

## EXPLANATORY STATEMENT

Issued by the authority of the Australian Communications Authority

*Telecommunications Act 1997*

*Telecommunications Numbering Plan Variation 2004 (No. 5)*

### **Statutory Basis**

Under section 455(1) of the *Telecommunications Act 1997* (the Act), the Australian Communications Authority (ACA) must, by written instrument, make a plan for the numbering of carriage services in Australia and the use of numbers in connection with the supply of such services. This is known as the *Telecommunications Numbering Plan 1997* (the Numbering Plan). The ACA may vary the Numbering Plan by written instrument (matters it must have regard to in doing so are listed in subsection 455(11) of the Act). This explanatory statement outlines the basis for the *Telecommunications Numbering Plan Variation (No. 5)* (the variation).

### **Purpose of the variation**

The purpose of this variation is to modify the specific rules for freephone and local rate numbers (FLRNs) allocated as a result of an auction held under the *Telecommunications (Freephone and Local Rate Numbers) Allocation Determination 2004 (No. 2)* (the auction determination) or the *Telecommunications (Freephone and Local Rate Numbers – Charities) Allocation Determination 2004 (No. 2)* (the charities determination) in relation to the following:

- the establishment and updating of a Register of numbers and rights of use holders (ROU-holders); and
- procedures for trading and licensing the rights of use for FLRNs obtained under the new allocation system.

### **Background**

#### *Introduction*

Under section 455 of the Act, the ACA is required to make a Numbering Plan which, among other things, may set rules relating to the allocation of numbers. Under the Numbering Plan, numbers are allocated to carriage service providers (CSPs) who then issue numbers to customers. At present, FLRNs are allocated to CSPs on behalf of the ACA by an industry organisation called Industry Number Management Services Ltd (INMS) on a ‘first-come, first-served’ administrative basis.

The ACA has now developed new arrangements for allocating FLRNs which comprise:

- a public auction process to allocate FLRNs, as set out in the auction determination; and
- a sealed bid auction process to allocate FLRNs to 'eligible charities', as set out in the charities determination.

Under the new arrangements, the ACA will make available all previously unavailable FLRNs using the 13, 1300 and 1800 prefixes. This represents an additional 1.2 million numbers, relative to the 600,000 numbers (approximately) that are currently available for allocation, and will bring the total number of available FLRNs to around 1.8 million. The new allocation arrangements are scheduled to commence in July 2004.

While the new auction system will be used to allocate specifically requested FLRNs, customers who do not have a preference for a particular number will still be able to obtain FLRNs from a limited pool of non-patterned numbers through an administrative process.

#### *Enhanced rights of use for numbers obtained at auction*

The new allocation system will provide people who are the highest bidders at auction or via the preferential access arrangements for charities with enhanced rights of use in relation to the number. These rights of use will be enhanced relative to the rights of use that arose for a person who was issued a number prior to the new arrangements or under the continuing administrative allocation process. A person who has the enhanced rights of use to a number is referred to in this document as a ROU-holder.

The enhanced rights of use are set out in the Numbering Plan and entitle the ROU-holder to:

- trade the rights of use to another person or organisation or, where the number was obtained under the charities determination, trade the rights of use to another 'eligible charity' where the number is 'strategic' for that charity;
- ask the CSP that has been allocated the number to surrender the number (at which time the number would enter a maximum three year quarantine period and be unable to be reallocated to a CSP, except at the request of the rights of use holder);
- relinquish all rights of use in relation to the number.
- retain the rights of use while having no active service in place on the number for a period of three years. If there has been no service activated on the number for a continuous period of three years, the rights to use the number will be cancelled;
- ask any CSP to retrieve the number if it has been surrendered; and
- disconnect an active service on the number at any time.

### *Trading the rights of use*

Under the new allocation arrangements, a ROU-holder will be able to trade the rights of use in relation to a number.

If the trade is for rights of use for a number obtained under the charities determination, the trade must include a written statement by the body to which the rights of use are to be traded that it is an 'eligible charity' within the meaning of the charities determination, and that the number is a 'strategic' number for the body within the meaning of the charities determination.

### *Rights of Use Register*

The new allocation arrangements provide for a Register of numbers and ROU-holders. It is proposed that the Register be established by the ACA, and updated by current ROU-holders. It will be the responsibility of the ROU-holder to ensure information in the Register is up to date and accurate.

