



**Australian Government**

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**Department of Broadband,  
Communications and the Digital Economy**

**Introduction of an eligible revenue threshold  
for the Universal Service Obligation and  
National Relay Service reporting and levy  
obligations: release of exposure draft**

**Telecommunications (Participating Persons)  
Determination 2011 (No.1)**

**April 2011**

# 1. Overview of instrument to introduce an eligible revenue threshold for the Universal Service Obligation and National Relay Service reporting and levy obligations

The Exposure Draft of the *Telecommunications (Participating Persons) Determination 2011* (No.1) (the Participating Persons Determination) exempts carriers with an annual eligible revenue of less than \$25 million from reporting requirements pursuant to the Universal Service Obligation (USO) and the National Relay Service (NRS), and as a result from contributing to the USO and NRS levies.

Making this instrument is part of the government's commitment to removing unnecessary red tape in the telecommunications industry by streamlining the eligible revenue assessment process. This will reduce the regulatory compliance costs for smaller carriers as well as reduce administrative costs for the Australian Communications and Media Authority (ACMA).

The Exposure Draft of the Participating Persons Determination is at Attachment B.

## 2. Consultation process

The government invites interested stakeholders to comment on the Exposure Draft of the Participating Persons Determination proposed to be made under paragraph 20A(2)(b) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Consumer Protection Act).

Please make submissions in writing to:

The Manager  
Universal Access Section  
Networks Regulation Branch  
Department of Broadband, Communications and the Digital Economy  
GPO Box 2154 CANBERRA ACT 2601

Or send by email to [consumersafeguardsreform@dbcde.gov.au](mailto:consumersafeguardsreform@dbcde.gov.au)

The closing date for submissions is **5PM AEST 16 May 2011**.

The department will publish all submissions on its website unless the submitter requests confidentiality.

## 3. Background

Under the current regulatory arrangements, a holder of a telecommunications carrier licence is required to pay annual carrier licence charges as well contribute (in the form of a levy) to the

USO and NRS. The amount paid by each carrier for these levies, is in part, based on each carrier's eligible revenue.

To calculate eligible revenue, carriers are required to submit an eligible revenue return to the ACMA at the end of each financial year. This involves lodging a form and supporting documents (including an annual financial statement and an independent auditors report) to the ACMA. The ACMA then uses this information to assess each carrier's eligible revenue, which is in turn used to calculate a carrier's contribution to the USO and NRS levies. The ACMA also currently uses eligible revenue to calculate the variable component of a carrier's annual carrier licence charge. The annual carrier licence charge also includes a fixed component.

For smaller carriers, the cost of preparing and submitting their eligible revenue return will often exceed their actual contribution to the levies. In the ACMA's 2008–09 eligible revenue assessment, there were a total of 194 carriers, with 170 having eligible revenue of less than \$25 million and 31 out of that number having zero eligible revenue and therefore not contributing to the levy at all.

On 15 September 2009, the government announced a package of reforms to telecommunications regulation in Australia which included the intention to remove unnecessary red tape by exempting smaller carriers from certain reporting obligations to the ACMA and annual carrier licence charges.

The draft Participating Persons Determination will exempt carriers with eligible revenue of less than \$25 million from needing to lodge an eligible revenue return to the ACMA and as a result from paying the USO and NRS levies.

A \$25 million eligible revenue threshold has been selected because it would align more closely with reporting processes mandated for Australian businesses under Commonwealth legislation and regulations. It will allow the ACMA to align its requirements with section 292 of the *Corporations Act 2001* so that a company required to submit a return under that section would be required to submit a return to the ACMA. This could streamline the reporting process for the companies involved and for the ACMA.

The Minister for Broadband, Communications and the Digital Economy (the Minister) will also issue a direction to the ACMA to make necessary changes under the *Telecommunications (Carrier Licence Charges) Act 1997* to exempt carriers with eligible revenue of less than \$25 million from paying the annual carrier licence charges. The ACMA will consult on this at a later time.

The introduction of an eligible revenue threshold is expected to start benefiting carriers from the 2010–11 eligible revenue period. On 20 June 2010, the government announced changes to the delivery of services under the USO and other universal access services. The introduction of the eligible revenue threshold will complement these changes.

## **4. Legislative basis for the draft Participating Persons Determination**

Paragraph 20A(2)(b) of the Consumer Protection Act enables the Minister to make a written determination exempting certain people from being a 'participating person' for the purpose of the USO.

