

Deed of Undertaking

- Network Upgrade in Standard Zones

Telstra Corporation Limited ("Telstra")

and

The Commonwealth of Australia ("the Australian Government")

Dated

Contents

1	Interpretation	2
2	Undertaking	5
3	Term Of This Deed	5
4	Reporting	5
5	Liaison and Monitoring	5
6	Change Management	5
7	Force Majeure	6
8	Notification of Force Majeure Event	6
9	Remedies	7
10	Notices	7
11	Confidentiality	8
12	Entire Agreement	8
13	Counterparts	8
14	Governing Law	8
	SCHEDULE ACTIVITY TO BE PERFORMED AND COMPLETED BY THE COMPLETION DATE (clause 2)	10
	Appendix 1 - Reporting	13

Deed Of Undertaking

Between TELSTRA CORPORATION LIMITED (ABN 33 051 775 556) having its registered office at 242 Exhibition Street, Melbourne, Victoria 3000 (“Telstra”)

And THE COMMONWEALTH OF AUSTRALIA (“the Australian Government”) represented by the DEPARTMENT OF COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS

BACKGROUND:

- A. The Regional Telecommunications Inquiry has reported to the Australian Government on the adequacy of telecommunications services in regional, rural and remote Australia and arrangements that should be put in place to ensure that Australians in regional, rural and remote areas continue to share in the benefits of further service improvements and developments in technology.
- B. The Inquiry’s overall assessment was that the Australian Government has responded positively and comprehensively to the earlier Telecommunications Services Inquiry findings, and that the arrangements that have been put in place are addressing the community concerns identified by the Telecommunications Services Inquiry.
- C. The Regional Telecommunications Inquiry identified the ongoing use of Analogue Radio Concentrator Systems (“ARCS”) and Digital Radio Concentrator Systems (“DRCS”) as an area of concern. The key service quality issues identified by the Inquiry with such systems are low data speeds, lack of enhanced calling features, potential congestion and poor reliability.
- D. The Inquiry recognised that Telstra is currently undertaking work to replace these older systems. For users in Extended Zones and some adjacent Standard Zones, the ARCS and DRCS systems are being replaced under Telstra’s Extended Zones Agreement with the Australian Government. For the remaining users, these systems are currently being replaced under Telstra’s Remote Australia Telecommunications Enhancement (“RATE”) program. The RATE program upgrades these services through the use of Alternative Access Technologies, such as CDMA Wireless Local Loop (“WLL”) and Subscriber Wireless Integrated Network Gateway (“SWING”).
- E. To ensure that all Australians will share in the benefits of these service improvements, the Inquiry recommended (in recommendation 2.8) that Telstra provide a formal undertaking to the Australian Government to complete the upgrade of its ARCS and DRCS systems under the RATE program in accordance with a publicly available timeframe.

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- F. Telstra has agreed to give the Australian Government a formal legally binding undertaking to:
- (a) upgrade its fixed network by replacing the ARCS and DRCS systems with Alternative Access Technologies under Telstra's RATE program within a specified timeframe; and
 - (b) report on Telstra's progress in upgrading its fixed network to the Australian Communications Authority,
- in accordance with the terms of this Deed.

OPERATIVE PROVISIONS:

1 Interpretation

- 1.1 In this Deed, unless the contrary intention appears:

'ACA' means the Australian Communications Authority.

'Activity' means the activities described in the Schedule, which Telstra has undertaken to perform and complete within the Activity Period.

'Activity Period' means the period specified in the Schedule during which the Activity must be completed.

'Australian Government' and 'Australian Government's' means the Commonwealth of Australia and includes the Commonwealth's officers, delegates, employees and agents, and the Commonwealth's successors;

'Business Day' means in relation to the doing of any action in a place, any day other than a Saturday, Sunday, or public holiday in that place.

'Completion Date' means the day Telstra gives a Completion Notice to the ACA and the Australian Government.

'Completion Notice' has the meaning given to it in the Schedule.

'Date of this Deed' means the date written on the execution page of this Deed, and if no date or more than one date is written there, then the date on which this Deed is signed by the last Party to do so.

'Deed' means this document and includes any schedules and annexures.

'Electronic Communication' has the same meaning as in the *Electronic Transactions Act 1999* (Cth).

