ACCESS DISPUTE BETWEEN

CHIME COMMUNICATIONS PTY LTD (ACCESS SEEKER)
AND TELSTRA CORPORATION LIMITED (ACCESS PROVIDER)

UNCONDITIONED LOCAL LOOP SERVICE (ULLS)

Access Dispute Notified under section 152CM of the

Final Determination under Section 152CP of the
Trade Practices Act 1974

Background

1. On 26 June 2008, the Australian Competition and Consumer Commission (the ACCC) received a written access dispute notification (the notification) from Chime Communications Pty Ltd (Chime) that an access dispute existed in relation to the supply by Telstra Corporation Limited (Telstra) of the Unconditioned Local Loop Service (ULLS). Chime’s notification was provided to the ACCC pursuant to section 152CM of the Trade Practices Act 1974 (the Act).

2. The ULLS is an access service involving the use of unconditioned cable, primarily copper pairs, between end-users and a telephone exchange where the unconditioned cable terminates. The ULLS is used by access seekers in conjunction with their own infrastructure in the exchange to provide services, including traditional voice services and high speed internet and data services, to end-users.

3. After holding a public inquiry, the ACCC declared the ULLS, pursuant to subsection 152AL(3) of the Act on 4 August 1999. The declaration was published in the Commonwealth of Australia Gazette GN32 on 11 August 1999. Since this time, the ACCC has re-declared the service twice:
   - From 1 August 2006 to 31 July 2009 - Commonwealth of Australia Gazette GN31 on 9 August 2006 (pursuant to subsection 152ALA(4) of the Act);
   - From 1 August 2009 to 31 July 2014 - Commonwealth of Australia Gazette, GN28 on 22 July 2009 (pursuant to subsection 152ALA(4) of the Act).

4. The ACCC made pricing principles on 3 December 2009 - Pricing Principles for the Unconditioned Local Loop Service (ULLS) Determination 2009 - for the declared ULLS pursuant to section 152AQA of the Act.1

5. The ACCC has formed the view that, with respect to the notification, the requirements of subsection 152CM(1) of the Act are satisfied. That is,
   - Telstra is a carrier;
   - Telstra supplies the declared ULLS;

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1 Pricing Principles for the Unconditioned Local Loop Service (ULLS) Determination 2009
Telstra has an obligation under subsection 152AR(3) of the Act to supply the ULLS to Chime; and under subsection 152AR(5) of the Act to permit interconnection of their facilities with those of Chime; and

Chime is unable to agree with Telstra about terms and conditions of access to the ULLS, including the charges and other terms and conditions that are the subject of this final determination.

6. On 4 July 2008, the ACCC made an interim determination. The interim determination was extended on 22 June 2009 until 1 July 2010.

7. Pursuant to subsection 152CP(1) of the Act, this instrument is the final determination relating to the terms and conditions of access by Chime to the ULLS provided by Telstra.

Terms and conditions of access

8. This Final Determination specifies:
   - ULLS monthly charges, as per Schedule 1
   - ULLS single connection charges, as per Schedule 2
   - ULLS MNM charges, as per Schedule 3
   - ULLS MNM non-price terms, as per Schedule 4
   - ULLS call diversion charges, as per Schedule 5
   - ULLS service qualification charges, as per Schedule 6
   - ULLS network modernisation and upgrade terms, as per Schedule 7.

9. Subject to clause 10, other terms and conditions upon which Telstra and Chime have agreed for the supply of the ULLS are to continue to apply.

10. Except where the parties expressly agree otherwise, in the event of any inconsistency between the terms and conditions upon which Telstra and Chime have agreed for the supply of the ULLS and the intended operation of this determination, this determination is taken to apply and overrides any pre-existing agreement to the extent of any inconsistency.

