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20 February 2013

Mr Paul Dunn
Director Network Operations and Development
Australian Energy Regulator
GPO Box 520
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Dear Mr Dunn

**TELSTRA SUBMISSION - DRAFT AER DRAFT NETWORK SERVICE PROVIDER
REGISTRATION EXEMPTION GUIDELINE - JANUARY 2013**

1. BACKGROUND

We act for, and have prepared this submission on behalf of, Telstra Corporation Limited ("**Telstra**").

On behalf of Telstra, we would like to thank the Australian Energy Regulator ("**AER**") for the opportunity to provide submissions to the AER in respect of the AER draft revised network service provider registration exemption guideline ("**Draft Revised NSP Exemption Guideline**"), dated January 2013.

2. INTRODUCTION

Telstra has reviewed and considered the Draft Revised NSP Exemption Guideline.

The purpose of this submission is to:

- (a) demonstrate why Telstra considers that a number of amendments to the Draft Revised NSP Exemption Guideline are required to ensure that there is a class of deemed exemption which adequately covers the operation of a private network and the supply of electricity associated with telecommunications, technology and content services ("**Telecommunication and Information Services**") provided by Telstra and others, now and in the future; and
- (b) propose drafting for the amendments Telstra seeks to be made to the Draft Revised NSP Exemption Guideline, for consideration by the AER.

3. ON-SUPPLYING ELECTRICITY IN THE TELECOMMUNICATION AND INFORMATION SERVICES INDUSTRY

Please refer to Telstra's submissions with respect to the Draft AER (Retail) Exempt selling guideline ("**Draft Revised Exempt Selling Guideline**") dated 18 January 2013 for:

- (a) an outline of the nature of Telstra's business and the Telecommunication and Information Services which involve the onselling and supply of electricity to its customers; and
- (b) a description of the type of customers that are supplied and on-sold electricity by Telecommunication and Information Services entities and the regulatory and contractual arrangements that are currently in place to protect those customers.

For ease of reference a copy of Telstra's submission is attached.

4. EXEMPTION CLASS ND02

4.1 Overview

In order to operate Telstra's facilities and equipment, and in turn, to provide Telecommunication and Information Services to its customers, Telstra commonly supplies electricity to its customers. The supply of electricity may also involve the onsale of electricity.

Historically, the AER has recognised the need for telecommunication service providers (such as Telstra) to be exempt from the requirement to register as a network service provider, including through the inclusion of the existing deemed exemption class ND02 and the proposed amendments to that class. Telstra also refers to its letter to the AER of 11 December 2012 referring to the historical exemptions available to Telstra.

However, given significant advances in the Telecommunications and Information Services Industry, existing deemed exemption class ND02 does not reflect the nature of the services provided by Telstra or others in this Industry. On this basis, Telstra understands the AER proposes to amend deemed exemption class ND02 in the Draft Revised NSP Exemption Guideline to read as follows:

*ND02 Sites broadcasting television or radio signals and/or **providing fixed or mobile communications.***⁶

FN6 Includes data storage facilities, telecommunications and data equipment, PABX equipment and other similar facilities.

Telstra agrees that it is necessary to update the language in deemed exemption class ND02 to recognise the current and changing nature of the Telecommunication and Information Services industry. However, Telstra is concerned that the language used in deemed exemption class ND02 in the Draft Revised NSP Exemption Guideline does not reflect the services currently provided and may not adequately provide for future changes to the nature of the Telecommunications and Information Services industry.

Further, Telstra considers that on a technical legal reading, deemed exemption class ND02 (as drafted in the Draft Revised NSP Exemption Guideline) may be read to mean that data storage facilities, telecommunications and data equipment, PABX equipment and other similar facilities are only covered by deemed exemption class ND02 if they are used at sites broadcasting television or radio signals and/or providing fixed or mobile communications. If deemed exemption class ND02 is read in this way, it would have the effect of excluding a large number of Telecommunication and Information Services provided by Telstra and other service providers in the Telecommunications and Information Services industry.