'Force Majeure Event' means any event or circumstance (whether by itself or in combination with a number of other events or circumstances, or the cumulative effect of the events or circumstances over time) that is outside the reasonable control of Telstra and which could not have been prevented or avoided by Telstra taking all reasonable steps and that adversely affects, or is likely to adversely

affect, the ability of Telstra to perform an obligation under the Deed and includes events or circumstances such as:

- (a) adverse weather conditions that prevent vehicle and machinery access;
- (b) act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest or drought;
- (c) inability to obtain access to any land, site or facility by reason of any law or action taken by any person or by reason of any occupational health or safety requirements;
- (d) embargo, power or water shortage;
- (e) a change in law that affects the time taken to obtain access to a land, site or facility, or that results in significant changes in design and construction practices;
- (f) any action of a Government agency or department, including refusal or revocation or a licence or consent, or a fire ban that prevents the use of vehicles or equipment;
- (g) the discovery of a latent condition (including any underground obstruction such as rock or facility not correctly marked on plans) that is not reasonably ascertainable;
- (h) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
- (i) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
- (j) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;
- (k) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority; or
- (l) strikes, blockades, lock out or other industrial disputes.

'Information System' has the same meaning as in the *Electronic Transactions Act 1999* (Cth).

'Item' means an item in the Schedule.

'Law' includes rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by-laws, rules, mandatory codes of conduct, writs, orders, injunctions or judgements.

'Party' means a party to this Deed.

‘Regional Telecommunications Inquiry’ means the inquiry of that name (also known as the Estens Inquiry) established by the Australian Government in August 2002 and which reported on 8 November 2002.

‘Report’ means progress reports and evaluations of the Activity or obligations of this Deed, as stipulated in the Schedule.

‘Schedule’ refers to the schedule to this Deed.

‘Term of this Deed’ refers to the period described in clause 3.

‘Telstra’ and **‘Telstra’s’** includes, where the context admits, Telstra’s officers, employees, agents and subcontractors, and Telstra’s successors.

‘Telstra Confidential Information’ means all information of a confidential nature provided by Telstra to the Australian Government for the purposes of this Deed which Telstra has specified is confidential to Telstra unless the information is in or becomes part of the public domain (otherwise than through breach of this Deed or an obligation of confidence owed to Telstra).

1.2 In this Deed, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular;
- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) all references to clauses are clauses in this Deed;
- (e) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, is a reference to that statute or other legislation as amended;
- (f) an uncertainty or ambiguity in the meaning of a provision of this Deed will not be interpreted against a Party just because that Party prepared the provision; and
- (g) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.3 The Schedule (and annexures and documents incorporated by reference, if any) form part of this Deed. In the event of any conflict or inconsistency between any part of:

- (a) the terms and conditions contained in the clauses of this Deed;
- (b) the Schedule;
- (c) the annexures, if any;

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- (d) documents incorporated by reference, if any;

then the material mentioned in any one of paragraphs (a) to (d) of this subclause 1.3 has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

2 Undertaking

- 2.1 Telstra undertakes to perform and complete the Activity within the Activity Period.
- 2.2 The undertaking referred to in subclause 2.1 is made solely to, and for the benefit of, the Australian Government. For the avoidance of doubt, the only parties to this Deed are the Australian Government and Telstra. This Deed does not create any legal or equitable rights or obligations as between Telstra and any person who is not a party to this Deed.

3 Term Of This Deed

- 3.1 This Deed commences on the date of this Deed and expires on the Completion Date.

4 Reporting

- 4.1 Telstra must provide the Reports to the ACA at the times and in the manner stated in the Schedule.

5 Liaison and Monitoring

- 5.1 Telstra must:
- (a) liaise with and provide information to the Australian Government as reasonably required by the Australian Government; and
 - (b) comply with all the Australian Government's reasonable requests, directions, or monitoring requirements.
- 5.2 Telstra may nominate, from time to time, a person who has authority to receive and sign notices and written communications for Telstra under this Deed and accept any request or direction in relation to the Activity.

6 Change Management

- 6.1 Except as otherwise expressly stated, this Deed cannot be varied unless the variation is in writing and executed by both parties.
- 6.2 Either party may propose variations to this Deed (including the Schedule). The parties must discuss any proposed variation to the Deed in good faith.

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- 6.3 Unless a proposed variation is manifestly unreasonable, a party must not reject a proposed variation without giving the party's written reasons for not accepting the variation.

7 Force Majeure

- 7.1 If Telstra is unable to perform or is delayed from performing an obligation under this Deed which inability or delay is caused by or which arises or results from a Force Majeure Event, that obligation is suspended but only so far and for so long as it is affected by the Force Majeure Event.
- 7.2 Telstra must take all reasonable steps to avoid, remove or limit the effects of the Force Majeure Event on its performance of the suspended obligations as quickly as possible and promptly re-commence performing the suspended obligations as soon as reasonably possible.