## **5. Outline of the draft Telecommunications (Participating Persons) Determination 2011 (No.1)**

### **Commencement**

The draft Participating Persons Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

### **Repeal of existing Ministerial Determination in relation to the NRS**

The draft Participating Persons Determination repeals the *National Relay Service (Participating Persons) Determination 2005 (No.1)*. This sets out that if a carrier's gross telecommunications sales revenue (for an eligible revenue period) is less than \$10 million, the person will not be a 'participating person' for the purpose of Part 3 of the Consumer Protection Act and will not be liable to pay the NRS levy for the relevant quarters. The National Relay Service (Participating Persons) Determination 2005 (No.1) is no longer required because the draft Participating Persons Determination results in carriers with eligible revenue of less than \$25 million not being liable to pay the NRS levy.

### **Key definitions**

#### ***Eligible revenue***

Eligible revenue for an eligible revenue period is taken to be the amount that would be a person's eligible revenue under the Consumer Protection Act, if that person were a participating person. Section 20B of the Consumer Protection Act sets out that eligible revenue is calculated by deducting certain revenues and expenses from a person's gross telecommunications sales revenue. Amounts deducted include revenues from:

- overseas activities
- acts in Australia for services outside Australia
- renting, selling, installing, insuring, repairing or maintaining customer equipment
- any levy credit balance
- content services

- any exempt base stations
- installing or maintaining telecommunications infrastructure
- the management of these activities and inter-person payments.

### ***Gross telecommunications sales revenue***

Gross telecommunications sales revenue for an eligible revenue period is taken to be the amount that would be a person's gross telecommunications sales revenue under the *Telecommunications Universal Service Obligation (Eligible Revenue) Determination 2003* (Eligible Revenue Determination), if that person were a participating person. Section 20 of the Eligible Revenue Determination sets out that gross telecommunications sales revenue includes all sales revenue listed in the person's financial statements plus other telecommunications sales revenue (for example amounts that have not been described as sales revenue in the financial statements) minus non-telecommunications sales revenue and revenue earned whilst not holding a telecommunications carrier licence.

### ***Initial sales revenue***

Initial sales revenue for an eligible revenue period is the amount that would be a person's initial sales revenue under the Eligible Revenue Determination, if that person were a participating person. Section 14 of the Eligible Revenue Determination sets out that initial sales revenue includes all sales revenue included in a person's financial statements.

The calculation of eligible revenue, gross telecommunications sales revenue and initial sales revenue is explained in detail in the *2009-10 Eligible Revenue Return Handbook for licensed Telecommunications Carriers*.

Carriers with initial sales revenue and gross telecommunications sales revenue under the \$25 million threshold will have eligible revenue below the relevant threshold. Given it is simpler for carriers to identify their initial sales revenue and gross telecommunications sales than to identify their eligible revenue (which is a more onerous calculation) the draft Participating Persons Determination sets out a three-tiered revenue threshold to further minimise the regulatory burden on smaller carriers.

### ***Eligible revenue period***

Eligible revenue period means a financial year, as referred to in section 5 (and defined in section 20) of the Consumer Protection Act.

## **Exemptions from reporting requirements and payment of levies**

### ***USO non-participating person***

The draft Participating Persons Determination provides that a person is a USO non-participating person for an eligible revenue period if:

- the person's eligible revenue or gross telecommunications sales revenue or initial sales revenue is less than \$25 million
- within four months of the end of the eligible revenue period (end of the financial year) the person provides to the ACMA an eligible statutory declaration stating that their eligible revenue or gross telecommunications sales revenue or initial sales revenue for the eligible revenue period is less than \$25 million.

The effect of being a USO non-participating person under the draft Participating Persons Determination is that the person will be exempt from being a participating person under section 20A of the Consumer Protection Act for the relevant eligible revenue period, and consequently will not be required to contribute to the USO levy.

### ***Exemption from NRS levy***

Under section 99 of the Consumer Protection Act, a person is liable to pay the NRS levy (paid quarterly) if:

- the person is a participating person for the relevant NRS quarter (subsection 99(a) of the Act)
- they are covered by the most recent eligible revenue assessment made by the ACMA before the start of the quarter (subsection 99(b) of the Act). A participating person for the purposes of the NRS levy is a person who is a carrier at any time during the relevant NRS quarter.

Under section 20F of the Consumer Protection Act, the ACMA must make a written assessment of each participating person's eligible revenue for an eligible revenue period. In practice this is carried out by the ACMA annually once they have received carriers' eligible revenue returns. The effect of a person becoming a USO non-participating person for an eligible revenue period is that the person will no longer be a participating person under section 20A of the Consumer Protection Act and therefore will not be covered by the ACMA's eligible revenue assessment under section 20F of the Consumer Protection Act. Consequently the USO non-participating person will not fall within section 99(b) of the Consumer Protection Act and will not be liable to pay the NRS levy from the quarter immediately after the quarter in which the ACMA conducted its eligible revenue assessment.