Telstra also considers that it would be appropriate to separate the exemption applying to broadcasting facilities from the exemption applying to the Telecommunications and Information Services industry. It proposes that a new category of deemed exemption would be added to the Guideline (called "**ND02A**" in this submission).

4.2 Proposed amendments

On the basis of the above, Telstra submits that deemed exemption class ND02 in the Draft Revised NSP Exemption Guideline be amended to read as follows:

Class ND02: *Sites broadcasting television or radio signals*

A new deemed exemption class ND02A would be created and read as follows:

Class ND02A: *Service providers in the telecommunications and information services industry supplying electricity to business customers¹ in conjunction with, or ancillary to, the provision of telecommunication or information services, for use with facilities installed by the service provider or the customer, in or on the service provider's premises.*

1. *Business customers means customers other than residential customers*

Telstra has considered the classes of customers that it may supply electricity through its networks and those customers include charities and NGOs but does not include residential customers (having regard to the definition in the dictionary of the Draft Revised NSP Exemption Guideline). We therefore propose that the term "business customers" be defined by excluding residential customers.

In January 2013, Telstra made submissions to the AER proposing that an analogous exemption (ideally using similar drafting) be included as a new exemption class in the Draft Revised Exempt Selling Guideline. Telstra considers that such an approach is consistent with the AER's goal of aligning the NSP Exemption Guideline with the Exempt Selling Guideline.

5. **CONDITIONS ATTACHED TO DEEMED EXEMPTION CLASS ND02**

5.1 **General overview**

The Draft Revised NSP Exemption Guideline states that the conditions set out in sections 5, 6, 7, 9(1) and 10 of Part B of that guideline apply to deemed exemption class ND02.

Having regard to:

- (a) the nature of Telstra's business and the Telecommunication and Information Services which involve the supply of electricity to its customers; and
- (b) a description of the type of customers that are supplied and on-sold electricity by Telecommunication and Information Services entities and the regulatory and contractual arrangements that are currently in place to protect those customers,

as outlined in Telstra's submissions with respect to the Draft Revised Exempt Selling Guideline dated 18 January 2013, Telstra considers that it is not appropriate for each of the conditions stated in sections 5, 6, 7 and 9(1) of Part B of the Draft Revised NSP Exemption Guideline to apply to the proposed deemed exemption class ND02A.

Below is an overview as to why Telstra considers that the conditions contained in sections 5, 6, 7 and 9(1) of Part B of the Draft Revised NSP Exemption Guideline should not apply to proposed deemed exemption class ND02A.

5.2 **Requirement to install accurate individual metering**

Condition overview

The conditions contained in sections 5(1), 5(2), 5(7), 6, 7 and 9(1) of Part B of the Draft Revised NSP Exemption Guideline relate to the requirement to:

- (a) install accurate individual metering in respect of electricity supplied to each customer (with an exception which permits unmetered supply where this is permitted under the Exempt Selling Guideline);
- (b) read the meters; and
- (c) calculate an appropriate distribution loss factor.

For both historical and practical reasons, we are advised that Telstra generally does not charge its customers for electricity on a metered consumption basis. Instead, we are advised that the relevant arrangements commonly include a methodology for charging for electricity that is agreed with the customer. We understand that this is often based on the forecast electricity usage provided by the customer, or based on expected usage for equipment of that type in the industry.

This approach is taken due to the:

- (a) insignificant amount of electricity supplied by Telstra to its customers, in the course of providing Telecommunication and Information Services;
- (b) design and cost limitations for each affected facility (see the discussion in the letter of 11 December 2012 from Telstra to the AER); and
- (c) significant number of facilities that are electrified by Telstra to facilitate its provision of Telecommunication and Information Services.

By way of example, for one service, Telstra hosts 6773 separate items of third party owned equipment at 573 sites across Australia.

However, in some cases where the customer has requested a metered supply, Telstra has worked with the customer to install the appropriate network and metering arrangements where practicable (at the customer's cost).

