

**TELECOMMUNICATIONS (NETWORK EXEMPTION
SPECIFIED VELOCITY NETWORKS)
INSTRUMENT 2012**

COMMONWEALTH OF AUSTRALIA

TELECOMMUNICATIONS ACT 1997

I, STEPHEN MICHAEL CONROY, Minister for Broadband, Communications and the Digital Economy, make the following Instrument under subsection 141A(1) and subsection 144(1) of the *Telecommunications Act 1997*.

Dated 9/1/2012



STEPHEN MICHAEL CONROY
Minister for Broadband, Communications and the Digital Economy

1. Name of Instrument

This Instrument is the *Telecommunications (Network Exemption—Specified Velocity Networks) Instrument 2012*.

2. Cessation

This Instrument ceases to have effect on:

(a) subject to subclause (b), the day which is 90 days after the last of the customer transition completion dates of the Specified Velocity Networks; or

[explanatory note of proposed Telstra change: if Telstra is able to complete a sale of the networks, a short 'run-on' period after completion of transition from the Telstra systems to the new owner's systems will enable a winding down of the Telstra involvement in the running of the network, including to resolve any 'in-flight' orders and other edge cases.]

(b) 1 July 2023, if Telstra owns any of the Specified Velocity Networks at that date.

~~the designated day.~~

Note 1 By virtue of paragraph 4(1)(a) and subsection 4(2 A) of the *Acts Interpretation Act 1901*, this Instrument will commence immediately on the commencement of Part 3 of Schedule 1 to the *Telecommunications Legislation Amendment (National Broadband Network Measures—Access Arrangements) Act 2011*.

Note 2 ~~The 'designated day' is 1 July 2018, or another day specified by the Minister in a non-legislative instrument under paragraph 577A(10)(b) of the *Telecommunications Act 1997* (refer subsection 577A(10)).~~

3. Definitions

In this Instrument:

Act means the *Telecommunications Act 1997*.

access seeker has the same meaning as in Part XIC of the *Competition and Consumer Act 2010*.

declared service has the same meaning as in Part XIC of the *Competition and Consumer Act 2010*.

Fibre Access Broadband Service means a carriage service that:

- a. is offered to be supplied on a wholesale basis; and
- b. is supplied by means of an optical fibre line; and
- c. is offered to be supplied at each of the following maximum transmission speeds:
 - i. download transmission speed of 8Mbps and upload transmission speed of 384kbps;
 - ii. download transmission speed of 30Mbps and upload transmission speed of 1Mbps;
 - iii. download transmission speed of 100Mbps and upload transmission speed of 5Mbps; and
- d. has the following configurations:
 - i. a 'best effort' or non-prioritised service, as characterised by the Differentiated Services Code Point Default Forwarding per-hop behaviour; and
 - ii. connectivity made with static Layer 2 Tunnelling Protocol (L2TP) tunnels and Broadband Virtual Local Area Networks, giving direct access to end user sessions; and =
 - iii. end-user sessions are aggregated together in the Telstra network via static L2TP tunnels supplied over Ethernet.

customer transition completion date means, in respect of a Specified Velocity Network, the date by which Telstra completes disconnection of all Telstra-Equipped Services supplied to premises connected to that Specified Velocity Network.

Telstra-Equipped Services means, carriage services which Telstra, while it is in a position to exercise control of a Specified Velocity Network, supplies to itself or to access seekers at premises connected to that Specified Velocity Network, including the Fibre Access Broadband Service.

[note explaining the Telstra proposed change: If Telstra is able to complete a sale of the networks, Telstra will be supplying carriage services before and after customer transition: before customer transition as the network operator and after customer transition as a wholesale customer of the new owner. It is therefore important to clearly identify the Telstra services which are to be disconnected by the customer transition completion date, and which will then trigger the exemption falling away. As Telstra will be using its systems and its equipment after customer transition, although at a different service layer of level (in the same way as would any RSP), defining the Telstra services to be disconnected by reference to Telstra-owned equipment or systems does not necessarily provide a clear definition. However, using the defined term 'in a position to control a network' will provide a bright line because, once the technology and system 'swap out' is completed, Telstra will no

longer be in a position to control the network but will be in the same position as any other RSP].