Attachment A sets out an example of the effect of the draft Participating Persons Determination on the USO and NRS levies.

# **ATTACHMENT A – Effect of the draft Telecommunications (Participating Persons) Determination 2011 (No.1) on Carrier A in eligible revenue periods 2010–11**

## **Universal Service Obligation levy liability**

For the 2010–11 eligible revenue period, Carrier A's eligible revenue is \$20 million as calculated in accordance with the *Telecommunications Universal Service Obligation (Eligible Revenue) Determination 2003*. In accordance with the draft *Telecommunications (Participating Persons) Determination 2011 (No.1)* (the Participating Persons Determination), Carrier A submits a statutory declaration before 31 October 2011 to the Australian Communications and Media Authority (ACMA) declaring its eligible revenue to be under \$25 million. Given that Carrier A has met the requirements of subsection 4(a) of the draft Participating Persons Determination, Carrier A is a Universal Service Obligation (USO) non-participating person and is not a participating person for the purposes of section 20A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Consumer Protection Act).

In mid-2012 the ACMA makes an eligible revenue assessment setting out the eligible revenue of all participating persons for the 2010–2011 eligible revenue period (section 20F of the Consumer Protection Act). Given Carrier A is not a participating person it will not be covered by the 2010–11 eligible revenue assessment.

In late 2012, the ACMA makes the Universal Service Assessment which sets the levies for 2011–12 based on whether a carrier was a participating person in 2010–11 (sections 20U/20N of the Consumer Protection Act). As Carrier A was not a participating person in 2010–11, it will not be liable to pay a USO levy relating to 2011–12 (See Figure 1).

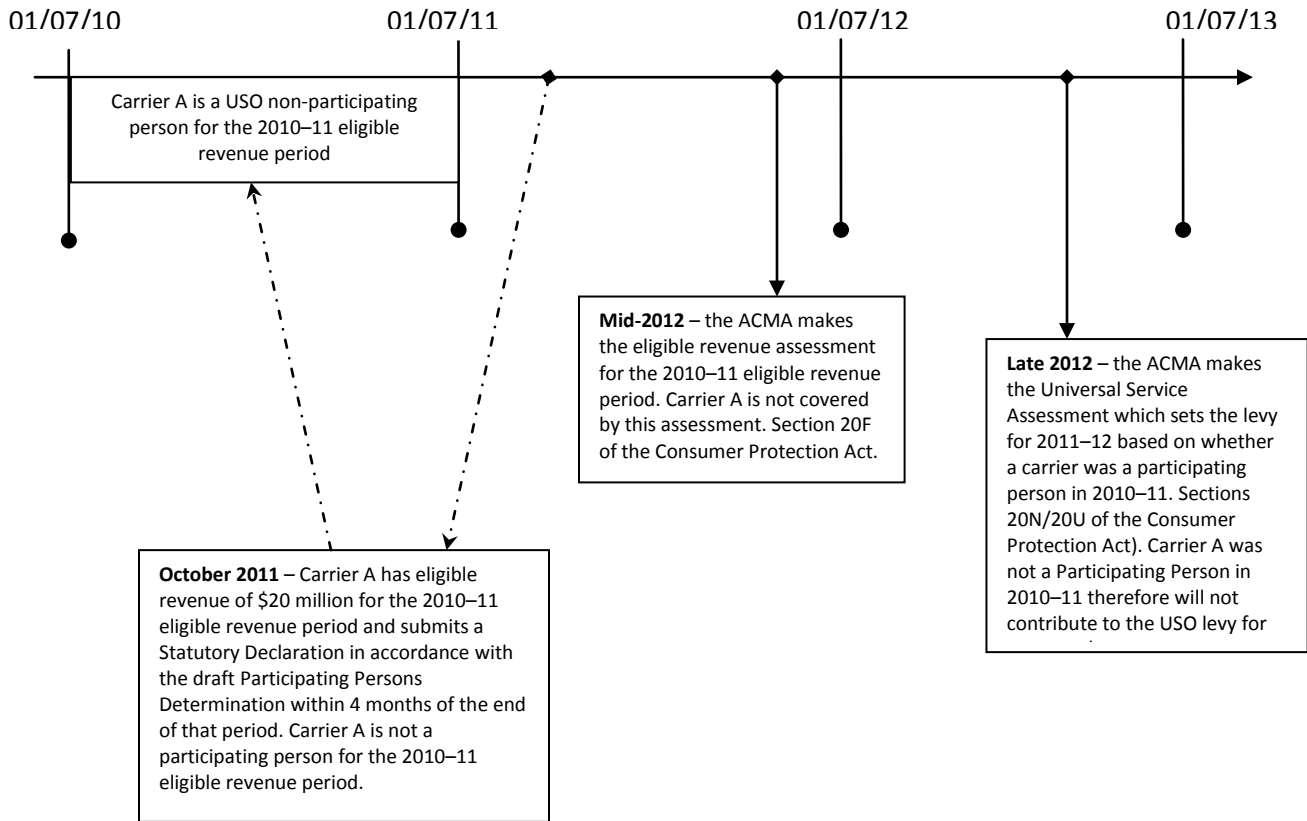
## **National Relay Service levy liability**

