

Commonwealth of Australia

*Telecommunications Act 1997*

**Telecommunications (Structural Separation—  
Networks and Services Exemption) Instrument  
(No. 1) 2011**

I, STEPHEN MICHAEL CONROY, Minister for Broadband, Communications and the Digital Economy, make the following Instrument under subsections 577A(20) and (21) of the *Telecommunications Act 1997*.

Dated 23 June 2011

STEPHEN CONROY

Minister for Broadband, Communications and the Digital Economy

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**1 Name of Instrument**

This Instrument is the *Telecommunications (Structural Separation—Networks and Services Exemption) Instrument (No. 1) 2011*.

**2 Commencement**

This Instrument commences on the later of:

- (a) the commencement of the Migration Plan Principles; and
- (b) the day after it is registered on the Federal Register of Legislative Instruments.

**3 Definitions**

(1) In this Instrument:

*Act* means the *Telecommunications Act 1997*.

*associated provision* has the same meaning as in section 577A of the Act.

*designated day* has the same meaning as in section 577A of the Act.

*fixed-line carriage service* has the same meaning as in section 577A of the Act.

**HFC deactivation area** means a geographical area served by the same cable modem termination system (such as a universal broadband router) on a hybrid fibre-coaxial network.

**inter-exchange network** means a telecommunications network comprising links between any two or more of the following:

- (a) Telstra exchanges, including remote exchanges;
- (b) cabinets or nodes (other than copper fed cabinets and nodes);
- (c) points of interconnection with third party networks or peering exchanges;
- (d) radiocommunications facilities, including base stations and satellite earth stations;
- (e) network operations facilities;
- (f) content distribution or production facilities;
- (g) broadcast or cable head-ends;
- (h) international gateways and cable landing stations;
- (i) any other transmission, switching, routing or aggregation point in the network other than a point that is located at a premises and which is used to provide services to the end-user.

**material unavailability of the NBN Co fibre network**, in relation to a fibre rollout region, means the NBN Co fibre network is unable to be used by customers that NBN Co supplied with fibre services to supply carriage services in the entirety of that fibre rollout region for at least five consecutive days.

**Migration Plan Principles** means the *Telecommunications (Migration Plan Principles) Determination 2011*.

- (2) Unless the contrary intention appears, expressions used in this Instrument and in the Migration Plan Principles have the same meaning in this Instrument as in the Migration Plan Principles.

*Disconnection*

- (3) Clause 1 of Schedule 3 sets out when a premises is **disconnected** from a copper network.
- (4) Clause 2 of Schedule 3 sets out when a premises is **disconnected** from a hybrid fibre-coaxial network.

*Note* By virtue of paragraph 46(1)(b) of the *Acts Interpretation Act 1901*, the following expressions have the meaning given by section 7 of the Act:

- **carriage service**
- **final migration plan**
- **telecommunications network**
- **Telstra**

#### **4 Exempt fixed-line carriage services**

For the purposes of subsection 577A(20) of the Act, each class of fixed-line carriage services specified at an item in column 1 of the table at Schedule 1 of this Instrument is exempt from subsection 577A(1) and the associated provisions, subject to the conditions or limitations specified (if any) for that item in column 2 of the table.

#### **5 Exempt telecommunications networks**

For the purposes of subsection 577A(21) of the Act, each telecommunications network, or class of telecommunications network, specified at an item in column 1 of the table at Schedule 2 of this Instrument is exempt from subsection 577A(1) and the associated provisions, subject to the conditions or limitations specified (if any) for that item in column 2 of the table.

## Schedule 1 Exempt fixed-line carriage services

Item	Column 1	Column 2
	<i>The class of fixed-line carriage services specified in each item of this table is exempt from subsection 577A(1) and the associated provisions...</i>	<i>...subject to any condition or limitation specified for that item.</i>
1	Fixed-line carriage services that are supplied to a location that is not a premises	
2	<p><i>Premises outside fibre rollout regions</i></p> <p>Fixed-line carriage services supplied to a premises where, as at the designated day, that premises is not in any fibre rollout region</p>	
3	<p><i>Premises inside fibre rollout regions that are not disconnected from copper networks</i></p> <p>Fixed-line carriage services supplied to a premises using a copper line where, as at the designated day, that premises:</p> <ul style="list-style-type: none"> <li>(a) is in a fibre rollout region; and</li> <li>(b) is not a premises that has been:                             <ul style="list-style-type: none"> <li>(i) passed by the NBN Co fibre network; and</li> <li>(ii) disconnected from a copper network</li> </ul> </li> </ul> <p><i>Note:</i> Subsection 9(8) of the Migration Plan Principles requires Telstra to specify in its migration plan the circumstances in which Telstra will not disconnect from a copper network a premises that is passed by the NBN Co fibre network.</p>	
4	<p><i>Premises inside fibre rollout regions that are not disconnected from hybrid fibre-coaxial networks</i></p> <p>Fixed-line carriage services supplied to a premises using a line forming part of a</p>	