### **Consultation**

The ACA has not undertaken consultation in relation to the proposed variation.

Subsection 460(3) of the Act requires that the public be consulted about any variations to the Numbering Plan if the ACA is of the opinion that:

- the variation will affect a number issued to a customer; or
- it is in the public interest.

It is the opinion of the ACA that the proposed variations are minor modifications to the Numbering Plan, and consequently, do not require consultation as stipulated in section 460(3). No numbers have been allocated or issued under the auction processes.

Further, it should be noted that substantial consultation was undertaken on the policy position of ROU-holder maintenance of the Register in late 2003 when the new allocation system was being developed and the required legal instruments were drafted to enable it. This approach was not implemented because the IT system developed at that time was unable to support it, however, deferred implementation dates have enabled the IT system to support the initial proposal.

## NOTES ON SECTIONS

### Part 1 – Introduction

#### Section 1 – Name of variation

Section 1 provides that the name of the variation is the *Telecommunications Numbering Plan Variation 2004 (No.5)*.

#### Section 2 – Commencement

Section 2 provides that the variation commences on gazettal.

#### Section 3 – Variation of *Telecommunications Numbering Plan 1997*

Section 3 states that Schedule 1 varies the *Telecommunications Numbering Plan 1997*.

### Schedule 1 Variations

#### Item 1

Item 1 provides that the definitions of ‘Auction Determination’ and ‘Charities Determination’ in section 3.75B in Division 7A of the Numbering Plan be substituted. The new definitions are designed to ensure that further amendment of the Numbering Plan will not be required merely as the result of a re-making of the auction determinations.

#### Item 2

Item 2 provides that section 3.75H in Division 7A of the Numbering Plan (‘Register’) be substituted. The following summarises the provision that has substituted the existing provision.

This section provides that the ACA will establish a Register of numbers and ROU-holders. The Register will contain the number, the name of the ROU-holder for the number and, if the ROU-holder agrees, the address, telephone, fax and email details for the ROU-holder for the number. These details will be obtained by the ACA through the auction process.

The ROU-holder for a number is required to update the Register with any change in address, telephone, fax or email details contained in the Register.

In the event that a person becomes a ROU-holder as the result of a trade, he or she must update the Register using the form made available by the ACA with his or her name, and, if the ROU-holder agrees, provide address, telephone, fax and email details.

The ACA is required to make the Register available to the public and the Register may be in electronic form. The ACA may correct an error or omission in the Register about a ROU-holder.

### Item 3

Item 3 provides that section 3.75J in Division 7A of the Numbering Plan ('Trading the rights of use and licensing a number') be substituted. The following summarises the provision that has substituted the existing provision.

This section provides clarification of a ROU-holder's entitlement to trade the rights of use to his or her number. 'Trade' is defined elsewhere in the Numbering Plan to mean 'assign or otherwise deal with the rights of use attached to the number'. Under this section, the ROU-holder can trade all his or her rights of use but cannot trade only some of these rights. A ROU-holder for a number may however licence another person to activate a telephone service on the number. It is not intended that licensees will be required to have their details entered into the Register as there is no change in the ownership of the rights of use.

The section provides that a trade must:

- be in writing, using the form made available by the ACA;
- include the number to which the rights of use relate, the names of the parties and the date; and
- be signed by the parties.

If the ROU-holder for a number is a charity that obtained the rights of use under the charities determination, the charity may only trade the rights of use to an 'eligible charity' to whom the number is 'strategic', within the meaning of the charities determination.

If the trade is for rights of use for a number obtained under the charities determination, the trade must include a written statement by the body to which the rights of use are to be traded that it is an 'eligible charity' within the meaning of the charities determination, and that the number is a 'strategic' number for the body within the meaning of the charities determination.

Any person who acquires the rights of use to a number as a result of a trade must ensure that the Register contains accurate information—in accordance with section 3.75H.

The CSP for a number must not do anything that will hinder the trading of the rights of use or licensing of the number.

The rights of use to a number may not be used by a ROU-holder as security for a loan.

### **Schedule 11**

Item 4 provides that items 1–1J be substituted with items 1–30.

This is a renumbering of Schedule 11 as contained in the current Numbering Plan and does not affect any existing clauses, nor contain any additional clauses.