In accordance with section 99 of the Act, a person will only be liable to pay the National Relay Service (NRS) levy if:

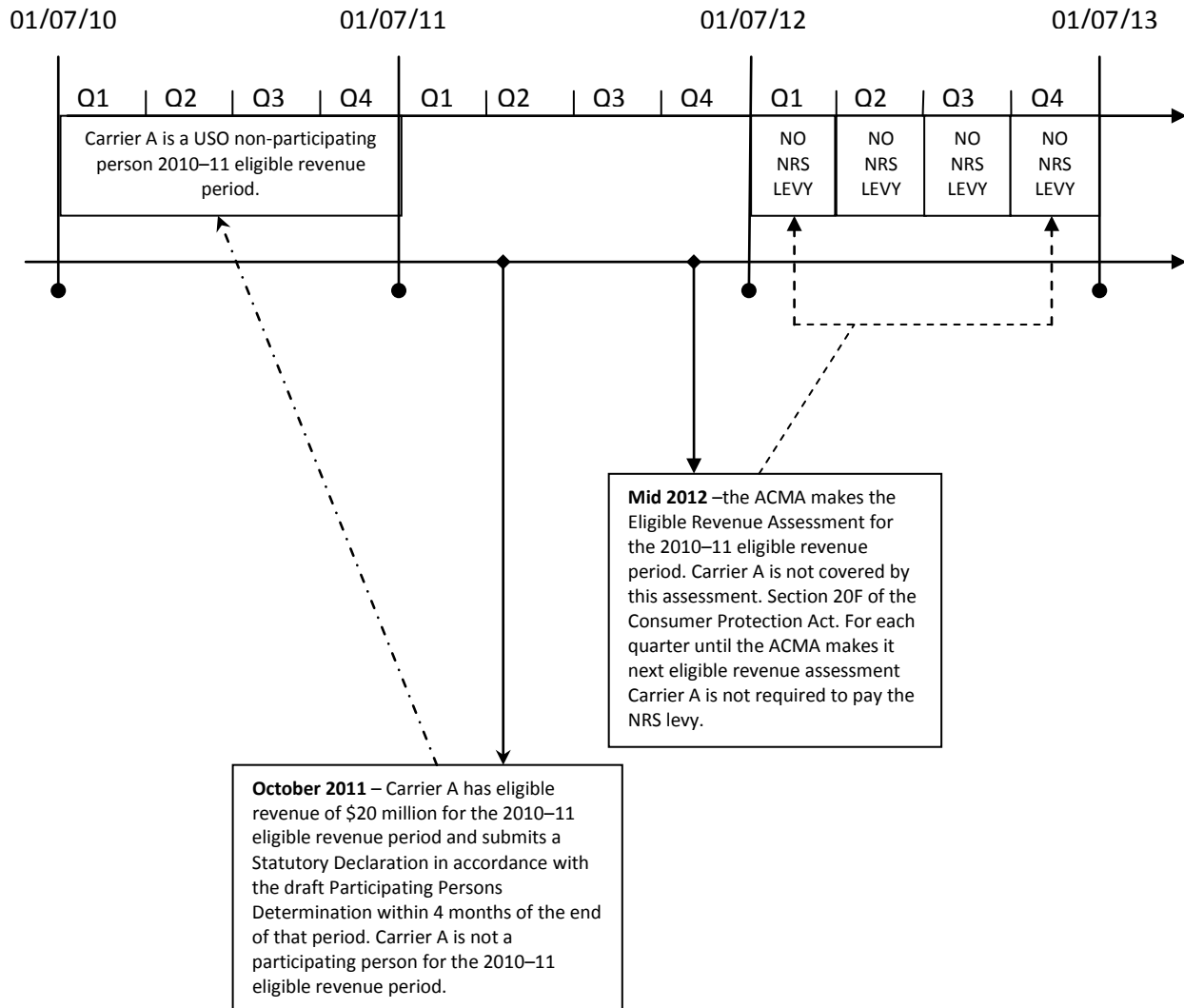
- the person is a participating person for the relevant NRS quarter (this requires the person to be a carrier) (subsection 99(a) of the Consumer Protection Act)
- the person is covered by the most recent eligible revenue assessment made by the ACMA before the start of the quarter (subsection 99(b) of the Consumer Protection Act).