	<p>hybrid fibre-coaxial network where, as at the designated day, that premises:</p> <ul style="list-style-type: none"> <li>(a) is in a fibre rollout region; and</li> <li>(b) is not a premises that has been:             <ul style="list-style-type: none"> <li>(i) passed by the NBN Co fibre network; and</li> <li>(ii) disconnected from a hybrid fibre-coaxial network</li> </ul> </li> </ul> <p><i>Note:</i> Subsection 10(6) of the Migration Plan Principles requires Telstra to specify in its migration plan the circumstances in which Telstra will not disconnect from a hybrid-fibre coaxial network a premises that is passed by the NBN Co fibre network</p>	
5	<p><i>Television and audio services over hybrid fibre-coaxial networks</i></p> <p>Fixed-line carriage services:</p> <ul style="list-style-type: none"> <li>(a) that are supplied using a hybrid fibre-coaxial cable network; and</li> <li>(b) that are required for, and are used only to enable the provision of, any of the following:             <ul style="list-style-type: none"> <li>(i) subscription television broadcasting services;</li> <li>(ii) subscription audio broadcasting services;</li> <li>(iii) on-demand analogue cable television services;</li> <li>(iv) on-demand digital cable television services;</li> <li>(v) on-demand analogue cable audio services;</li> <li>(vi) on-demand digital cable audio services; and</li> </ul> </li> <li>(c) that are not internet-protocol based services</li> </ul>	

<p>6</p>	<p><i>Fibre component of hybrid fibre-coaxial networks</i></p> <p>Fixed-line carriage services that are supplied using an optical fibre line forming part of a hybrid fibre-coaxial network</p>	<p>A fixed-line carriage service is not exempt under this item if it is supplied to a premises using a coaxial cable connection to that premises.</p> <p><i>Note:</i> Such a fixed-line carriage service may be exempt under another item of this table.</p>
<p>7</p>	<p><i>Material unavailability of the NBN Co fibre network</i></p> <p>Fixed-line carriage services that are supplied using a copper network or a hybrid fibre-coaxial network in a fibre rollout region that is affected by material unavailability of the NBN Co fibre network</p>	<p>A fixed-line carriage service is exempt on condition that:</p> <ul style="list-style-type: none"> <li>(a) the material unavailability of the NBN Co fibre network was not caused or substantially contributed to by an act or omission of Telstra which constitutes a breach of law or of any binding obligation to NBN Co; and</li> <li>(b) the fixed-line carriage service is only supplied by Telstra in the area that is affected by the material unavailability of the NBN Co fibre network (except where that fixed-line carriage service is of a kind that is otherwise specified in this Instrument); and</li> <li>(c) Telstra ceases to supply the fixed-line carriage service using the copper network or the hybrid fibre-coaxial network in the area that is affected by the material unavailability of the NBN Co fibre network when the material unavailability of the NBN Co fibre network ceases to persist in that area (except where that fixed-line carriage service is of a kind that is otherwise specified in this Instrument).</li> </ul>

<p>8</p>	<p><i>Services required to be supplied over a copper network</i></p> <p>Fixed-line carriage services that Telstra:</p> <ul style="list-style-type: none"> <li>(a) supplies to a person on or after the designated day using a copper network;</li> <li>and</li> <li>(b) is required to supply to that person using a copper network by or under law</li> </ul>	<p>A fixed-line carriage service is exempt for so long as Telstra is required by or under law to supply that fixed-line carriage service to that person using a copper network.</p>
<p>9</p>	<p><i>Services required to be supplied over a hybrid fibre-coaxial network</i></p> <p>Fixed-line carriage services that Telstra:</p> <ul style="list-style-type: none"> <li>(a) supplies to a person after the designated day using a hybrid fibre-coaxial network; and</li> <li>(b) is required to supply to that person using a hybrid fibre-coaxial network by or under law</li> </ul>	<p>A fixed-line carriage service is exempt for so long as Telstra is required by or under law to supply that fixed-line carriage service to that person using a hybrid fibre-coaxial network.</p>
<p>10</p>	<p><i>Relocation of cable modem</i></p> <p>Fixed-line carriage services supplied using a hybrid fibre-coaxial network to a premises that has been disconnected from that network</p>	<p>The fixed-line carriage services are exempt if:</p> <ul style="list-style-type: none"> <li>(a) the premises is occupied by an end-user who has relocated to that premises (the <b><i>new premises</i></b>) from another premises (the <b><i>old premises</i></b>) in the same HFC deactivation area; and</li> <li>(b) the end-user acquired the service at the old premises using a modem; and</li> <li>(c) the end-user relocates that modem to the new premises; and</li> <li>(d) the modem is used to connect to and use the service at that new premises; and</li> <li>(e) the old premises had not been disconnected from a hybrid fibre-coaxial network at the time the modem</li> </ul>

