



## **Submission to the Draft Part XIC Procedural Rules 2008**

**June 2008**

## **Introduction**

The Competitive Carriers' Coalition represents the interests of non dominant telecommunications carriers in Australia. It has participated in regulatory processes related to the application of Part XIC consistently over the past seven years, and has been an especially active participant since it was incorporated as a industry association in 2004.

The CCC has many times expressed its concerns that the Part XIC processes have been gamed by access providers, especially by Telstra, with the effect that the time and resources of the Commission and access seekers have been unnecessarily wasted.

For this reason, the CCC welcomes the Commission's draft procedural rules as an attempt to constrain this conduct. The CCC believes the Commission has generally taken a relatively light handed approach to dealing with these issues, but supports the underlying intention and motivation.

The CCC at this time wishes to comment specifically on only one of the draft rules, which we believe might have unintended consequences.

## **Rule 11 Concerns**

The CCC has some reservations about Rule 11, which requires documents submitted to a Part XIC process to be accompanied by a declaration that the information in the document is accurate and complete and that no matters of significance and relevance are withheld.

The CCC understands that the intention of this rule is to ensure that opportunities to game regulatory processes through the provision of incomplete or misleading material are closed off. Rule 11 sends an important signal to companies that deliberately trying to manipulate regulatory processes will face serious consequences, and this signal is fully supported by the CCC.

However, the CCC is concerned that this rule might have unintended consequences for itself and similar organizations. The CCC often, in making submissions to ACCC processes under Part XIC, relies on information that has been provided to it by third parties. Usually these are member companies of the CCC. This material often relates to regulatory processes or commercial activities to which the CCC is not and cannot be directly privy. However, the CCC relies on this information to remain informed about the general regulatory and commercial environment, and develops its positions in relation to specific regulatory processes on the basis of this understanding.

It is unclear to the CCC how it will be able to attest to the accuracy and completeness of all information it provides to the Commission when commercial and regulatory confidence necessarily mean that the CCC is precluded from access to some information.

The CCC submits that other member-based organizations that have been regular participants in Commission processes – such as ATUG – would be in a similar position.

While the CCC has no reason to believe that it would have been the intention of the Commission to constrain member-based organizations from participating fully in future processes, Rule 11 as it presently is drafted does not appear to make allowance for situations where some information might not be available to associations when they are preparing submissions, and that associations might not even be aware that other relevant information exists.

The CCC urges the Commission to consider how the intention of Rule 11 can be preserved while making allowance for the particular circumstances of non-commercial and member-based organizations.

**Contact**

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