Carrier Licence Conditions (Access and Roaming) Declaration 1998

I, RICHARD KENNETH ROBERT ALSTON, Minister for Communications, the Information Economy and the Arts, make the following Declaration under subsection 63 (2) of the Telecommunications Act 1997.


Minister for Communications, the Information Economy and the Arts

Citation

1. This Declaration may be cited as the Carrier Licence Conditions (Access and Roaming) Declaration 1998.

Note: This Declaration commences on gazettal: see Acts Interpretation Act 1901, ss 46A and 48.

Interpretation

2. (1) In this Declaration:

800 MHz band means:

(a) in a major capital city—the frequency bands:
   (i) 825 MHz to 845 MHz; and
   (ii) 870 MHz to 890 MHz; and

(b) elsewhere in Australia—the frequency bands:
   (i) 825 MHz to 830 MHz; and
   (ii) 835 MHz to 845 MHz; and
   (iii) 870 MHz to 875 MHz; and
   (iv) 880 MHz to 890 MHz;

Act means the Telecommunications Act 1997;

air-time means timed use of a public mobile telecommunications service that is provided by a network operated by a carriage service provider;

AMPS has the same meaning as in section 358 of the Act;
coverage means an area in which the customers of a carriage service provider who supplies a public mobile telecommunications service are ordinarily able to make or receive calls by means of that provider's network, and includes areas within that area in which there is localised lack of effective coverage because of, for example, attenuation within buildings, screening or reflection by natural or man-made features or blind spots;

Note: It is intended that the coverage of a carriage service provider's public mobile telecommunications service include areas in which customers of that service are ordinarily able to make or receive calls by means of the provider's network but, for reasons such as system or network failure or network congestion, are unable to do so from time to time.

eligible carrier means a carrier that uses or proposes to use all or part of the spectrum in the 800 MHz band to supply a public mobile telecommunications service and that:

(a) holds a spectrum licence that provides for the use of the spectrum; or

(b) is authorised by the holder of a spectrum licence that provides for the use of the spectrum to use all or part of that spectrum;

whether or not the licence presently authorises the operation of any device;

major capital city means a designated area described in the Schedule to the Spectrum Re-allocation Declaration No. 2 of 1997, to the extent that the area is within the territorial limits of Australia;

re-allocation declaration means Spectrum Re-allocation Declaration No. 1, 2, 3 or 4 of 1997 made under subsection 153B (1) of the Radiocommunications Act 1992;

roam, for a customer of a carriage service provider who supplies a public mobile telecommunications service, means make or receive calls:

(a) in geographic areas where that service does not have coverage using:

(i) a public mobile telecommunications service network operated by another carriage service provider that has coverage in that area; and

(ii) the same mobile telephone; and

(b) including calls in which there is automatic handover during a call:

(i) to the extent technically feasible; and

(ii) on or after 1 January 2000;

specified date, for a frequency band, means the date mentioned in the Schedule for the band;

spectrum licence has the same meaning as in the Radiocommunications Act 1992;

Telstra has the same meaning as in the Telstra Corporation Act 1991.
(2) In this Declaration, each frequency band includes all frequencies that are greater than the lower frequency, up to and including the higher frequency.

Telstra to sell AMPS air-time in certain circumstances

3. (1) The carrier licence granted to Telstra is subject to a condition that Telstra must, if requested to do so by an eligible carrier, sell air-time on its AMPS service and supply any related services reasonably required:

(a) if the request relates to the sale of air-time before the earliest specified date for a frequency band in relation to which the eligible carrier holds a spectrum licence or authorisation—to enable the eligible carrier to resell AMPS services; and

(b) if the request relates to the sale of air-time on or after the day when the eligible carrier begins supplying a public mobile telecommunications service in spectrum for which the eligible carrier holds a spectrum licence or authorisation—to enable customers of the eligible carrier’s public mobile telecommunications service who have a handset capable of interworking with both Telstra’s AMPS network service and the eligible carrier’s public mobile telecommunications service to roam onto Telstra’s AMPS service.

(2) Subsection (1) does not impose an obligation if there is in force a certificate issued by the ACCC stating that, in the ACCC’s opinion, compliance with subsection (1) would have the effect of preventing Telstra, or any other carriage service provider being supplied with air time, from meeting its reasonably anticipated requirements, measured at the time the request is made.