8 Notification of Force Majeure Event

- 8.1 If Telstra is unable to perform or is delayed from performing the Activity (or any part of the Activity) by reason of or arising or resulting from a Force Majeure Event, Telstra must notify the ACA as soon as practicable of Telstra's inability to perform or the delay in performing the Activity (or any part of the Activity), including:
- (a) details of the nature of the Force Majeure Event;
 - (b) the day on which the Force Majeure Event commenced to have an effect on Telstra's performance of the Activity (or any part of the Activity) and the earliest day on which Telstra anticipates that Force Majeure Event will cease to have an effect on Telstra's performance of the Activity (or part of the Activity); and
 - (c) what actions, if any, Telstra proposes to take to recommence the performance of the Activity (or any part of the Activity).
- 8.2 If the period for which Telstra anticipates the Force Majeure Event will affect Telstra's performance of the Activity exceeds one month, Telstra must brief the ACA at regular intervals on when it expects to recommence the Activity.
- 8.3 Unless otherwise agreed by Telstra and the ACA, briefings under subclause 8.2 should be at least on a monthly basis.
- 8.4 Telstra must notify the ACA as soon as practicable of the day on which the Force Majeure Event ceases to have an effect on Telstra's ability to perform the Activity (or part of the Activity) or ceases to cause a delay in Telstra's performance of the Activity (or part of the Activity).
- 8.5 On the day that Telstra notifies the ACA in accordance with subclause 8.4, the Activity Period is extended by the period commencing on the day notified under subclause 8.1, being the day that the Force Majeure began to affect Telstra's ability to perform the Activity (or part of the Activity), and ending on the day

notified under subclause 8.4, being the day that the Force Majeure Event ceased to have this effect.

9 Remedies

- 9.1 The Australian Government acknowledges that Telstra has entered into this Deed on a voluntary basis. Any rights that the Australian Government has under this Deed are limited to specific performance of this Deed by Telstra. Nothing in this Deed gives the Australian Government any rights to seek compensation from Telstra for damages or loss, whether on the Australian Government's own behalf or on behalf of another party.

10 Notices

- 10.1 A Party giving notice or notifying under this Deed must do so in writing or by Electronic Communication:
- (a) directed to the recipient's address, as varied by any notice; and
 - (b) hand delivered or sent by pre-paid post or Electronic Communication to that address.

- 10.2 The parties' address details are:

The Australian Government	Manager - Telephone Policy Department of Communications, Information Technology and the Arts Level 1, 38 Sydney Avenue Forrest ACT 2603 GPO Box 2154 Canberra ACT 2601 Fax: (02) 6271 1886
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Telstra	General Counsel - Telstra Country Wide Level 14, 231 Elizabeth Street Sydney NSW 2000 Locked Bag 6794 Sydney NSW 1100 Fax: (02) 9267 0343.
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- 10.3 A notice given in accordance with this clause 10 is taken to be received:
- (a) if hand delivered, on delivery;
 - (b) if sent by pre-paid post, 5 Business Days after the date of posting unless it has been received earlier;
 - (c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth) if a notice was being given under a law of the Commonwealth, which is currently

when the Electronic Communication enters the addressee's Information System.

11 Confidentiality

- 11.1 The Australian Government must not, and must ensure that any of its departments or agencies do not, use or disclose Telstra Confidential Information unless the use or disclosure is:
- (a) in accordance with, or contemplated by, this Deed; or
 - (b) required by Law; or
 - (c) required by a court or tribunal or regulatory agency; or
 - (d) requested or required in the course of proceedings in Parliament (within the meaning of the *Parliamentary Privileges Act 1987* (Cth)); or
 - (e) otherwise authorised by Telstra.
- 11.2 This clause survives termination (for whatever reason) of this Deed.

12 Entire Agreement

- 12.1 This Deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

13 Counterparts

- 13.1 This Deed may be executed in any number of counterparts. Each counterpart is an original, but the counterparts are one and the same Deed.

14 Governing Law

- 14.1 This agreement is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of that place.