Conclusion

The cost of installing separate meters is likely to be significant and the cost/benefits to customers (if any) would be minimal. The management of each site will be cumbersome and in some instances it may not be practical or possible to undertake the installation of meters. Therefore, Telstra submits that proposed deemed exemption class ND02A should not be required to comply with the conditions stated in sections 5(1), 5(2), 5(7), 6, 7 and 9(1) of Part B of the Draft Revised NSP Exemption Guideline. This is notwithstanding the proposed amendment to condition 5(2) that an unmetered supply is permitted where that is permitted under the Exempt Selling Guideline.

5.3 **Safety and security of the network**

Condition overview

Section 5(3) of Part B of the Draft Revised NSP Exemption Guideline requires that all private networks are installed, operated and maintained in accordance with the relevant safety legislation of the jurisdiction in which the network is located.

Section 5(4) of Part B of the Draft Revised NSP Exemption Guideline obliges an on supplier of electricity to have suitable "islanding" arrangements in place for any generation source located within the private network except in accordance with arrangements approved by the relevant NEM registered network service provider.

Conclusion

Telstra considers that condition imposed by section 5(3) is unnecessary as Telstra is already obliged to install, operate and maintain its private networks in accordance with the relevant safety legislation of the jurisdiction in which each network is located, pursuant to such legislation, as well as comply with its obligations under the *Telecommunications Act 1997* (Cth) ("**Telco Act**").

Telstra also considers that condition imposed by section 5(4) of Part B of the Draft Revised NSP Exemption Guideline is unnecessary as, if the private network also contains a generation source, Telstra is required have suitable "islanding" arrangements in place

pursuant to its connection agreements with its various network service providers. Telstra understands that such conditions are required to be included in connection agreements with network service providers, pursuant to chapter 5 of the National Electricity Rules.

5.4 **Onselling of electricity**

Condition overview

Section 5(5) of Part B of the Draft Revised NSP Exemption Guideline requires that all electricity on-sold via a private network is undertaken by:

- (a) a registered market retailer;
- (b) the holder of a valid retail exemption registered with the AER; or
- (c) by a party or parties entitled to a deemed retail onselling exemption in accordance with the current AER Exempt Selling Guideline.

Telstra understands that it is appropriate for this condition to apply to the proposed deemed exemption class ND02A, subject to appropriate adjustments to the Draft Revised Exempt Selling Guideline (as referred to in Telstra's submission to the AER in respect of the Draft Revised Exempt Selling Guideline).

However, Telstra considers that section 5(5) of Part B of the Draft Revised NSP Exemption Guideline should be amended to reflect that:

- (a) the NERL has not yet commenced in every jurisdiction of Australia; and
- (b) an onseller is only required to comply with the conditions listed above if a charge is levied in respect of the electricity on-sold.

Conclusion

On this basis, Telstra submits that section 5(5) of Part B of the Draft Revised NSP Exemption Guideline be amended to read as follows:

"5) All onselling conducted within a private network must be undertaken by:

a) a registered market retailer; or

b) by the holder of a valid retail exemption registered with the AER; or

c) by a party or parties entitled to a deemed retail onselling exemption in accordance with the current AER Exempt Selling Guideline,

where:

d) the private network is operated in a jurisdiction of Australia where the National Energy Retail Law has commenced operation; and

e) a charge is levied in respect of the electricity on-sold via the private network."

5.5 **Dispute resolution procedures**

Condition overview

Section 5(6) of Part B of the Draft Revised NSP Exemption Guideline requires that a private network has in place approved dispute resolution procedures that customers can access at no cost or on a fee for service basis.

Application to Telecommunication and Information Service industry

Telstra's customers have access to a variety of mechanisms to make complaints in respect of the services they receive. In respect of regulated services provided by Telstra, this includes a range of mechanisms enshrined in the Telco Act.

