing;

(“**the Approved Purposes**”);

- (b) comply with any reasonable request or direction from Optus regarding the Confidential Information.

4 Subject to paragraph 5 below, I will not disclose any of the Confidential Information to any other person without the prior written consent of Optus.

5 I acknowledge that I may disclose the Confidential Information to which I have access to:

- (a) ACCC employees for the Approved Purposes; and
- (b) any external legal advisors, independent experts, internal legal or regulatory staff of [PARTY], for the Approved Purposes provided that:
 - (i) the person to whom disclosure is proposed to be made (“**the person**”) is notified in writing to Optus and Optus has approved the person as a person who may receive the Confidential Information, which approval shall not be unreasonably withheld;
 - (ii) the person has signed a confidentiality undertaking in the form of this Undertaking or in a form otherwise acceptable to Optus; and
 - (iii) a signed undertaking of the person has already been served on Optus; and
- (c) if required to do so by law; and

(d) to any secretarial, administrative and support staff, who perform purely administrative tasks, and who assist me or any person referred to in paragraph 5(b) for the Approved Purpose.

6 I will establish and maintain security measures to safeguard the Confidential Information that is in my possession from unauthorised access, use, copying, reproduction or disclosure and use the same degree of care as a prudent person in my position would use to protect that person's confidential information.

7 Except as required by law and subject to paragraph 11 below, within a reasonable time after whichever of the following first occurs:

(a) a decision is made to accept or reject the Exemptions;

(b) my ceasing to be employed or retained by [PARTY] (provided that I continue to have access to the Confidential Information at that time); or

(c) my ceasing to be working for [PARTY] in respect of the Approved Purposes (other than as a result of ceasing to be employed by [PARTY]),

I will destroy or deliver to Optus the Confidential Information and any documents or things (or parts of documents or things), constituting, recording or containing any of the Confidential Information in my possession, custody, power or control.

Note: For the purpose of paragraph 7(a) above, a decision is made to accept or reject the Exemptions where 21 days has expired after a decision has been made by the ACCC or the Tribunal to accept or reject the Exemptions and there are no outstanding applications, appeals or other legal proceedings in relation to the Exemptions or the decision.

8 Nothing in this Undertaking shall impose an obligation upon me in respect of information:

(a) which is in the public domain; or

(b) which has been obtained by me otherwise than in relation to the Exemptions;

provided that the information is in the public domain and/or has been obtained by me by reason of, or in circumstances which do not involve any breach of a confidentiality undertaking or a breach of any other obligation of confidence in favour of Optus or by any other unlawful means, of which I am aware.

- 9 I acknowledge that damages may not be a sufficient remedy for any breach of this Undertaking and that Optus may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach of this Undertaking, in addition to any other remedies available to Optus at law or in equity.
- 10 The obligations of confidentiality imposed by this Undertaking survive the destruction or delivery to Optus of the Confidential Information pursuant to paragraph 7 above.
- 11 I acknowledge that this Undertaking is governed by the law in force in the State of New South Wales and I agree to submit to the non-exclusive jurisdiction of the court of that place.

Signed: _____ Dated: _____

Print name: _____

ATTACHMENT 1

Any document, or information in any document provided by Optus to [PARTY] which Optus asserts is confidential information for the purposes of this Undertaking or is otherwise marked as confidential, including, but not limited to, the confidential version of Optus' submission on the Exemptions.