11. All charges expressed in this Final Determination are expressed on a GST exclusive basis.

Settlement of over or under paid amounts and interest

12. The total amount that arises from the difference between charges that have been paid by Chime and the charges specified in this determination (‘the settlement amount’) is to be paid:
   (a) where the charges paid by Chime are less than the charges specified in this determination, by Chime to Telstra; or,
   (b) where the charges paid by Chime are more than the charges specified in this determination, by Telstra to Chime.

Note: For calculating the amount of money required to be paid, parties must take into account the charges paid by Chime under the interim determinations.

13. Interest is payable on the settlement amount, compounded daily at the applicable monthly rate specified in the Small Business Variable Other
Overdraft Indicator Rate published by the Reserve Bank of Australia, for the period commencing on the date that the charge specified in this determination commences, and ending on the date that this determination takes effect.

Note: This Indicator Rate series can be obtained from the Reserve Bank of Australia http://www.rba.gov.au/statistics/tables/xls/f05hist.xls

14. Except where the parties agree otherwise, the settlement amount is to be paid within 42 days after the date on which this determination is made.

Commencement and expiry

15. This determination comes into effect 21 days after the date it is made.

16. The determination will remain in force until 31 December 2010 for the following schedules:
   - ULLS monthly charges (Schedule 1)
   - ULLS single connection charges (Schedule 2)
   - ULLS MNM charges (Schedule 3)
   - ULLS call diversion charges (Schedule 5)
   - ULLS service qualification charges (Schedule 6)

unless the ULLS ceases to be a declared service, in which case this determination will cease to have effect on that day.

Definitions

17. For the purpose of this Final Determination, the following definitions apply:
   (i) ‘Band’ refers to the geographic classification of exchange service areas (ESAs).
   (ii) ‘Band 1’ means the following central business districts:
        (a) NSW (City South, Dalley, Haymarket, Pitt, Kent)
        (b) QLD (Charlotte, Edison, Roma Street, Spring Hill)
        (c) South Australia (Flinders, Waymouth)
        (d) Victoria (Batman, Exhibition, Lonsdale)
        (e) WA (Bulwer, Pier, Wellington).
   (iii) ‘Band 2’ means an exchange service area with more than 108.4 services in operation in a square kilometre area at the time this determination is made, which is not a Band 1 area;
   (iv) ‘Band 3’ means an exchange service area with 6.56 or more, but less than 108.4, services in operation in a square kilometre area at the time this determination is made;
   (v) ‘Band 4’ means an exchange service area with 6.55 or less services in operation in a square kilometre area at the time this determination is made.

Note 2: The applicable Band is the Band in which the relevant service lies as at 31 August 2007.

Note 3: Brief descriptions of the four Bands are:
- Band 1 – central business districts in New South Wales, Queensland, South Australia, Victoria and Western Australia
- Band 2 – metropolitan
- Band 3 – provincial
- Band 4 – rural

Edward Campbell Willett  
Presiding Member

Joseph Dimasi  
Commissioner

DATED: 7 April 2010
Schedule 1 - ULLS Monthly Charges

1. Except where the parties subsequently agree otherwise, the ULLS Monthly Charges payable by Chime to Telstra per ULLS, per month are as follows:

<table>
<thead>
<tr>
<th>Band</th>
<th>1 July 2008 – 31 July 2009</th>
<th>1 August 2009 – 31 December 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Band 1</td>
<td>$6.60</td>
<td>$6.60</td>
</tr>
<tr>
<td>Band 2</td>
<td>$16.00</td>
<td>$16.00</td>
</tr>
<tr>
<td>Band 3</td>
<td>$31.30</td>
<td>$31.30</td>
</tr>
</tbody>
</table>

2. Except where the parties subsequently agree otherwise, there is no minimum period for which a ULLS must be acquired, and ULLS Monthly Charges are not payable for a ULLS following Chime ceasing to acquire it.

3. Except where the parties subsequently agree otherwise, this determination does not include any reasonable amount which Telstra may impose in order to recover tax paid by Telstra pursuant to the Utilities (Network Facilities Tax) Act 2006 (ACT).