Specified Velocity Network means an optical fibre-based telecommunications network:

- a. that is owned by Telstra or over which Telstra is in a position to exercise control; and

[explanatory note of proposed Telstra change: If Telstra is able to complete a sale of the networks, there will need to be a transition period post sale during which Telstra will continue to operate the network while Telstra and the new owner 'swap out' the Telstra network equipment and connections to the Telstra OSS for the new owner's network equipment and connections to its own OSS. This continuing level of involvement by Telstra during the transition period is likely to mean that, within the meaning of section 155, Telstra is in a 'position to exercise control' of the network. Accordingly, Part 8 would apply and, as Telstra is vertically integrated, Telstra would be in breach of Part 8 if post sale Telstra continues to operate the network and provide customers with services until the transition to the new owner's network could be completed.

Part 7 does not use a control test but would be triggered in the transition period because the new owner permits the local access lines forming part of the transferred network to be used by Telstra to continue supplying the FAB service until the owner can commence supplying its own compliant layer 2 services.

However, using 'the control test' as a criterion for the eligibility of the network for the exemption under both Parts 7 and 8 will more narrowly confine the exemption to the specific circumstances of the transition period.]

- b. which comprises:
- i. a network located in:
- (A) a real estate development project specified in column 1 of the table at Schedule 1 to this Instrument; and
- (B) an area of land depicted in the corresponding map at Annexure A to Schedule 1 (refer to column 2 of the table at Schedule 1 to this Instrument); and
- ii. those local access lines or parts of access lines located outside the areas specified in subparagraph (b)(i) necessary for the provision of carriage services to premises located within the areas specified in subparagraph (b)(i); and
- c. constructed by Telstra in accordance with a legally enforceable agreement:

- i. in force prior to 25 November 2010; and
 - ii. between Telstra and the person responsible for the real estate development project; and
- d. which uses fibre-to-the-premises architecture.

Note By virtue of paragraph 46(1)(b) of the *Acts Interpretation Act 1901*, the following expressions have the same meaning as in the Act:

- ACCC
- AC MA
- ~~designated day~~
- carriage service
- local access line
- optical fibre line
- real estate development project
- telecommunications network
- ~~Telstra~~
- A person being in a position to exercise control over a network

4. Exemptions

1. Subject to the condition set out in subclauses (2), (3) and (4), and pursuant to subsections 141 A(1) and 144(1) of the Act, each Specified Velocity Network is exempt from sections 141 and 143 of the Act.
2. The exemptions are subject to the condition that, if a Fibre Access Broadband Service is not a declared service:
 - a. Telstra must offer and supply to access seekers, upon reasonable request, a Fibre Access Broadband Service over the Specified Velocity Network; and
 - b. Telstra must:
 - i. publish on the wholesale section of its website, the terms and conditions (price and non-price) on which it offers to supply the Fibre Access Broadband Service on a Specified Velocity Network **(reference offer)**; and
 - ii. each time it enters into an agreement with an access seeker, where the terms and conditions are not the same as those set out in the reference offer, provide the following information to the ACCC within 14 days of entering into the agreement:
 - (A) the identity of the parties to the agreement; and
 - (B) the differences between the terms and conditions set out in the agreement and the terms and conditions set out in the reference offer; and

- iii. each time it implements a material change to either the reference offer or the product specification for the Fibre Access Broadband Service, provide the following information to the ACCC within 14 days of implementing the change:
 - (A) the nature of the change; and
 - (B) the date the change took effect; and
- iv. make available to the ACCC or ACMA, within 14 days of receipt of the request, copies of executed contracts it has entered into with person responsible for the real estate development project for the construction of a Specified Velocity Network.

Note 1 Paragraph 141 A(4)(b) provides that an instrument made under subsection 141A(1) may be subject to such conditions as are specified in the instrument.

Note 2 Paragraph 144(4)(b) provides that an instrument made under subsection 144(1) may be subject to such conditions as are specified in the instrument.

3. The customer transition completion date of a Specified Velocity Network must be no more than:

- (a) 27 months after Telstra ceases to own a Specified Velocity Network; or
- (b) the further period specified by the Minister.