Given Carrier A was not a participating person in 2010–2011 and was not covered by the 2010–11 eligible revenue assessment, Carrier A will not be liable to pay the NRS levy from the quarter immediately after the quarter in which the ACMA makes its eligible revenue assessment. For example if the ACMA's 2010–11 eligible revenue assessment is made in April 2012 (fourth quarter of 2011–12 financial year), for each quarter until the ACMA makes its next eligible revenue assessment Carrier A is not required to pay the NRS levy (See Figure 2).

**FIGURE 1: Example of effect of a carrier being a USO non-participating person under the draft Participating Persons Determination and USO levy liability**



**FIGURE 2 Example of effect of a carrier being a USO non-participating person under the draft Participating Persons Determination and NRS levy liability**



# **ATTACHMENT B – exposure draft of the Telecommunications (Participating Persons) Determination 2011 (No.1)**

Commonwealth of Australia

*Telecommunications (Consumer Protection and Service Standards) Act 1999*

## **Telecommunications (Participating Persons) Determination 2011 (No. 1)**

I, STEPHEN MICHAEL CONROY, Minister for Broadband, Communications and the Digital Economy, make the following Determination under paragraph 20A(2)(b) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

Dated 2011

STEPHEN CONROY  
Minister for Broadband, Communications and the Digital Economy

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### **1 Name of Determination**

This Determination is the *Telecommunications (Participating Persons) Determination 2011 (No. 1)*.

### **2 Commencement**

This Determination commences on the day after it is registered on the Federal Register of Legislative Instruments

### 3 Repealed

The *National Relay Service (Participating Persons) Determination 2005 (No. 1)* is repealed.

### 4 Definitions

(1) In this Determination:

*ACMA* means the Australian Communications and Media Authority.

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

*Eligible Revenue Determination* means the *Telecommunications Universal Service Obligation (Eligible Revenue) Determination 2003* as in force from time to time.

Note: The terms *eligible revenue period* and *participating person* have the same meaning given by section 5 of the Act.

(2) For the purposes of this Determination:

(a) a person's *eligible revenue* for an eligible revenue period is the amount that would be that person's *eligible revenue* under the Act, if that person were a participating person;

(b) a person's *gross telecommunications sales revenue* for an eligible revenue period is the amount that would be that person's *gross telecommunications sales revenue* under the Eligible Revenue Determination, if that person were a participating person; and

(c) a person's *initial sales revenue* for an eligible revenue period is the amount that would be that person's *initial sales revenue* under the Eligible Revenue Determination, if that person were a participating person.

(3) A statutory declaration given by a person is an *eligible statutory declaration* if it is made:

(a) by:

(i) if the person is a company—a director or company secretary of the company, or

(ii) if the person is a natural person—the person; and

(b) in accordance with the *Statutory Declarations Act 1959*.

(4) A person is a *USO non-participating person* for an eligible revenue period if: (a) both:

(i) the person's eligible revenue for the eligible revenue period is less than \$25 million; and

(ii) within 4 months of the end of the eligible revenue period, the person provides to the ACMA an eligible statutory declaration stating that the

- (iii) person's eligible sales revenue for the eligible revenue period was less than \$25 million; or
  
- (b) both:
  - (i) the person's gross telecommunications sales revenue for the eligible revenue period is less than \$25 million; and
  - (ii) within 4 months of the end of the eligible revenue period, the person provides to the ACMA an eligible statutory declaration stating that the person's gross telecommunications sale revenue for the eligible revenue period was less than \$25 million; or
  
- (c) both:
  - (i) the person's initial sales revenue for the eligible revenue period is less than \$25 million; and
  - (ii) within 4 months of the end of the eligible revenue period, the person provides to the ACMA an eligible statutory declaration stating that the person's initial revenue for the eligible revenue period was less than \$25 million.

## **5 Determination**

If a person is a USO non-participating person for an eligible revenue period, the person is exempt from section 20A of the Act for that eligible revenue period.