For example, pursuant to the Telco Act, a person has a right to make a complaint about certain matters relating to certain Telecommunications and Information Services to the Australian Communications and Media Authority ("**ACMA**"). The ACMA has the power to conduct an investigation in respect of the complaint made, as well as to refer specific matters to the Australian Competition and Consumer Commission ("**ACCC**") or the Telecommunications Industry Ombudsman.

Information regarding Telstra's management of complaints by its customers (as well as disputes) is published on Telstra's website and is readily accessible by its customers. Further, we understand that under the contractual arrangements entered into between Telstra and its customers, customers also have contractual rights to access a range of alternative dispute resolution processes or to initiate litigation. In the case of regulated services, the customer can ask the ACCC to arbitrate if not satisfied when negotiating the contract under which the electricity is supplied.

Telstra understands that similar protections would be in place for customers of other service providers in the Telecommunication and Information Services industry.

Conclusion

On the basis of the above, Telstra submits that proposed deemed exemption class ND02A should not be required to comply with the condition imposed under section 5(6) of Part B of the Draft Revised NSP Exemption Guideline.

5.6 Applications for exemption not transferrable

Sections 5(8) and 5(9) of Part B of the Draft Revised NSP Exemption Guideline apply with respect to exemptions registered with the AER, and hence do not apply to deemed exemption classes. Therefore, Telstra submits that proposed deemed exemption class ND02A should not be required to comply with conditions imposed by sections 5(8) and 5(9) of Part B of the Draft Revised NSP Exemption Guideline.

5.7 Life support

Condition overview

Sections 5(10) and 5(11) of Part B of the Draft Revised NSP Exemption Guideline impose conditions with respect to the supply of electricity to "life support customers".

Electricity supplied and on-sold by Telstra (and other Telecommunication and Information Service providers) in connection with Telecommunication and Information Services is only used by customers to receive the contracted services, and for no other purpose.

Specifically, we understand that no electricity on-sold by Telstra to its customers in connection with Telecommunication and Information Services, is used to supply electricity to residences or for unrelated commercial purposes.

Therefore, Telstra and other Telecommunication and Information Service providers do not supply electricity to "life support customers" in connection with the provisions of Telecommunication and Information Services.

Conclusion

On the basis that neither Telstra nor other Telecommunication and Information Service providers supply electricity to "life support customers" in connection with the provisions of Telecommunication and Information Services, Telstra submits that proposed deemed exemption class ND02A should not be required to comply with conditions contained in sections 5(10) and 5(11) of Part B of the Draft Revised NSP Exemption Guideline.

5.8 **AEMO and NEM requirements**

Section 8 of Part B of the Draft Revised NSP Exemption Guideline applies where customers of a private network have access to full retail competition and where a customer has elected to obtain supply from a retailer. The Draft Revised NSP Exemption Guideline does not currently propose that section 8 would apply to deemed exemption class ND02.

Telstra proposes that this condition is similarly not appropriate for Telstra's customers, nor the customers of other Telecommunication and Information Service providers. However, as noted above, if a customer requests a metered supply Telstra will work with the customer to address this request where practicable.

Therefore, Telstra submits that proposed deemed exemption class ND02A should also not be required to comply with conditions contained in section 8 of Part B of the Draft Revised NSP Exemption Guideline.

5.9 **Pricing**

Condition 10 of Part B of the Draft Revised NSP Exemption Guideline describes predefined pricing arrangements accepted by the AER for network charges in private networks.

Telstra considers that the conditions contained in section 10 of Part B of the Draft Revised NSP Exemption Guideline are appropriate conditions to apply to proposed deemed exemption class ND02A.

5.10 **Proposed amendments**

Telstra considers that the imposition of the conditions proposed to apply to deemed exemption class ND02 on Telstra and other service providers, in respect of the provision of Telecommunication and Information Services, will result in significant increases to the costs paid by customers to receive such services. Therefore, in order to significantly reduce or eliminate such a detriment, Telstra proposes that a narrower list of conditions apply to proposed deemed exemption class ND02A.

In the context of the services provided by Telstra and other service providers in the Telecommunication and Information Services industry, Telstra considers that it is appropriate that the conditions stated in section 5(5) (as amended in accordance with section 5.4 of this submission) and section 10 apply to proposed deemed exemption class ND02A.