(3) Subsection (1) does not impose an obligation on Telstra if there are reasonable grounds to believe that:

(a) the eligible carrier would fail, to a material extent, to comply with the terms and conditions on which Telstra complies, or on which Telstra is reasonably likely to comply, with the condition; or

(b) the eligible carrier would fail, in connection with that condition, to protect:

(i) the integrity of Telstra’s AMPS service or any related services; or

(ii) the safety of individuals working on, or using services supplied by means of, Telstra’s AMPS service or any related services.

(4) Any arrangement to give effect to a request under subsection (1) must be on terms and conditions agreed between Telstra and the eligible carrier.

(5) However, if Telstra and the eligible carrier are unable to agree on the terms and conditions, they are to be:

(a) determined by an arbitrator appointed by the parties; or

(b) if the parties do not agree on the appointment of an arbitrator—determined by the ACCC.
(6) For a determination of terms and conditions under subsection (5) by the ACCC, the ACCC must have regard to the following matters:

(a) whether the determination will promote the long-term interests of end-users of carriage services or of services provided by means of carriage services;

(b) the legitimate business interests of Telstra and Telstra’s investment in facilities used to supply the air-time and related services;

(c) the interests of all eligible carriers;

(d) the direct costs of Telstra providing air-time and related services;

(e) the operational and technical requirements necessary for the safe and reliable operation of a carriage service, telecommunications network or facility;

(f) the economically efficient operation of a carriage service, telecommunications network or facility.

(7) The ACCC may also have regard to any other matters it thinks are relevant.

(8) For paragraph (6)(a), the question whether a determination promotes the long-term interests of end-users of carriage services or of services provided by means of carriage services is to be determined in the same manner as the question whether a particular thing promotes those interests is determined for Part XIC of the Trade Practices Act 1974.

(9) To assist the ACCC in forming an opinion for subsection (2), the ACCC may:

(a) consult with the ACA; and

(b) have regard to any written plan determined under subsection 361(2) of the Act; and

(c) have regard to any other matters that the ACCC thinks are relevant.

Certain other carriers to sell air-time to Telstra in certain circumstances

4. (1) A carrier licence granted to an eligible carrier (other than Telstra) (the licensee) is subject to a condition that the licensee must, if requested to do so by Telstra, sell air-time on its public mobile telecommunications service that uses spectrum in the 800 MHz band and supply any related services reasonably required to enable customers of Telstra’s AMPS service who have a handset capable of interworking with both Telstra’s AMPS network service and the licensee’s public mobile telecommunications service to roam onto the licensee’s service on terms and conditions:

(a) agreed between the licensee and Telstra; or

(b) if the parties do not agree—determined by an arbiter appointed by the parties; or

(c) if the parties do not agree on the appointment of an arbiter—determined by the ACCC.
(2) Subsection (1) does not impose an obligation if there is in force a certificate issued by the ACCC stating that, in the ACCC’s opinion, compliance with subsection (1) would have the effect of preventing the licensee, or any other carriage service provider being supplied with air-time, from meeting its reasonably anticipated requirements, measured at the time the request is made.

(3) Subsection (1) does not impose an obligation on an eligible carrier if there are reasonable grounds to believe that:

(a) Telstra would fail, to a material extent, to comply with the terms and conditions on which the licensee complies, or on which the licensee is reasonably likely to comply, with the condition; or

(b) Telstra would fail, in connection with that condition, to protect:

(i) the integrity of the licensee’s service or any related services; or

(ii) the safety of individuals working on, or using services supplied by means of, the licensee’s service or any related services.

(4) For a determination of terms and conditions under subsection (1) by the ACCC, the ACCC must have regard to the following matters:

(a) whether the determination will promote the long-term interests of end-users of carriage services or of services provided by means of carriage services;

(b) the legitimate business interests of the licensee and the licensee’s investment in facilities used to supply the air-time and related services;

(c) the interests of Telstra;

(d) the direct costs of the licensee providing air-time and related services;

(e) the operational and technical requirements necessary for the safe and reliable operation of a carriage service, telecommunications network or facility;

(f) the economically efficient operation of a carriage service, telecommunications network or facility.