Application

4. The charges specified in this Schedule do not apply to:
   (a) the ULLS supplied in Band 4; or
   (b) the supply of the ULLS before 1 July 2008; or
   (c) the supply of the ULLS after 31 December 2010.
Schedule 2 - ULLS single connection charges

ULLS single connections— IULLS and TULLS

1. Except where the parties subsequently agree otherwise, and subject to clause 2, the charge payable per connection for the making of an IULLS connection or TULLS connection outside a Managed Network Migration is as follows:

**From 1 July 2008 to 31 July 2009**

- Band 1: $50.40
- Band 2: $53.10
- Band 3: $57.70

**From 1 August 2009 to 31 December 2010**

- Band 1: $50.40
- Band 2: $53.10
- Band 3: $57.70

2. Except where the parties subsequently agree otherwise, where cutover testing is performed by Telstra at the request of Chime for a particular IULLS connection or TULLS connection, the following additional amount is payable for that connection:

   $10.80

Application

3. The terms specified in this Schedule do not apply to ULLS connections:
   (a) in Band 4;
   (b) where the line on which the ULLS is to be connected is being used to supply LSS; or
   (c) which were made prior to 1 July 2008 or after 31 December 2010.

4. This Schedule does not specify charges payable for VULLS connections.

Definitions

5. For the purposes of this Schedule:
   (i) a reference to the connection of an IULLS or TULLS outside a Managed Network Migration refers to all instances of ULLS connections other than those that are made as part of a ‘Managed Network Migration’ (MNM).
   (ii) a MNM is the transfer or migration of services that is achieved by the project management of Telstra in coordinating the cancellation and connection of services.
   (iii) ’IULLS’ connection refers to an ‘in-use’ ULLS connection where the ULLS is to be provided on a copper pair that was being used by Telstra, immediately prior to the request for access, to provide PSTN-based services on a wholesale or retail basis.
   (iv) ‘TULLS’ connection refers to a ‘transfer’ ULLS connection where the ULLS is to be provided on a copper pair that was being used...
immediately prior to the request for access, to supply a ULLS to another carrier or carriage service provider (for the avoidance of doubt, this may include Telstra as the access provider).

(v) ‘VULLS’ refers to a ‘vacant’ ULLS connection on a line that at the time of the order is not being used to supply any service.
Schedule 3 – ULLS Managed Network Migration (MNM) charges

This Schedule applies to connection charges for connections where the ULLS is being connected as part of a MNM involving the transfer of end user data services from a Telstra wholesale PSTN and/or ADSL service, or from a line that Telstra is using to supply a ULLS to another access seeker.

1. Except where the parties subsequently agree otherwise, the connection charges payable for the connection of a ULLS as part of a MNM involving the transfer of end user data services from a Telstra wholesale PSTN and/or ADSL service, or from a line that Telstra is using to supply a ULLS to another access seeker, are:

   For 1 July 2008 to 31 July 2009
   
<table>
<thead>
<tr>
<th>Component</th>
<th>Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fixed amount (per MNM)</td>
<td>$138.00</td>
</tr>
<tr>
<td>Variable amount (per connection)</td>
<td>+ $25.00</td>
</tr>
</tbody>
</table>

   For 1 August 2009 to 31 December 2010
   
<table>
<thead>
<tr>
<th>Component</th>
<th>Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fixed amount (per MNM)</td>
<td>$138.00</td>
</tr>
<tr>
<td>Variable amount (per connection)</td>
<td>+ $25.00</td>
</tr>
</tbody>
</table>

Minimum connection charge per MNM per exchange

2. Except where the parties subsequently agree otherwise, the minimum connection charge payable per exchange for the connection of a ULLS as part of a MNM involving the transfer of end user data services from a Telstra wholesale PSTN and/or ADSL service, or from a line that Telstra is using to supply a ULLS to another access seeker is as follows:

   For 1 July 2008 to 31 July 2009
   $638.00 per exchange per MNM

   For 1 August 2009 to 31 December 2010
   $638.00 per exchange per MNM

Cancellation (standard and pre-jumpering charges)

3. Subject to clauses 4 and 5, and except where the parties subsequently agree otherwise, no charges are payable on cancellation of an order for an ULLS that was to be connected as part of a MNM.