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IN WITNESS WHEREOF the Parties have EXECUTED THIS DEED

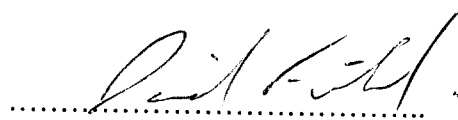
This 4th day of September 2003

SIGNED, SEALED AND DELIVERED
by DOUGLAS C CAMPBELL as attorney
for TELSTRA CORPORATION
LIMITED (ABN 33 051 775 556) under
power of attorney dated 4 June 1998

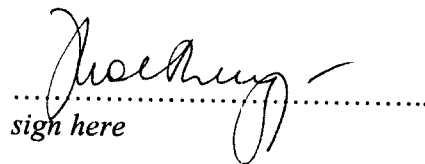

.....
sign here

In the presence of:

P.G. FIELD
.....
print name of witness



.....
witness sign here

SIGNED, SEALED AND DELIVERED
for and on behalf of the
COMMONWEALTH OF AUSTRALIA
represented by and acting through the
Department of Communications,
Information Technology and the Arts,
(ABN 51 491 646 726) by
FAY HOLTHUYZEN


.....
sign here

In the presence of:

CHRISTINE ANDISON
.....
print name of witness


.....
witness sign here

SCHEDULE **ACTIVITY TO BE PERFORMED AND COMPLETED BY THE COMPLETION DATE (clause 2)**

1 Activity

- 1.1 The Activity for this Deed is as set out in this paragraph 1.
- 1.2 The Activity for this Deed is the performance and completion of the Network Upgrade.
- 1.3 Subject to paragraph 3.1, Telstra will use reasonable commercial endeavours to complete the Network Upgrade within the Activity Period.
- 1.4 The Network Upgrade is subject to the end users on DRCS and ARCS systems in Telstra's fixed network agreeing to be cut-over to an Alternative Access Technology.

2 Activity Period

- 2.1 Unless extended from time to time under clause 8.5 of the Deed, the Activity Period for the Activity commences on the date of the Deed and ends 180 days after the Extended Zones Agreement Completion Date.

3 Notice to Cut-Over

- 3.1 Telstra will use reasonable commercial efforts to obtain access and co-operation from end-users on ARCS and DRCS systems in order to complete the cut-over. Reasonable commercial efforts will include the following actions, to the extent necessary and appropriate in the circumstances:
 - (a) seeking meetings with end-users who are withholding access or co-operation, in order to address any concerns;
 - (b) offering to demonstrate the functionality and features of the relevant Alternative Access Technology to end-users who are withholding access or co-operation;
 - (c) organising and attending community meetings of end-users on ARCS or DRCS systems; and
 - (d) making available appropriate local senior managers to discuss concerns with end-users.
- 3.2 If Telstra is unable to replace an ARCS or DRCS system on its fixed network because an end user on a system refuses to give Telstra access to complete the cut-over, Telstra may give the end user concerned a **Notice to Cut-Over** (which Telstra will copy to the ACA) requiring the end user to give Telstra access to complete the cut-over within 30 days of the notice.

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- 3.3 If Telstra remains unable to complete the cut-over on the expiry of a Notice to Cut-Over for the reason referred to in paragraph 3.2:
- (a) Telstra is deemed to have completed the Network Upgrade with respect to the ARCS or DRCS systems that Telstra is prevented from cutting-over by virtue of the refusal to provide access; and
 - (b) the end users whom Telstra is prevented from cutting-over by virtue of the refusal to provide access are deemed to have been cut-over pursuant to the Network Upgrade for the purposes of this Deed alone.
- 3.4 Where Telstra treats the Network Upgrade as complete in relation to any ARCS or DRCS system pursuant to paragraph 3.3, Telstra will highlight in its reports to the ACA the systems and the number of end users which it has treated in this way.

4 Completion Notice

- 4.1 Telstra must give the Australian Government and the ACA a notice certifying that the Network Upgrade is complete (“**Completion Notice**”) if all end users on Telstra’s ARCS or DRCS systems have been cut-over, or deemed to have been cut-over, pursuant to the Network Upgrade.

5 Reporting

- 5.1 Telstra will provide written reports to the ACA in the format, and with the frequency, indicated in Appendix 1.
- 5.2 The obligation in subparagraph 5.1 will commence on the date of execution of the Deed and cease on the day that Telstra gives a Completion Notice to the Australian Government and the ACA.
- 5.3 Subject to clause 11 (“**Confidentiality**”) of the Deed, the Australian Government and the ACA may publish the reports provided to the ACA under this paragraph 5 or include any information provided in such reports in media releases, general announcements about the Deed and in annual and other reports.

6 Definitions

- 6.1 In this Schedule:

ACA means the Australian Communications Authority.