(5) The ACCC may also have regard to any other matters it thinks are relevant.

(6) For paragraph (4)(a), the question whether a determination promotes the long-term interests of end-users of carriage services or of services provided by means of carriage services is to be determined in the same manner as the question whether a particular thing promotes those interests is determined for Part XIC of the Trade Practices Act 1974.

(7) To assist the ACCC in forming an opinion for subsection (2), the ACCC may:

(a) consult with the ACA; and

(b) have regard to any matters that the ACCC thinks are relevant.
Examples for subsections 3 (3) and 4 (3):

1. Evidence that the person making the request is not creditworthy.
2. Repeated failures by the person making the request to comply with the terms and conditions on which the same or a similar service has been provided.

SCHEDULE

SPECIFIED DATES

<table>
<thead>
<tr>
<th>Frequency bands (MHz)</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>825 to 830/870 to 875</td>
<td>1 April 1999</td>
</tr>
<tr>
<td>840 to 845/885 to 890</td>
<td>1 April 1999</td>
</tr>
<tr>
<td>830 to 835/875 to 880</td>
<td>1 January 2000</td>
</tr>
<tr>
<td>835 to 840/880 to 885</td>
<td>1 January 2000</td>
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</tbody>
</table>
EXPLANATORY STATEMENT

CARRIER LICENCE CONDITIONS (ACCESS AND ROAMING) DECLARATION 1997

TELECOMMUNICATIONS ACT 1997

Issued by the Authority of the Minister for Communications, the Information Economy and the Arts

Division 3 of Part 3 of the Telecommunications Act 1997 ("the Act") provides for the imposition of licence conditions on carriers.

Section 61 of the Act provides that a carrier licence is subject to the conditions specified in Schedule 1 to the Act. Section 62 of the Act provides that a carrier licence is subject to the condition set out in section 152AZ of the Trade Practices Act 1974, which provides that a carrier must comply with any applicable standard access obligations. Section 63 of the Act provides that the Minister may, by written instrument:

(a) impose conditions, in addition to those referred to in sections 61 and 62, applying to all carrier licences (section 63(1))

(b) impose conditions on specified carrier licences (section 63(2))

(c) provide that specified conditions will be imposed on a carrier licence which may be granted to a specified person during a specified period (section 63(3)).

The attached Declaration under section 63(2) of the Act imposes conditions on the carrier licences of Telstra and carriers that use or propose to use spectrum in the 800 MHz band to supply public mobile telecommunications services and that either hold spectrum licences for the use of that spectrum or are authorised to use the spectrum by the holder of such a licence.

The conditions give effect to aspects of the competition rules announced by the Minister for Communications, the Information Economy and the Arts on 9 July 1997 to apply in the context of the upcoming auction of spectrum in the 800 MHz and 1.8 GHz bands; in particular:

• to establish rights to enable new digital public mobile telecommunications service operators in the 800 MHz band to acquire capacity from Telstra’s AMPS service for resale before their digital services operations can begin; and

• to establish reciprocal roaming between the digital and analogue 800 MHz band services.

The Minister must give a copy of an instrument under section 63(2) to the holder of the licence to which the conditions relate. An instrument made under section 63(2) may be varied or revoked by the Minister (sections 63(5) and (6)); must be published in the Gazette (section 63(10)); and is disallowable by the Parliament (section 63(13)).
CARRIER LICENCE CONDITIONS (ACCESS AND ROAMING) DECLARATION 1997

1. Citation

This section provides for the Declaration to be cited as the Carrier Licence Conditions (Access and Roaming) Declaration 1997.

The note to this section clarifies that the licence conditions contained in the Declaration commence on gazettal.

2. Interpretation

This section includes key definitions for the Declaration.

Specified dates refer to the dates mentioned in the Schedule to the Declaration. These dates are used to establish the time at which AMPS resale rights for eligible carriers cease. The AMPS phaseout arrangements provide for the progressive clearance of the 800 MHz band by the AMPS service before 2000. As the spectrum is cleared by this service, new entrants will be able to establish their own services. The dates provide eligible carriers with an interim period, after the time at which they can begin their own services, during which they can continue to ‘resell’ the AMPS service. This recognises that new services will be unlikely to be operational immediately upon the spectrum becoming available for that service.