4. Where an order for a MNM that is scheduled for an exchange is cancelled, Chime must pay to Telstra:
   
   (a) a ‘standard cancellation’ charge per MNM of:
   
   (i) for 1 July 2008 to 31 July 2009: $138.00 per cancelled MNM
(ii) for 1 August 2009 to 31 December 2010: $138.00 per cancelled MNM; and

(b) if applicable, a further ‘pre-jumpering’ charge per relevant cancelled service, where the cancellation has followed ‘pre-jumpering’ work performed 20 Business Days or less before the scheduled date of the MNM by Telstra or its agents as part of the MNM process, of:

(i) for 1 July 2008 until 31 December 2010: $20 per relevant cancelled service.

5. Where a MNM is forecast to involve more than 20 services, and the forecast number of services to be connected as part of that migration is revised down within 20 Business Days of the prospective date of the MNM, Chime must pay to Telstra:

(a) if applicable, a ‘pre-jumpering’ charge per relevant cancelled service, where the cancellation has followed ‘pre-jumpering’ work performed by Telstra or its agents as part of the MNM process, of:

(i) for 1 July 2008 until 31 December 2010: $20 per relevant cancelled service;

in which case the number of relevant cancelled services is the difference between:

(a) the number of services that had been forecast for migration at the relevant exchange immediately prior to 20 Business Days from the prospective migration date; and

(b) the greater of the revised number of services to be migrated, or 20.

Application

6. The terms specified in this Schedule do not apply to:

(a) MNMs in Band 4; or

(b) MNMs which were ordered prior to 1 July 2008 or after 31 December 2010.

Definitions

7. For the purposes of this Schedule:

(i) a reference to the connection of an ULLS as part of a MNM refers to a ULLS connection to be made in the context of a ‘Managed Network Migration’;

(ii) a ‘Managed Network Migration’ is the transfer or migration of services that is achieved by the project management of Telstra in co-ordinating the cancellation and connection of services;

(iii) ‘Pre-jumpering’ work involves, inter alia, locating relevant copper pairs and making ready the jumpers that are needed to effect a ULLS connection prior to the actual connection or migration;

(iv) ‘Business Day’ means any day other than Saturday or Sunday or a day which is a gazetted public holiday in the place concerned.
Schedule 4 – ULLS Managed Network Migration (MNM) non-price terms

Minimum number of services

1. Except where the parties subsequently agree otherwise, it is at the discretion of Chime whether a particular service is to be connected as part of a MNM, or outside of a MNM.

2. Chime will notify Telstra at the time the order is made whether a particular service is to be connected as part of a MNM or outside of a MNM.

3. Except where the parties subsequently agree otherwise, there is no minimum number of connections applying as a pre-requisite for requesting a MNM.

Application

4. The terms specified in this Schedule do not apply in respect of MNMs that are ordered prior to this determination coming into effect.

Definitions

5. For the purposes of this Schedule:
   (i) a reference to the connection of an ULLS as part of a MNM refers to a ULLS connection to be made in the context of a ‘Managed Network Migration’;
   (ii) a ‘Managed Network Migration’ is the transfer or migration of services that is achieved by the project management of Telstra in co-ordinating the cancellation and connection of services.
Schedule 5 – ULLS Call Diversion Charges

Charges for call diversion as part of a ULLS connection

1. Except where the parties subsequently agree otherwise, the connection charges that are to apply in respect of call diversion as part of a ULLS connection are as follows:

   From 1 July 2008 to 31 July 2009 $9.30 per call diversion
   From 1 August 2009 to 31 December 2010 $9.30 per call diversion.