Therefore, Telstra submits that the statement as to the conditions that apply to proposed deemed exemption class ND02 (which appears on page 6 above table 2) in the Draft Revised NSP Exemption Guideline, be amended to read as follows:

"The conditions set out in sections 5, 6, 7, 9(1) and 10 of Part B of the Guideline apply to deemed exemption class NDO1 and ND02.

"The conditions set out in sections 5(5) and 10 of Part B of the Guideline apply to deemed exemption class NDO2A."

Again, on behalf of Telstra, we thank the AER for allowing Telstra to make this submission.

If the AER would like to discuss this submission with Telstra, please contact Joy Hooker of Ashurst to arrange a convenient time. Joy's contact details are: phone: (03) 9679 3416, email: joy.hooker@ashurst.com.

Yours faithfully



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18 January 2013

Naomi Feast
Associate Director
Australian Energy Regulator
GPO Box 520
MELBOURNE VIC 3000



Dear Ms Feast

TELSTRA SUBMISSION – DRAFT AER (RETAIL) EXEMPT SELLING GUIDELINES NOVEMBER 2012

1. **BACKGROUND**

We act for, and have prepared this submission on behalf of, Telstra Corporation Limited ("**Telstra**").

On behalf of Telstra, we would like to thank the Australian Energy Regulator ("**AER**") for the opportunity to provide submissions to the AER in respect of the Draft AER (Retail) Exempt selling guideline ("**Draft Revised Exempt Selling Guideline**"), dated November 2012.

2. **INTRODUCTION**

As part of a number of integrated services Telstra provides to its customers, Telstra on-sells electricity and operates private networks in each jurisdiction of Australia. Telstra understands that the Draft Revised Exempt Selling Guideline as currently drafted will, in conjunction with the Network Service Providers Exemption Guideline, the National Energy Retail Law (as implemented in each State) and its associated rules and regulations (collectively, the "**New System**"), together with any State based laws, govern these arrangements.

Telstra has reviewed and considered the Draft Revised Exempt Selling Guideline and has a number of concerns about how it will affect Telstra's business, and the telecommunications, technology and content services ("**Telecommunication and Information Services**") industry more generally.

The purpose of this submission is to:

- (a) outline to the AER the nature of Telstra's business and the integrated services which involve the onselling of electricity;
- (b) describe the type of customers that are supplied and on-sold electricity by Telecommunication and Information Services entities and the regulatory and contractual arrangements that are currently in place to protect those customers;
- (c) demonstrate why Telstra considers that as the Draft Revised Exempt Selling Guideline is currently drafted, there is no category of deemed or registrable exemption that appropriately deals with onselling arrangements in the Telecommunication and Information Services industry; and

- (d) propose a new class of deemed exemption to be included in the Draft Revised Exempt Selling Guideline that will operate to exempt Telecommunication and Information Services providers from the operation of the Exempt Selling Guideline in appropriate circumstances.

3. **ONSELLING ELECTRICITY IN THE TELECOMMUNICATION AND INFORMATION SERVICES INDUSTRY**

3.1 **Overview**

Telstra provides a number of integrated services to third parties in the Telecommunication and Information Services industry. Broadly speaking, the integrated services provided by Telstra to consumers can be divided into two categories, regulated services and un-regulated services.

Regulated services

In this context, regulated services provided by Telstra refers to those services Telstra provides to other telecommunication carriers involving the provision to those carriers of access to Telstra owned facilities. The provision of these services are governed by the *Telecommunications Act 1997* (Cth) ("**Telco Act**") and the *Competition and Consumer Act 2010* (particularly Part XIC). Telstra provides these types of regulated services via a number of different channels, including:

- (a) through providing access to and utilising a network that comprises thousands of equipment buildings and other network sites ("**Facilities**"). These Facilities are linked by millions of kilometres of cabling such as optic fibre, copper wire and other mechanisms such as radio, microwave and satellite links; and
- (b) mobile communication towers.

