



Submission to Inquiry into Varying the Final Access Determinations for the WLR, LCS and PSTN OA

May 2012

The Competitive Carriers' Coalition welcomes the opportunity to comment on Telstra's application for an exemption from its obligations to provide WLR, LCS and PSTN OA in greenfields locations.

The CCC submits that the fixed line service final access determinations should not be varied to allow Telstra to avoid providing wholesale voice services in these circumstances. The CCC believes that this application from Telstra must be viewed in the context of the history of its efforts to avoid providing wholesale services, or to avoid providing wholesale services that are equivalent in price, terms and conditions to the retail services it provides.

The most contentious example of this conduct was Telstra's attempt in 1998 to launch its first ADSL retail products without offering an equivalent wholesale service. At the time, Telstra claimed it was not in a position to provide a wholesale service simultaneously with its retail service launch for technical reasons.

The ACCC did not accept this example, instead concluding that Telstra was seeking to advantage itself by being "first to market" with broadband. The Commission imposed a Part XIB Competition notice and required Telstra to develop and take to market a wholesale service.

The CCC believes that the obligations on Telstra to provide competitive access is not negotiable. Telstra has campaigned to avoid or dilute these obligations through a variety of tactics over many years. Telstra has gone so far as to challenge the basis of the Commission's regulation of access to its network in the High Court, which reaffirmed the principle that Telstra was obliged to facilitate competition and competitive entry.

All of these processes, interventions and decisions by the Commission, by policy makers and by the courts should leave Telstra with no room for doubt about its obligations to competition. Telstra should have integrated these repeated lessons into its business planning and be developing equivalent wholesale product simultaneously with retail products.

That it continues not to do this can only be evidence that the incentive on Telstra to advantage its own interest against those of access seekers continues to be a powerful factor in Telstra's decision making.

The transition of customers from the copper network to the NBN is a period of crucial importance for all industry participants. Clearly, there is a strong incentive on Telstra to do all that it can to protect its historical advantages by establishing incumbency in as many locations as possible.

The CCC submits that in varying the access determinations to exempt Telstra in greenfields locations, the Commission would not be acting in the long term interest of end users. For consumers in these locations, the competitive playing field would be tilted in Telstra's favour and they would be disadvantaged in the transition to the NBN as against the position of consumers in brownfields locations where the NBN was rolled out.

The CCC does not accept that this circumstance is a result of technology. Telstra should have been aware that it would face access obligations in providing a voice service over FTTH networks and should have developed a wholesale service simultaneously with a retail service.

The Commission would be setting a dangerous and unwelcome precedent and one that stood at odds with past decisions if it were to grant this exemption.

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