2. The monthly charge of a ULLS call diversion is $12.50 per month (pro rata) per service.

   Application

3. The charges specified in this Schedule do not apply to:

   (a) call diversion as part of a ULLS connection made in Band 4;
   (b) call diversion as part of a ULLS connection which was made prior to 1 July 2008 or after 31 December 2010.
Schedule 6 - Charges for ULLS Service Qualification Inquiries and Service Qualification Not Followed by an Order

1. Except where the parties subsequently agree otherwise, and subject to paragraphs 2 and 4, the charges that are to apply in respect of Service Qualification Inquiries (where Chime makes an inquiry of Telstra in respect of a service and Telstra conducts a Service Qualification for Chime) are as specified in Customer Relationship Agreement 167 (at Tables CRA167.3).

2. A charge is not payable by Chime for a Service Qualification Inquiry (where Chime makes an inquiry of Telstra in respect of a service and Telstra conducts a Service Qualification for Chime) where, immediately following the results of the inquiry being advised to Chime, Chime orders a ULLS on the line that is the subject of the Service Qualification Inquiry.

3. Except where the parties subsequently agree otherwise, and subject to paragraph 4, the charges that are to apply in respect of Service Qualification Not Followed by an Order (where Telstra conducts a Service Qualification in respect of a service at the request of Chime and Telstra is advised at the time of the request that the Service Qualification will not or cannot be followed by an order for a service), are as specified in Customer Relationship Agreement 167 (at Tables CRA167.4).

4. A charge is not payable for a Service Qualification Inquiry via LOLO/LOLIG or a Service Qualification via LOLO/LOLIG Not Followed by an Order.

Application:

5. Clauses 1 to 4 do not apply to Service Qualifications requested prior to 1 July 2008 or after 31 December 2010.

Definitions:

6. For the purpose of this Schedule:
   (i) a reference to Customer Relationship Agreement 167 is a reference to the agreement of that name between Telstra and Chime current as at the date that this determination is made;
   (ii) a reference to LOLO/LOLIG refers to Telstra’s Linx Online Ordering System and Linx Online Interaction Gateway.
Schedule 7 – ULLS Network Modernisation and Upgrade Terms

Notice to be provided where Telstra undertakes a Major Network Modernisation and Upgrade

1. Except where the parties agree otherwise, Telstra may make a Major Network Modernisation and Upgrade by:
   
   (a) providing Chime with notices in writing in accordance with clauses 2 and 4 (General Notification) and clauses 3 and 5 (Individual Notification); and
   
   (b) consulting with Chime, and negotiating in good faith, any reasonable concerns of Chime, in relation to the Major Network Modernisation and Upgrade.

This clause 1 does not apply to an Emergency Network Modernisation and Upgrade.

2. The period of notice given under a General Notification provided by Telstra to Chime:
   
   (a) must be an Equivalent Period of Notice; and
   
   (b) in any event, must not be less than thirty weeks before the Major Network Modernisation and Upgrade is scheduled to take effect.

3. An Individual Notification must be provided by Telstra to Chime as soon as practicable after the General Notification, but, in any event, not less than twenty-six weeks prior to the anticipated commencement date of the Major Network Modernisation and Upgrade.

Information to be provided in the notices

4. A General Notification must include information on:
   
   (a) the exchange service area affected by the proposed Major Network Modernisation and Upgrade;
   
   (b) the distribution area affected by the proposed Major Network Modernisation and Upgrade; and
   
   (c) a general description of the proposed Major Network Modernisation and Upgrade, including the indicative timing for the implementation of the Major Network Modernisation and Upgrade.