		<p>was relocated to the new premises; and</p> <p>(f) the end-user has not notified Telstra that it has relocated the modem to the new premises; and</p> <p>(g) Telstra has not otherwise become aware that the modem has been relocated to the new premises.</p>
11	<p><i>Special services required to be supplied after the designated day</i></p> <p>Special services</p>	<p>If:</p> <p>(a) Telstra may continue to supply a special service in an area until a day that is specified in a final migration plan or that is ascertained by reference to the occurrence of an event that is specified in a final migration plan (the <i>special services disconnection day</i>) without contravening the final migration plan; and</p> <p>(b) the special services disconnection day occurs after the designated day; and</p> <p>then:</p> <p>(c) if the special service is not a service of a kind that is covered by another item of this table—the special service is exempt until the end of the special services disconnection day;</p> <p>(d) otherwise—the special service is exempt subject to any conditions that apply in relation to that other item or those other items.</p>

<p>12</p>	<p><i>Special service inputs required to be supplied after the designated day</i></p> <p>Special service inputs</p>	<p>If:</p> <ul style="list-style-type: none"> <li>(a) Telstra may continue to supply a special service input in an area until a day that is specified in a final migration plan or that is ascertained by reference to the occurrence of an event in a final migration plan (the <i>special service inputs disconnection day</i>) without contravening the final migration plan; and</li> <li>(b) the special service inputs disconnection day occurs after the designated day;</li> </ul> <p>then:</p> <ul style="list-style-type: none"> <li>(c) if the special service input is not a service of a kind that is covered by another item of this table—the special service input is exempt until the end of the special service inputs disconnection day;</li> <li>(d) otherwise—the special service input is exempt subject to any conditions that apply in relation to that other item or those other items.</li> </ul>
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## Schedule 2 Exempt telecommunications networks

Item	Column 1	Column 2
	<i>The telecommunications network, or class of telecommunications network, specified in each item of this table is exempt from subsection 577A(1) and the associated provisions...</i>	<i>...subject to any condition or limitation specified for that item.</i>
1	Telecommunications networks that are inter-exchange networks	
2	Telecommunications networks that use optical fibre lines	<p>The telecommunications networks are not exempt to the extent that they:</p> <ul style="list-style-type: none"> <li>(a) contain copper lines; or</li> <li>(b) form part of a hybrid fibre-coaxial network.</li> </ul> <p><i>Note:</i> A separate exemption may apply with respect to fixed-line carriage services supplied using copper lines or lines that form part of a hybrid fibre-coaxial network – see Schedule 1.</p>
3	Signalling, switching, transmission, aggregation or routing infrastructure including nodes, PSTN switches, routers or other similar devices but only to the extent that they form part of a telecommunications network	
4	Any content or applications platforms, data storage or caching facilities or databases used in providing carriage services or content services but only to the extent that they form part of a telecommunications network	
5	Any facilities used to operate, control or monitor any networks, including	

	network operations centres but only to the extent that they form part of a telecommunications network	
6	Any facilities, systems or platforms used for the ordering, provisioning or maintenance of any networks or to provide billing, to manage customer relationships or to otherwise deal with retail or wholesale customers, including operational support systems but only to the extent that they form part of a telecommunications network	
7	Any lines, equipment or facilities located on the customer side of the boundary of a telecommunications network (excluding the terminating end of any copper line), including customer cabling (for example, building riser fibre, customer premises wiring) and customer premises equipment	
8	Any exchange buildings, frames located in exchange buildings or frames located in customer premises, but only to the extent that they form part of a telecommunications network	
9	Any conduits, ducts, cable vaults, access holes and pits, but only to the extent that they form part of a telecommunications network	
10	Any towers, poles, masts and rights of way, but only to the extent that they form part of a telecommunications network	
11	Telecommunications networks that are wholly located outside Australia, or exclusively used to provide services outside Australia	
12	Telecommunications networks that are exclusively used to connect: <ul style="list-style-type: none"> <li>(a) an international gateway; or</li> <li>(b) a cable landing station in Australia; or</li> </ul>	

	(c) any other point of presence connected to a domestic network; with one or more points outside Australia	
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## Schedule 3 Disconnection