Relevant definitions from the Telco Act are set out in paragraph 1 to the Schedule to this letter. Regulated services will commonly involve Telstra providing other telecommunication carriers with access to certain of its facilities (as defined in the Telco Act) in accordance with the requirements of the Telco Act (subject to certain conditions) in order for those carriers to install their own equipment to facilitate the provision of competitive telecommunication services.

Unregulated services

The un-regulated facilities infrastructure services provided by Telstra are other services in the Telecommunication and Information Services Industry that are also provided to third parties. These services are also provided through various facilities, including:

- (a) data centres; and
- (b) mobile communication towers, equipment buildings and other infrastructure where the access seeker is not a telecommunication carrier.

The un-regulated services provided by Telstra are related to technology and content services provided by Telstra, or that third parties provide using Telstra's facilities. For example, data centres are buildings where computer servers and other electronic equipment for data processing and storage are located. Often data centres host servers and other equipment owned and operated by multiple parties and which provide space for infrastructure to be located including for cloud IT services. The data centres and equipment buildings contain a large number of individual equipment racks that house the third parties' equipment. By way of example, for one product, Telstra hosts 6773 separate items of third party owned equipment at 573 sites across Australia.

3.2 Supply arrangements

In order to operate the facilities and equipment described above, and in turn to provide Telecommunication and Information Services, Telstra commonly supplies electricity to its customers.

This involves Telstra:

- (a) buying electricity (in kilowatt hours) from a licensed retailer at a connection point. Telstra's general approach to this is to negotiate State based electricity contracts (aggregating its sites in that State) with retailers to ensure Telstra can source the most cost effective rates;
- (b) depending on the nature of the facility either:
 - (i) converting the purchased electricity from AC to DC power and on-selling (as required) the electrical power to customers in Amps or kilowatt hours; or
 - (ii) providing the electricity at the same voltage to its customers;
- (c) providing backup electricity in the form of batteries and generators; and
- (d) providing air-conditioning in the common areas of some facilities.

Without the supply of electricity at or to these facilities, neither Telstra nor the customer will be able to utilise the equipment located in the facilities (whether owned by the customer or Telstra) in connection with the contracted service. To this end, we understand that the electricity on-sold by Telstra in connection with Telecommunication and Information Services is only used by the customer to receive the contracted services from Telstra, and for no other purpose. Specifically, we understand that no electricity on-sold by Telstra to its customers in connection with Telecommunication and Information Services, is used to supply electricity to residences or for unrelated commercial purposes.

In most cases, the volume of electricity on sold to Telstra's customers (even if aggregated across multiple sites) is less than the upper consumption threshold for electricity and therefore, its customers would be classified as small customers under the National Energy Retail Regulations. However, in other cases, if the volume was aggregated, the upper consumption threshold would be exceeded.

3.3 Contractual arrangements

Regulated services

Generally, access terms and conditions for the regulated services are on common terms and conditions. Further, we are advised that Telstra sets its pricing (including for electrical power) in accordance with the Telco Act.

For example, Telstra has published a rate card for Telstra's access to its telephone exchanges which includes pricing for electrical power. This rate card, along with Telstra's standard terms and conditions for its regulated services, are published on Telstra's website and are readily accessible by Telstra's customers. (<http://www.telstrawholesale.com.au/products/facilities/teba/index.htm>, <http://www.telstrawholesale.com.au/download/document/tw-rate-card.pdf>)

We understand that generally, there is nothing in the contractual arrangements or Telstra's corporate policy which would prevent, where reasonably practicable and subject to any laws, a customer from installing its own electricity supply and exercising its right (in accordance with any jurisdictional requirements) to choose a retailer.

Un-regulated services

The terms and conditions which apply to the on-sale of electricity in connection with un-regulated services provided by Telstra, are dependent on the nature of the un-regulated service. For some products, we understand that Telstra provides power supply (up to a specified maximum volume) to customers as part of the overall service charge. However, a customer will usually be given the ability to request additional power to be supplied by Telstra for an additional service charge. For other products, Telstra may charge customers for electricity on-sold in connection with un-regulated services as a separate line item.