5. An Individual Notification must include the following information in addition to the information provided in the relevant General Notification:
   
   (a) the anticipated commencement date for implementing the Major Network Modernisation and Upgrade;
   
   (b) details of Chime’s ULLS activated or in the process of being activated at the date of the notice that are likely to be affected by the Major Network Modernisation and Upgrade;
(c) the likely action required by Chime as a result of the Major Network Modernisation and Upgrade (including the possible impact of the Major Network Modernisation and Upgrade upon Chime’s ULLS); and

(d) details of who Chime may contact to obtain further information about the Major Network Modernisation and Upgrade.

6. An Individual Notification only needs to be given where a ULLS has been activated or Telstra is in the process of activating a ULLS as at the date of the Individual Notification, and:

(a) the Major Network Modernisation and Upgrade will require Chime to take particular action in order to continue to use the ULLS; or

(b) the Major Network Modernisation and Upgrade will result in the ULLS no longer being supplied.

7. Where Telstra has provided Chime with an Individual Notification, Telstra must provide Chime with:

(a) updates about the Major Network Modernisation and Upgrade covered by the notice, including:

   (i) any update or change to the information provided in the Individual Notification;

   (ii) any new information available at the time of the update about:

       (A) services provided by Telstra in the relevant exchange service area that may be available to Chime;

       (B) how Chime may be impacted by the Major Network Modernisation and Upgrade; and

       (C) what steps Chime will be required to take to facilitate the Major Network Modernisation and Upgrade;

(b) weekly reports about the anticipated cutover dates for Chime’s affected services, beginning no less than five weeks prior to the anticipated commencement date for the Major Network Modernisation and Upgrade.

8. The updates referred to in subclause 7(a) are to be provided regularly (which is not required to be any more frequently than monthly) after the Individual Notification.

Emergency Network Modernisation and Upgrade

9. In the event of an Emergency, Telstra may conduct an Emergency Network Modernisation and Upgrade, and:

(a) will use its best endeavours to provide Chime with an Individual Notification prior to the Emergency Network Modernisation and Upgrade being implemented; or
where it is not practicable for prior notice to be given, Telstra will provide Chime with an Individual Notification as soon as reasonably practicable after the Emergency Network Modernisation and Upgrade is implemented.

Coordinated Capital Works Program forecast

10. Telstra must provide Chime with a written three year Coordinated Capital Works Program forecast in accordance with clause 11 on the date this determination commences (Coordinated Capital Works Program Forecast).

11. The Coordinated Capital Works Program Forecast will:
   (a) be for the three year period commencing on the date the forecast is provided;
   (b) describe generally Telstra’s indicative investment plans (as at the date of the forecast) for its Coordinated Capital Works Program over the next three years;
   (c) include an evaluation of the impact that Telstra’s indicative investment plans may have on individual exchange service areas and distribution areas; and
   (d) specify anticipated timeframes for implementation.

12. Telstra must update the Coordinated Capital Works Program Forecast (and provide the updated forecast in writing to Chime) regularly, at not less than six months intervals.

13. At the same time as Telstra provides a Coordinated Capital Works Program Forecast under clause 10, Telstra must provide a copy of the Coordinated Capital Works Program Forecast to the ACCC.

Coordinated Capital Works Program schedule

14. Telstra must provide a written Coordinated Capital Works Program schedule to Chime by giving notice not less than 12 months before the anticipated commencement date of the Coordinated Capital Works Program in accordance with clause 15 (Coordinated Capital Works Program Schedule).

15. Telstra must provide the Coordinated Capital Works Program Schedule and make its best endeavours to identify:
   (a) the exchange service areas and distribution areas affected;
   (b) Telstra’s plan for the Coordinated Capital Works Program for each exchange service area;
   (c) Chime’s ULLS in that exchange that will be affected and the expected impact of the Coordinated Capital Works Program on Chime’s ULLS; and
   (d) the anticipated timeframe for the implementation of the Coordinated Capital Works Program.
16. At the same time as Telstra provides a Coordinated Capital Works Program Schedule under clause 14, Telstra must provide a copy of the Coordinated Capital Works Program Schedule to the ACCC.