[explanatory note for Telstra proposed change: Telstra acknowledges that if it is able to complete a sale of the networks, the end date for the exemption is not a fixed date and so there needs to be some certainty about the maximum timeframe within which customer transition is to be completed. Telstra anticipates that the migration period could take between 12 and 24 months. However, the customer transition period will very much depend on the resources, capability and development times required by a new owner. Telstra's experience of customer transitions also suggests that unanticipated issues and challenges will arise and that this may result in delays as solutions are developed. Telstra proposes some built-in flexibility by setting a basic period of two and a half years, but if major difficulties arise, the Minister has the power to give a further period.]

4. A Specified Velocity Network ceases to be subject to the exemptions 90 days after the customer transition completion date of that Specified Velocity Network.

Schedule 1 - Specified Velocity Networks

(clauses 3 and 4)

New South Wales

Item	Column 1 Name and location of real estate development project	Column 2 Area of project (Map Number)
1	Aveo Island Point Estate - St George's Basin (Sanctuary Point) NSW	Map 1 at Annexure A
2	Bingara Gorge Estate - Wilton NSW	Map 2 at Annexure A
3	Calala Village Estate - Tamworth NSW	Map 3 at Annexure A
4	Endeavour House - Coogee NSW	Map 4 at Annexure A
5	Fern Bay Seaside Village - Fern Bay NSW	Map 5 at Annexure A
6	Freeman's Ridge Estate - Hoxton Park NSW	Map 6 at Annexure A
7	Harrington Grove Estate - Harrington Park NSW	Map 7 at Annexure A
8	Heritage on Peel 1 - Tamworth NSW	Map 8 at Annexure A
9	Hermitage Camden Valley Golf Resort - Catherine Fields NSW	Map 9 at Annexure A
10	Hundred Hills Estate - Murwillumbah NSW	Map 10 at Annexure A
11	Jacksons Landing Estate - Pyrmont NSW	Map 11 at Annexure A
12	Manufactured Homes Estate -Leppington NSW	Map 12 at Annexure A
13	Moore Creek Estate - Calala (Tamworth) NSW	Map 13 at Annexure A
14	Rouse Hill Estate - Rouse Hill NSW	Map 14 at Annexure A
15	Seaside City Estate - Kingscliffe NSW	Map 15 at Annexure A
16	Stonecutters Ridge Estate - Colebee NSW	Map 16 at Annexure A
17	Tamworth Lifestyle Village - West Tamworth NSW	Map 17 at Annexure A
18	Windmill Downs Estate - Tamworth NSW	Map 18 at Annexure A
19	Windmill Hill Estate - Tamworth NSW	Map 19 at Annexure A

Victoria

Item	Column 1 Name and location of real estate development project	Column 2 Area of project (Map Number)
20	Cascades on Clyde Estate -Cranbourne VIC	Map 20 at Annexure A
21	Cornells Hill Estate - Doreen VIC	Map 21 at Annexure A
22	Eastridge Estate -Mooroolbark/Croydon VIC	Map 22 at Annexure A
23	Eynesbury Estate - Eynesbury VIC	Map 23 at Annexure A
24	Kew Cottages Estate - Kew VIC	Map 24 at Annexure A
25	Kingsford Estate - Point Cook VIC	Map 25 at Annexure A
26	Laurimar Estate - Doreen VIC	Map 26 at Annexure A
27	Martha Cove Estate - Safety Beach VIC	Map 27 at Annexure A

Item	Column 1 Name and location of real estate development project	Column 2 Area of project (Map Number)
28	Saltwater Coast Estate - Point Cook VIC	Map 28 at Annexure A
29	Somerfield Estate - Keysborough VIC	Map 29 at Annexure A
30	The Hunt Club Estate - Cranbourne VIC	Map 30 at Annexure A
31	Yarra's Edge Estate - Melbourne VIC	Map 31 at Annexure A

