

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Broadband, Communications  
and the Digital Economy

*Telecommunications Act 1997*

*Telecommunications (Regulated Services) Determination (No. 1) 2011*

### **Authority**

Subclause 71(4) of Schedule 1 to the *Telecommunications Act 1997* (the Act) authorises the Minister, by legislative instrument, to determine that a specified eligible service is a regulated service for the purposes of subsections 577A(2) and (3) and Part 9 of Schedule 1 to the Act.

### **Purpose**

The purpose of this Determination is to specify two eligible services, namely the 'Wholesale ADSL Layer 2' service and the 'Telstra Exchange Building Access' service as regulated services for the purposes of subsections 577A(2) and (3) and Part 9 of Schedule 1 to the Act. An 'eligible service' is a listed carriage service (as defined in the Act) or a service that facilitates the supply of a listed carriage service (see section 152AL of the *Competition and Consumer Act 2010* (CCA)).

The services specified as regulated services in this Determination are in addition to the services specified as regulated services in clause 71 of Schedule 1 to the Act.

Under clause 71, each declared service (within the meaning of Part XIC of the CCA) is a regulated service for the purposes of Part 9 of Schedule 1 unless the Minister under subclause 71(3) determines that a specified declared service is not a regulated service.

### **Background**

Part 9 of Schedule 1 to the Act provides for the functional separation of Telstra.

The Act provides that if Telstra submits a structural separation undertaking (SSU), and where applicable a migration plan, which is accepted by the ACCC and comes into force under Part 33 of the Act, Telstra will not be required to submit a functional separation undertaking under Part 9 of Schedule 1 to the Act.

Under subsections 577A(2) and (3) of the Act, the ACCC must not accept an SSU given under section 577A unless the ACCC is satisfied that the undertaking contains appropriate and effective measures for transparency and equivalence in relation to the supply by Telstra of regulated services to Telstra's wholesale customers and Telstra's retail business units from the time a structural separation undertaking given to the ACCC under subsection 577A(1) comes into force (see section 577AB) until the 'designated day' (see subsection 577A(10)).

This determination provides for the transparency and equivalence measures to apply to the Wholesale ADSL Layer 2 and Telstra exchange building access services, in addition to all declared services.

The Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

### Consultation

Drafts of five regulatory instruments which create the framework for Telstra's structural separation, including a draft of this Determination, were released for public consultation for a period of 14 days on 1 June 2011.

In response, submissions were received from the Competitive Carriers' Coalition (CCC), Optus, Telstra, Australian Communications Consumer Action Network (ACCAN), Vodafone Hutchison Australia (VHA) and Herbert Geer (on behalf of iiNet, Internode and Adam Internet).

The Department of Broadband, Communications and the Digital Economy also consulted directly with Telstra, NBN Co Limited and the ACCC on the draft Determination.

Details of the accompanying Determination are set out in the Attachment.

**ATTACHMENT****Details of the *Telecommunications (Regulated Services) Determination (No. 1) 2011*****Section 1—Name of Determination**

Section 1 provides that the title of the Determination is the *Telecommunications (Regulated Services) Determination (No. 1) 2011*.

**Section 2—Commencement**

Section 2 provides that the Determination commences the day after it is registered on the Federal Register of Legislative Instruments.

**Section 3—Definitions**

Section 3 sets out definitions of terms used in the Determination.

**Section 4—Regulated service—Wholesale ADSL Layer 2**

Subsection 4(1) of the Determination provides that for the purposes of subclause 71(4) of Schedule 1 to the Act, ‘Wholesale ADSL Layer 2’ is determined as a regulated service.

Subsection 4(2) of the Determination defines Wholesale ADSL Layer 2 for the purposes of subsection 4(1). Wholesale ADSL Layer 2 is a carriage service that uses copper or aluminium based wire to carry data between the boundary of the end user’s premises and the local exchange, but not necessarily to the exchange where the data traffic is aggregated and where Telstra’s network is interconnected with the network of a wholesale customer. The definition recognises that the carriage of data to the exchange may utilise other technologies or means of transmission.

**Section 5—Regulated service—Telstra Exchange Building Access**

Subsection 5(1) of the Determination provides that for the purposes of subclause 71(4) of Schedule 1 to the Act, ‘Telstra Exchange Building Access’ is determined as a regulated service.

Subsection 5(2) of the Determination provides that for the purposes of subsection 5(1), the Telstra Exchange Building Access is the use of an exchange building facility, either in connection with Telstra’s supply of an active declared service; or for the purpose of enabling interconnection of facilities to enable Telstra to supply an active declared service.

The inclusion of external facilities to the exchange building (external interconnection cables, external interconnection ducts and pits that are used with an external interconnect duct) means that transparency and equivalence rules will apply to access seekers interconnecting their equipment located adjacent to an exchange building when the exchange building is subject to space constraints.