17. For the avoidance of doubt, Telstra must also comply with clauses 1-8 when complying with clauses 10-16.

*Negotiations in good faith*

18. Except where the parties agree otherwise, Telstra must not commence implementation of a Major Network Modernisation and Upgrade unless:

(a) it complies with clauses 1 to 8; and
(b) it has consulted with Chime and has negotiated in good faith, and addressed the reasonable concerns of Chime in relation to the Major Network Modernisation and Upgrade.

19. Except where the parties agree otherwise, Telstra must not commence implementation of a Coordinated Capital Works Program unless

(a) it complies with clauses 14 to 16; and
(b) it has consulted with Chime and has negotiated in good faith, and addressed the reasonable concerns of Chime in relation to the Major Network Modernisation and Upgrade.

20. Notwithstanding any continuing negotiations between Telstra and Chime pursuant to clauses 18 and 19, if Telstra has complied with this Schedule 5, a Major Network Modernisation and Upgrade may proceed twenty-six weeks after an Individual Notification has been issued, unless both parties agree otherwise.

21. In attempting to reach a mutually acceptable resolution in relation to a variation under clauses 1, 18 and 19, the parties must recognise any need that Telstra may have to ensure that the specifications for the ULLS which Telstra supplies to more than one of its customers need to be consistent (including, without limitation, having regard to the incorporation by Telstra of any relevant international standards).

*Dispute Resolution*

22. Existing dispute resolution procedures that have been agreed between the parties in respect of disputes over the terms of access to the ULLS are to apply to disputes arising from decisions that are made or acts done pursuant to this Schedule.

*Note: This is not intended to preclude a party from taking any other steps in respect of the matter.*

*Application*

23. This Schedule commences 21 days after the final determination is made.
24. A requirement for Telstra to provide information in written form includes provision of that information in electronic form.

25. Any information provided by Telstra in electronic form must be in a text-searchable and readable format.

Definitions

26. For the purposes of this Schedule:

‘Coordinated Capital Works Program’ means a planned Major Network Modernisation and Upgrade that extends across more than one exchange service area but does not include an Emergency Network Modernisation and Upgrade or an NBN Upgrade.

‘Emergency Network Modernisation and Upgrade’ means a Major Network Modernisation and Upgrade that is required and is reasonably necessary and a proportionate response to address an Emergency.

‘Emergency’ means an emergency which requires a significant and coordinated response due to an actual or potential occurrence (such as fire, flood, storm, earthquake, explosion, accident, vandalism, theft, epidemic or war-like action) that:

(a) endangers or threatens to endanger the safety or health of persons; or

(b) destroys or damages, or threatens to destroy or damage, property.

‘Equivalent Period of Notice’ means a period of notice commencing at the time that Telstra has approved and allocated the capital expenditure or otherwise approved and made a decision to commit to a Major Network Modernisation and Upgrade.

‘Major Network Modernisation and Upgrade’ means a modernisation or upgrade that:

(a) involves the installation of Telstra customer access modules closer to ULLS end-users than a Telstra exchange building;

(b) requires the truncation of ULLS provided from Telstra exchange buildings, or the establishment of a new point of interconnection (or relocation of an existing point of interconnection) for the ULLS, or alteration of deployment classes of equipment used on the ULLS; or

(c) results in the ULLS no longer being supplied or adversely affects the quality of that service (or any services supplied by Chime to their end-users using the ULLS),

but does not mean, or include, an Emergency Network Modernisation Upgrade or an NBN upgrade.
‘NBN Upgrade’ means a planned Major Network Modernisation and Upgrade by the Commonwealth of Australia and/or NBN Co that upgrades an existing access network as part of a fibre to the premises upgrade.