Alternative Access Technology means CDMA WLL, SWING, small capacity distribution system (“**ScaDS**”) (each as described in, and with the features set out in, Appendix 4 to Schedule 1 of the Extended Zones Agreement) or any other technology that meets or exceeds the requirements of the *Telecommunications Act 1997* (Cth) and the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth) and does not adversely affect the standard of the service provided to a customer prior to the Network Upgrade.

ARCS means Analogue Radio Concentrator System.

Completion Notice means the notice referred to in paragraph 4.1.

DRCS means Digital Radio Concentrator System.

Extended Zones Agreement means the *Agreement for the provision of untimed local calls, untimed Internet access and other carrier services to Extended Zones* between Telstra and the Commonwealth, as amended from time to time.

Extended Zones Agreement Completion Date means the date of the Twelfth Milestone Achievement in Schedule 2 of the Extended Zones Agreement.

Network Upgrade means the replacement of all DRCS and ARCS systems in Telstra's fixed network within a Standard Zone with Alternative Access Technologies other than the DRCS and ARCS systems that are replaced under the Extended Zones Agreement.

Notice to Cut-Over has the meaning given in paragraph 3.1. The Notice to Cut-Over expires 30 days after it is issued by Telstra.

Standard Zone has the meaning given in the *Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth)*.

Appendix 1 - Reporting

(a) Reporting Frequency

Every month, at or around the end of each month.

(b) Reporting Format

Table 1: Network Upgrade from DRCS and ARCS systems in Standard Zones - status as at [insert reporting date]

Location	Indicative replacement technology	Indicative number of services	Total services cutover	Latest required date	System cutover dates			Status (Red/Amber/Green)
					Planned	Revised	Achieved	
<i>DRCS System</i>								
Bairanald 2	CDMA WLL	77		30 Sep 04	28 Feb 04			
Berserker	CDMA WLL	80		30 Sep 04	06 Jul 04			
Carinda	CDMA WLL	30		30 Sep 04	27 Apr 04			
Clermont Central	CDMA WLL	48		30 Sep 04	05 Aug 04			
Collarenebri	CDMA WLL	69		30 Sep 04	10 May 04			

Location	Indicative replacement technology	Indicative number of services	Total services cutover	Latest required date	System cutover dates			Status (Red/ Amber/ Green)
					Planned	Revised	Achieved	
Deniliquin	CDMA WLL	79		30 Sep 04	09 Jun 04			
Girilambone	CDMA WLL	91		30 Sep 04	03 Mar 04			
Goodooga	CDMA WLL	55		30 Sep 04	10 May 04			
Grawin	CDMA WLL	60		30 Sep 04	08 Sep 04			
Lightning Ridge	CDMA WLL	77		30 Sep 04	26 Feb 04			
Monto	CDMA WLL	49		30 Sep 04	21 Feb 04			
Mt Fox	HCRC SWING	78		30 Sep 04	30 Jun 04			
Mundubbera	HCRC SWING	93		30 Sep 04	30 Aug 04			
Nyngan 2	CDMA WLL	75		30 Sep 04	06 Aug 04			
Nyngan 3	CDMA WLL	50		30 Sep 04	03 Sep 04			
Quambone	CDMA WLL	60		30 Sep 04	11 Jun 04			

Location	Indicative replacement technology	Indicative number of services	Total services cutover	Latest required date	System cutover dates			Status (Red/ Amber/ Green)	
					Planned	Revised	Achieved		
South Yorke Peninsula	CDMA WLL	78		30 Sep 04	06 Jul 04				
Thursday Island	CDMA WLL	16		30 Sep 04	02 Sep 04				
Tottenham	CDMA WLL	38		30 Sep 04	09 Jun 04				
Walgett 1	CDMA WLL	86		30 Sep 04	11 Aug 04				
Walgett 1	SCaDs	20		30 Sep 04	11 Jul 04				
Walgett 2	CDMA WLL	69		30 Sep 04	12 Jul 04				
Wandoan	HCRC SWING	30		30 Sep 04	15 Sep 04				
<i>ARCS System</i>									
Leigh Creek	CDMA WLL	8		30 Sep 04	29 Apr 04				
<i>DRCS System</i>									
Whyalla	CDMA WLL	10		30 Sep 04	10 Feb 04				
Total Services									
					1426	0			

Table 2: Total number of services on access systems in Standard Zones - status as at [insert reporting date]

Running total of Services for:	Indicative Services	Current Completed Cutover
▪ CDMA WLL	1205	0
▪ HCRC Swing	201	0
▪ HCRC-V10	0	0
▪ SCADS	20	0
▪ USOSat	0	0
Running total of Services for all systems	1426	0