Again, we understand that generally, there is nothing in the contractual arrangements which would prevent, where reasonably practicable and subject to any laws, a customer from installing its own electricity supply and exercising its right (in accordance with any jurisdictional requirements) to choose a retailer.

Basis of charging

For both historical and practical reasons, we are advised that Telstra generally does not charge its customers for electricity on a metered consumption basis. Instead, we are advised that the relevant arrangements include a methodology for charging for electricity that is agreed with the customer. We understand that this is often based on the forecast electricity usage provided by the customer, or based on expected usage for equipment of that type in the industry. The costs of installing separate meters is likely to be significant and the cost/benefits to consumers would be minimal.

4. CUSTOMER PROTECTION

4.1 Nature of customer base being on-sold electricity

We are advised that all customers receiving Telecommunication and Information Services from Telstra, which involve the on-sale and supply of electricity, are commercial customers.

By way of example, many of the network customers of Telstra are participants in the Telecommunication and Information Services Industry that do not have the same infrastructure as Telstra. In fact, Telstra provides network services and solutions to more than 200 of the world's top 500 companies. However, Telstra's customer base also includes a range of other business customers from large corporate entities to medium and small businesses.

Therefore, despite the fact that the volume of electricity on-sold or supplied to commercial customers in connection with the Telecommunication and Information Services (even if aggregated across sites) will generally be below the upper consumption threshold in the National Energy Retail Regulations, Telstra's customers for such services are businesses customers and not domestic customers. We note that in some instances the aggregation across sites may result in the volume of electricity consumed by a customer exceeding the threshold upper consumption.

4.2 Complaints / Dispute resolution

Telstra's customers have access to a variety of mechanisms to make complaints in respect of the services they receive, including the charges associated with the provision of such services. In respect of regulated services, this includes a range of mechanisms enshrined in the Telco Act.

For example, pursuant to the Telco Act, a person has a right to make a complaint about certain matters relating to certain Telecommunications and Information Services to the Australian Communications and Media Authority ("ACMA"). The ACMA has the power to conduct an investigation in respect of the complaint made, as well as to refer specific

matters to the Australian Competition and Consumer Commission ("**ACCC**") or the Telecommunications Industry Ombudsman.

Information regarding Telstra's management of complaints by its customers (as well as disputes) is published on Telstra's website and is readily accessible by its customers. Further, we understand that under the contractual arrangements entered into between Telstra and its customers, customers also have contractual rights to access a range of alternative dispute resolution processes or to initiate litigation. In the case of regulated services, the customer can ask the ACCC to arbitrate if not satisfied when negotiating the contract under which the electricity is supplied.

4.3 **Competition**

In respect of the un-regulated services provided by Telstra, Telstra considers that there is substantial competition within the Telecommunication and Information Services industry. Given the competitive market for the provision of such services, customers have the ability to have other participants in the Telecommunication and Information Services industry provide them with un-regulated services if they do not wish to be serviced by Telstra. For example, in relation to data centres, Telstra is not the only owner of data centres or the only provider of data services. The services can be obtained by customers from other parties both in Australia and overseas.

4.4 **Choice of retailer**

As noted above, we understand that there is no policy within Telstra preventing its customers from choosing its preferred electricity retailer, in connection with the Telecommunication and Information Services provided by Telstra. In fact, some of Telstra's contractual arrangements with customers expressly state that Telstra will not unreasonably hinder a customer from obtaining its own supply of electricity to the equipment located within Telstra's infrastructure. However, in many instances, Telstra notes that it will be impractical from an engineering and cost perspective for a customer to have a separate electricity supply.

5. **EXEMPT SELLING GUIDELINE**

5.1 **Deemed exemptions and registrable under the Exempt Selling Guideline**

Telstra has reviewed and considered the deemed exemption classes which are currently included in the Draft Revised Exempt Selling Guideline. Unfortunately, Telstra considers that there is currently no appropriate class of deemed exemption for Telecommunication and Information Services providers.