Coverage means an area in which customers of a carriage service provider supplying a public mobile telecommunications service are ordinarily able to make or receive calls by means of the provider’s network and includes areas within the coverage area in which there may be a localised lack of effective coverage because, for example, of attenuation within buildings, screening or reflection by natural or man-made features or blind spots. The note below the definition clarifies that the use of the term ‘ordinarily able’ in the definition is intended to provide that coverage includes areas in which customers are normally able to make or receive calls but where, for reasons such as network failure or congestion, that ability is temporarily not available. The definition also provides that a coverage area includes areas within that broader coverage area in which factors such as attenuation within buildings prevent customers from being able to make or receive calls.

The definition of eligible carrier is intended to include licensed carriers (under the Act) that use or intend to use some or all of the 800 MHz band spectrum to supply a public mobile telecommunications service and who either:

• hold a spectrum licence for the use of that spectrum; or

• are authorised to use the spectrum by another person, who is a holder of a spectrum licence for 800 MHz band spectrum;

whether or not the licence presently authorises the operation of any device.
Reference to ‘whether or not the licence presently authorises the operation of any device’ is intended to ensure the rights conferred on eligible carriers have effect even if the spectrum for which they hold a licence or are authorised to use is not yet cleared through the AMPS phaseout process or re-allocation period.

Roam means, for a customer of a carriage service provider who supplies a public mobile telecommunications service, the ability to make or receive calls in an area where the carriage service provider does not have coverage:

- by making use of the network of another public mobile telecommunications service network that does have coverage in that area; and

- using the same mobile telephone.

On or after 1 January 2000, ‘roam’ also includes the provision of automatic handover between networks during a call where this is technically feasible. This is intended to mean that where a customer who makes or receives a call on one network then moves into an area in which another network has coverage, the call is capable of being passed to and the connection maintained on the second network.

In October 1996, the Government announced that provision may be made to enable AMPS services to continue after 1 January 2000 in certain rural planned service areas. This definition will require, to the extent that it is technically feasible, that automatic handover between networks during a call is available where customers are ‘roaming’ onto or off those continuing parts of the AMPS network. Advice from Telstra indicates that automatic handover of a call will require the implementation of additional network capabilities in the remaining AMPS network based on the IS41 technical standard. The delay in the requirement for automatic handover of calls will enable necessary work to be completed.

Section 2(2) notes that each reference to a frequency band does not include the first whole number frequency specification but starts from immediately above the whole number, and includes all frequencies up to and including the whole number higher frequency.

3. Telstra to sell AMPS air-time in certain circumstances

This section provides that Telstra will be subject to a licence condition under which it must, if requested to do so by an eligible carrier, sell air-time on its AMPS network and supply any related services necessary to enable:

- the eligible carrier to resell AMPS services to its customers (if the request relates to the period before the earliest specified date for a frequency band in relation to which the eligible carrier holds a spectrum licence or authorisation) (section 3(1)(a)); or

- customers of the eligible carrier to roam onto Telstra’s AMPS service in areas where the eligible carrier does not have coverage (if the request relates to the period on or after the day when the eligible carrier begins supplying a public mobile telecommunications service in spectrum for which the eligible carrier holds a spectrum licence or authorisation) (section 3(1)(b)).
Reference to necessary ‘related services’ is intended to provide that Telstra is required to provide other services which are necessary for the eligible carrier to resell the AMPS service or provide roaming services (as the case may be). These may include billing information, signalling or other services necessary to enable the network to identify and provide services to an eligible carrier’s customer and network interconnection.

Reference to ‘earliest date’ in section 3(1)(a) is intended to provide that, where an eligible carrier holds a spectrum licence or authorisation for spectrum which has more than one specified date, the first specified date shall determine the period in this paragraph.

Section 3(2) provides that the obligations in section (1) do not apply if there is in force a certificate issued by the Australian Competition and Consumer Commission (ACCC) stating that, in the ACCC’s opinion, compliance with that section would have the effect of preventing Telstra, or any other carriage service provider being supplied with air-time (such as Optus, which is currently acquires air-time for resale purposes), from meeting its reasonably anticipated requirements, measured at the time the request is made.