Queensland

Item	Column 1 Name and location of real estate development project	Column 2 Area of project (Map Number)
32	Bluewater Estate - Trinity Park (Cairns) QLD	Map 32 to Annexure A
33	Boonaroo Views Estate - Nerang QLD	Map 33 to Annexure A
34	Brookwater Estate - Brookwater QLD	Map 34 at Annexure A
35	Canopy's Edge Estate - Smithfield (Cairns) QLD	Map 35 at Annexure A
36	Cascade Gardens Estate -Rockhampton QLD	Map 36 at Annexure A
37	Centrus Estate - Eight Mile Plains QLD	Map 37 at Annexure A
38	Ecopoint Estate - Victoria Point QLD	Map 38 at Annexure A
39	Edenbrook Estate - Bundaberg QLD	Map 39 at Annexure A
40	Emerald Lakes Estate - Carrara QLD	Map 40 at Annexure A
41	Fitzgibbon Chase Estate - Fitzgibbon QLD	Map 41 at Annexure A
42	FKP Rochedale Estate - Rochedale QLD	Map 42 at Annexure A
43	Forest Ridge Estate - Narangba QLD	Map 43 at Annexure A
44	Gainsborough Greens Estate -Pimpana QLD	Map 44 at Annexure A
45	Gecko Valley Estate - Gladstone QLD	Map 45 at Annexure A
46	Greater Ascot Estate - Shaw (Townsville) QLD	Map 46 at Annexure A
47	H2O MDU - Southport QLD	Map 47 at Annexure A
48	Highland Reserve Estate - Biloela QLD	Map 48 at Annexure A
49	Huntington Downs Estate - Maudsland QLD	Map 49 at Annexure A
50	Kerrisdale Estate - Beaconsfield (North Mackay) QLD	Map 50 at Annexure A
51	Liberty Rise Estate - Bohle (Townsville) QLD	Map 51 at Annexure A
52	Mount Cotton Estate - (Mount Cotton Brisbane) QLD	Map 52 at Annexure A
53	Mountview Estate - Redbank Plains QLD	Map 53 at Annexure A
54	Northern Element Estate - Pimpana (Ormeau) QLD	Map 54 at Annexure A
55	Ocean Reach Estate - Cannon Valley (Airlie Beach) QLD	Map 55 at Annexure A
56	Ocean's Edge Estate - Palm Cove (Cairns) QLD	Map 56 at Annexure A
57	Oxford & Thorpe St Units - Balmoral (Brisbane) QLD	Map 57 at Annexure A
58	Pacific Harbour Estate - Bribie Island QLD	Map 58 at Annexure A
59	Panorama Heights Estate - Biloela QLD	Map 59 at Annexure A
60	Pioneer Valley Estate - Kuraby QLD	Map 60 at Annexure A

Item	Column 1 Name and location of real estate development project	Column 2 Area of project (Map Number)
61	Plantation Palms Estate - Rural View (North Mackay) QLD	Map 61 at Annexure A
62	Riverside Ridge Estate - Douglas (Townsville) QLD	Map 62 at Annexure A
63	Riverstone Crossing Estate -Maudsland/Upper Coomera QLD	Map 63 at Annexure A
64	Royal Pines Marina Estate - Benowa (Gold Coast) QLD	Map 64 at Annexure A
65	Salacia Waters Estate - Paradise Point QLD	Map 65 at Annexure A
66	Sanctum Estate - Mount Low (Townsville) QLD	Map 66 at Annexure A
67	Smithfield Village Estate - Trinity Park (Cairns) QLD	Map 67 at Annexure A
68	Stoneybrook Estate - Glen Eden (Gladstone) QLD	Map 68 at Annexure A
69	Tannum Waters Estate - Tannum Sands (Gladstone) QLD	Map 69 at Annexure A
70	The Fairways Estate - Brookwater QLD	Map 70 at Annexure A
71	The Observatory Estate - Reedy Creek QLD	Map 71 at Annexure A
72	The Outlook Estate - Deebing Heights QLD	Map 72 at Annexure A
73	The Ridges Estate - Peregian (Sunshine Coast) QLD	Map 73 at Annexure A
74	Village at Coorparoo - Coorparoo (Brisbane) QLD	Map 74 at Annexure A
75	Village at Redcliffe - Redcliffe QLD	Map 75 at Annexure A
76	Waverley Park Estate - Willowvale QLD	Map 76 at Annexure A
77	Wheller on the Park Estate -Chermside QLD	Map 77 at Annexure A
78	Willowbank Estate - Kirwan (Townsville) QLD	Map 78 at Annexure A
79	Windarra Estate - Bunya (Brisbane) QLD	Map 79 at Annexure A
80	Yeronga Village - Yeronga QLD	Map 80 at Annexure A
81	Yungaba - Kangaroo Point QLD	Map 81 at Annexure A