Telstra have also reviewed and considered the registrable exemptions classes included in the current Draft Revised Exempt Selling Guideline. Telstra does not consider any of these classes captures the onselling arrangements described above and there is no class of suitable registrable exemption. Telstra is also concerned that, with the growing number of sites involved in providing Telecommunication and Information Services, the burden of a registrable exemption would be significant and involve a substantial amount of work on an ongoing basis.

The National Energy Retail Law acknowledges that it is not appropriate for everyone that on-sells electricity to hold a retailer authorisation. Similarly, Telstra considers that it is not appropriate for everyone that is deemed to be exempt from the requirement to hold a retailer authorisation, to be subject to conditions analogous to those which apply to holders of retailer authorisations.

On this basis, Telstra suggests that the AER include a new class of exemption for the Telecommunication and Information Services industry in the Draft Revised Exempt Selling Guideline. The inclusion of such a class of deemed exemption would reflect that:

- (a) the on-sale of electricity is incidental to the core business of Telecommunication and Information Service providers;
- (b) the electricity on-sold by Telecommunication and Information Service providers in connection with Telecommunication and Information Services is only used by customers to receive the contracted services, and for no other purpose. For example, no electricity on-sold by Telstra to its customers in connection with Telecommunication and Information Services, is used to supply electricity to residences;
- (c) generally, the on-sale of electricity occurs on a cost recovery basis. Telstra does not seek to profit in respect of its provision of electricity and conjunction with the provision of Telecommunication and Information Services;
- (d) the amount of electricity on-sold by Telecommunication and Information Service providers to each of its customers is negligible in the context of the wider national electricity market;
- (e) other laws are in place which appropriately govern Telecommunication and Information Service providers relationship with its customers. Such laws include substantial protections for such customers in specified circumstances; and
- (f) the cost of compliance with the National Energy Retail Law as well as the conditions attached to the deemed exemptions (as the Draft Revised Exempt Selling Guideline is currently drafted) will impose exorbitant compliance costs on Telecommunication and Information Service providers and will not provide a significant benefit (if any) to its customers.

5.2 Telecommunications and Information Services

Exemption

Telstra therefore submits that, in light of its submission and the underlying policy objectives of the New System, a deemed exemption for the Telecommunications and Information Services Industry could be included in the Revised Exempt Selling Guideline as follows:

Class D[] Service Providers in the Telecommunications and Information Services industry selling electricity to business customers in conjunction with, or ancillary to, the provision of telecommunication or information services, for use with facilities installed by the customers in or on the Service Provider's premises.

6. OTHER

Telstra's supports the AER's proposal to include a new registrable exemption class R7 for historical un-metered on-selling arrangements.

Again, on behalf of Telstra, we thank the AER for allowing Telstra to make this submission.

If the AER would like to discuss this submission with Telstra, please contact Joy Hooker of Ashurst to arrange a convenient time. Joy's contact details are: phone: (03) 9679 3416, email: joy.hooker@ashurst.com.

Yours faithfully



Schedule

1. **Telco Act**

The Telco Act defines a facility as:

- (a) any part of the infrastructure of a telecommunications network; or
- (b) any line, equipment, apparatus, tower, mast, antenna, tunnel, duct, hole, pit, pole or other structure or thing used, or for use, in or in connection with a telecommunications network.

The telecommunications industry is defined in that Act as "Includes an industry that involves:

- (a) carrying on business as a carrier; or
- (b) carrying on business as a carriage service provider; or
- (c) supplying goods or services for use in connection with the supply of a listed carriage service; or
- (d) supplying a content service using a listed carriage service; or
- (e) manufacturing or importing customer equipment or customer cabling; or
- (f) installing, maintaining, operating or providing access to:
 - (i) a telecommunications network; or
 - (ii) a facility;
 - (iii) used to supply a listed carriage service."