Section 3(3) provides that the obligations in section (1) do not apply if there are reasonable grounds to believe that the eligible carrier would fail:

- to a material extent, to comply with the terms and conditions on which Telstra complies, or on which Telstra is reasonably likely to comply, with the condition; or

- in connection with that condition, to protect:

  - the integrity of Telstra’s AMPS service or any related services; or

  - the safety of individuals working on, or using services supplied by means of, Telstra’s AMPS service or any related services.

A note at the end of the instrument gives examples for section 3(3).

Sections 3(4) and (5) provide that terms and conditions under which access is provided by Telstra to requesting eligible carriers are to be agreed between the parties, determined by a mutually agreed arbitrator, or determined by the ACCC. If determined by the ACCC, the Commission must have regard to the matters detailed in section 3(6). These matters are based on section 152CR of the Trade Practices Act 1974 which guides the ACCC in arbitrating disputes under the telecommunications access regime.

Section 3(7) provides that the ACCC, if required to arbitrate a dispute, may also have regard to any other matters it thinks are relevant.

Section 3(8) provides that where the ACCC is required to consider whether a determination would promote the long-term interests of end-users of carriage services or of services provided by means of carriage services, it is to do so in the same manner as it would under Part XIC of the Trade Practices Act 1974 (see section 152AB of the Trade Practices Act).
Section 3(9) provides that, to assist the ACCC in forming an opinion for the purposes of section (2), it may:

- consult with the Australian Communications Authority (ACA);

- have regard to any AMPS phaseout plan determined by the Minister under section 361(2) of the Act (which may, for example, impose certain obligations on carriage service providers relating to ceasing the supply of AMPS services); and

- have regard to any other matters that it thinks are relevant.

4. Certain other carriers to sell air-time to Telstra in certain circumstances

This section provides that an eligible carrier (other than Telstra, should it be an eligible carrier) will be subject to a licence condition under which it must, if requested to do so by Telstra, sell air-time on its public mobile telecommunications service supplied using 800 MHz band spectrum, and supply any related services necessary to enable customers of Telstra to roam onto the eligible carrier's service.

Section 4(1) provides that terms and conditions under which access is provided by an eligible carrier to Telstra may be agreed between the parties, determined by a mutually agreed arbitrator, or determined by the ACCC. If determined by the ACCC, the Commission must have regard to the matters detailed in section 4(4), which is based on section 152CR of the Trade Practices Act 1974. Section 4(5) provides that the ACCC, if required to arbitrate a dispute, may also have regard to any other matters it thinks are relevant.

Section 4(2) provides that the obligations in section (1) do not apply if there is in force a certificate issued by the ACCC stating that, in the ACCC’s opinion, compliance with that subsection would have the effect of preventing the licensee, or any other carriage service provider being supplied with air time, from meeting its reasonably anticipated requirements, measured at the time the request is made.

Section 4(3) provides that the obligations in section (1) do not apply if there are reasonable grounds to believe that Telstra would fail:

- to a material extent, to comply with the terms and conditions on which the licensee complies, or on which the licensee is reasonably likely to comply, with the condition; or

- in connection with that condition, to protect:
  - the integrity of licensee’s service or any related services; or
  - the safety of individuals working on, or using services supplied by means of, the licensee’s service or any related services.

A note at the end of the instrument gives examples for section 4(3).
Section 4(6) provides that where the ACCC is required to consider whether a determination would promote the long-term interests of end-users of carriage services or of services provided by means of carriage services, it is to do so in the same manner as it would under Part XIC of the *Trade Practices Act 1974* (see section 152AB of the Trade Practices Act).

Section 4(7) provides that, to assist the ACCC in forming an opinion for the purposes of section (2), it may:

- consult with the ACA; and
- have regard to any matters that it thinks are relevant.

**Schedule**

The Schedule details the ‘specified dates’ used for the purposes of sections 3 and 4 of the proposed Declaration. The dates, where possible, provide eligible carriers with a period after the time at which the spectrum for which they are licensed or authorised is cleared by the AMPS service, in which they can continue to resell Telstra’s analogue AMPS service before establishing their own digital services. A cut-off time for resale rights is necessary given the progressive reduction in the amount of spectrum available for AMPS services.