### 1 Disconnection from a copper network

- (1) A premises is disconnected from a copper network when all logical paths that have been built over each line or series of lines to that premises that form part of that copper network (each a *copper path*) are determined to be disconnected in accordance with subclause (2) of this Schedule.
- (2) For the purposes of this Instrument, a copper path is disconnected if:
  - (a) in respect of copper paths over which an unconditioned local loop service (ULLS) or a line sharing service (LSS) were provisioned, there is no wholesale jumper cable for the copper path; and
  - (b) except where Telstra is required to supply a soft dial tone service in accordance with the Migration Plan Principles—there is no dial tone supplied by Telstra over that copper path; and
  - (c) there is no active DSL port at the DSLAM for that copper path; and
  - (d) the configuration data within the Telstra operational support systems that is used to associate a service supplied using a line that forms part of the copper network to that copper path is configured so as to prevent that copper path carrying communications to any premises over the copper network; and
  - (e) the state of the copper path is such that:
    - (i) it cannot be associated in any Telstra system or database with any DSLAM or carriage service; and
    - (ii) the provisioning of any service over the copper path is not possible; and
    - (iii) it cannot be available to Telstra to enable Telstra (or permit third parties) to deliver any communications to or from a premises; and
  - (f) the state of the copper path cannot be varied other than by means of a process which permits Telstra to manually rebuild that path to enable the provision of exempt services;
  - (g) without limiting any of the foregoing:
    - (i) no carriage service or content service is provided over that copper path; and

- (ii) no communications can be delivered over the copper path to any premises.
- (3) For the purposes of this Instrument, a copper path is disconnected only for so long as each of the conditions specified in paragraphs (2)(a) to (g) continue to be satisfied in relation to that copper path.
- (4) For the purposes of this clause:

***dial tone*** means an audible signal used to indicate that a line which forms part of the copper network is capable of being used for:

- (a) a voice service including:
  - (i) making telephone calls to:
    - (A) emergency numbers; and
    - (B) making telephone calls to customer service; and
    - (C) fault reporting telephone numbers; and
  - (ii) receiving telephone calls; and
- (b) any capability provided by: and
  - (i) the Telstra Product known as “InContact Service”; and
  - (ii) any replacement of that service; and
  - (iii) any service that provides similar functionality or has a similar market placement as that service.

***DSLAM*** means a digital subscriber line access multiplexer used by Telstra to provide broadband services (including for wholesale line rental services).

***exempt services*** means the fixed-line carriage services specified in section 4 of this Instrument.

***line sharing service*** means the line sharing service declared by the ACCC under subsection 152AL(3) of the *Competition and Consumer Act 2010* for the purposes of Part XIC of the Act.

***unconditioned local loop service*** means the unconditioned local loop service declared by the ACCC under subsection 152AL(3) of the *Competition and Consumer Act 2010* for the purposes of Part XIC of the Act.

***wholesale jumper cable*** means a section of cable between premises and the main distribution frame in the nearest exchange, or at the main distribution frame in the nearest exchange, in relation to a copper path to enable the supply of services to a wholesale customer of Telstra, the breakage of which would remove or break the copper path to the premises.

## **2 Disconnection from a hybrid fibre-coaxial network**

- (1) A premises is disconnected from a hybrid fibre-coaxial network when all lines at that premises which form part of that hybrid fibre-coaxial network (each a **HFC line**) are determined to be disconnected in accordance with subclause (2).
- (2) For the purposes of this Instrument, a HFC line is disconnected if:
  - (a) there is no carriage service provided over that HFC line other than a service of the kind specified in item 5 or 6 of the table at Schedule 1 of this Instrument; and
  - (b) the state of the HFC line is such that:
    - (i) it cannot be associated with a premises except in respect of a services of the kind specified in item 5 or 6 of the table at Schedule 1 of this Instrument; and
    - (ii) it cannot be available to Telstra to enable Telstra (or permit third parties) to deliver any communications to or from a premises other than services of the kind specified in item 5 or 6 of Schedule 1 of this Instrument; and
    - (iii) the provisioning of any service over the HFC line is not possible other than services of the kind specified in item 5 or 6 of the table at Schedule 1 of this Instrument; and
  - (c) the state of the HFC line cannot be varied other than by means of a process which permits Telstra to manually enable the provision of exempt services over that HFC line;
  - (d) without limiting any of the foregoing:
    - (i) no carriage service or content service is provided over that HFC line except for a service of the kind specified in item 5 or 6 of the table at Schedule 1 of this Instrument; and
    - (ii) no carriage services (other than services of the kind specified in item 5 or 6 of the table at Schedule 1 of this Instrument) can be delivered over that HFC line to any premises.
- (3) For the purposes of this Instrument, a HFC line is disconnected only for so long as each of the conditions specified in paragraphs (2)(a) to (d) continue to be satisfied in relation to that HFC line.

- (4) For the purposes of this clause, ***exempt services*** means the fixed-line carriage services specified in section 4 of this Instrument.