South Australia

Item	Column 1 Name and location of real estate development project	Column 2 Area of project (Map Number)
82	Bluestone Mount Barker Estate - Mt Barker SA	Map 82 at Annexure A
83	Narnu Waterways Estate SA	Map 83 at Annexure A
84	The Marina - Hindmarsh Island SA	Map 84 at Annexure A
85	Wakefield Waters Estate - Port Wakefield SA	Map 85 at Annexure A

Western Australia

Item	Column 1 Name and location of real estate development project	Column 2 Area of project (Map Number)
86	Austin Cove Estate - Yunderup WA	Map 86 at Annexure A
87	Baldivis North Estate - Baldivis WA	Map 87 at Annexure A
88	Bayonet Head Estate - Bayonet Head WA	Map 88 at Annexure A
89	Beachridge Estate - Dryandra Boulevard WA	Map 89 at Annexure A

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Item	Column 1 Name and location of real estate development project	Column 2 Area of project (Map Number)
90	Beachside at Yanchep Estate -Yanchep WA	Map 90 at Annexure A
91	Brighton estate - Butler WA	Map 91 at Annexure A
92	Broadwater Park Private Estate -Broadwater WA	Map 92 at Annexure A
93	Brookleigh Estate - Caversham WA	Map 93 at Annexure A
94	Capricorn Village Estate - Two Rocks WA	Map 94 at Annexure A
95	Champion Lakes/Champion Drive - Champion Lakes WA	Map 95 at Annexure A
96	Clydesdale Estate - McKail (Albany North) WA	Map 96 at Annexure A
97	CY O'Connor Village - Forrestdale WA	Map 97 at Annexure A
98	Dalyellup Beach Estate - Dalyellup WA	Map 98 at Annexure A
99	Ellenbrook Estate - Ellenbrook WA	Map 99 at Annexure A
100	Esprit Estate - Eaton WA	Map 100 at Annexure A
101	Evermore Heights Estate - Baldivis WA	Map 101 at Annexure A
102	Frasers Landing Estate - Coodanup (Mandurah) WA	Map 102 at Annexure A
103	Heron Park Estate - Harrisdale WA	Map 103 at Annexure A
104	Ibis Gardens Estate - Broadwater WA	Map 104 at Annexure A
105	Port Geographe Estate - Geographe (Busselton) WA	Map 105 to Annexure A
106	Provence Estate - Yalyalup (Busselton) WA	Map 106 at Annexure A
107	Rapids Landing Estate - Margaret River WA	Map 107 at Annexure A
108	Seville Grove Estate - Seville Grove WA	Map 108 at Annexure A
109	Shorehaven at Alkimos Estate -Alkimos WA	Map 109 at Annexure A
110	St Leonards Estate - West Swan WA	Map 110 at Annexure A
111	Taylor Private Estate - Caversham WA	Map 111 at Annexure A
112	The Glades Byford Estate - Byford WA	Map 112 at Annexure A
113	Vasse Newton Estate - Vasse WA	Map 113 at Annexure A
114	Whiteman Edge Estate - Henley Brook/West Swan WA	Map 114 at Annexure A
115	Yalyalup Estate - Yalyalup WA	Map 115 at Annexure A

Northern Territory

Item	Column 1 Name and location of real estate development project	Column 2 Area of project (Map Number)
116	Bellamack Multiple Estate Area -Bellamack NT	Map 116 at Annexure A
117	Johnston Northern Enterprise Estate Area - Johnston NT	Map 117 at Annexure A
118	Lyons Estate - Lyons NT	Map 118 at Annexure A