

# Australian Competition & Consumer Commission

## Draft Determination – Model Non-price Terms and Conditions

### June 2003

#### Submission by PowerTel Limited

30 July 2003

PowerTel welcomes the opportunity to provide comments regarding the model non-price terms and conditions draft determination (**draft determination**) issued by the Commission.

It is imperative that the model non-price terms and conditions provide incentives for access providers to improve efficiency but more importantly allows access seekers the opportunity to compete for retail customers on a fair and equitable basis.

Consistent with the view outlined in PowerTel's previous submission<sup>1</sup> to the Commission, PowerTel believes that without regulated and appropriate non-price terms and conditions:

- carriers cannot differentiate themselves with respect to non-price areas (eg. service levels) in this market;
- the competitive market place is unsustainable; and
- access providers have no incentive to become efficient.

PowerTel notes there are two aspects of the draft determination on which the Commission seeks comment. The first aspect relates to the principle applied by the Commission in formulating the model terms and conditions and the second aspect relates to the actual drafting of the model terms and conditions.

As PowerTel is generally supportive of the principles applied and the actual drafting adopted by the Commission on the majority of the non-price terms and conditions we have decided to only draw attention to the areas that continue to be of concern. PowerTel believes that with further refinement, the final model non-price terms and conditions should provide a platform for a fairer and more competitive market.

#### Billing and notification

PowerTel reiterates the view that frequent incorrect invoices rendered by access providers continues to consume considerable resources for access seekers. As the Commission has stated in its draft determination<sup>2</sup>:

*'The Commission considers that frequent rendering of incorrect invoices can be unnecessarily time consuming and potentially financially damaging to an access seeker and should be addressed in a contract between the parties.'*

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<sup>1</sup> PowerTel Limited submission to the Commission on model non-price terms and conditions, 29 January 2003

<sup>2</sup> ACCC, *Draft Determination – Model Non-price Terms and Conditions, June 2003* p.18

PowerTel supports the Commission's suggestion regarding the introduction of a rebate for access seekers who continue to receive frequent incorrect invoices.

This provides the mechanism which recognises the resources committed by access seekers, rewards access seekers for their diligence and provides further incentives for access providers to improve billing systems and to be more efficient.

### **Creditworthiness**

PowerTel believes that security will continue to be a contentious issue for both access seekers and access providers. As an access provider, PowerTel understands the need to limit financial exposure particularly to those carriers who are relatively new to the industry or where there are justified concerns regarding a carrier's financial viability.

However, PowerTel believes that where an access seeker has demonstrated appropriate credit control and has no history of default over a reasonable timeframe the access provider should not be able to maintain security or limit the provision of services without just cause.

For those access seekers that establish and maintain regular undisputed payments, PowerTel believes there is merit for the access seeker to seek a credit review with the access provider with the view to remove the security or as an alternative, the access provider should consider that a lower security is more appropriate. It is unreasonable for an access provider to retain a security for long periods of time for those access seekers who maintain good credit ratings.

### **Summary**

PowerTel believes the Commission has adopted appropriate principles in the draft determination of model non-price terms and conditions. This is important as large vertically integrated access providers have the ability to 'manage' the smaller access seekers business plans through unfair non-price terms and conditions.

However, PowerTel remains concerned over a number of issues namely, billing and notification and creditworthiness. PowerTel requests the Commission adopt the changes recommended above.

PowerTel has identified another area of concern regarding the non-price terms and conditions during a change of ownership. Clauses regarding change of ownership may be fairly onerous and again this often disadvantages smaller access seekers. PowerTel notes this issue is not covered in the draft determination but considers the terms and conditions surrounding a change of ownership worthy of review.

Consistent with PowerTel's previous view, PowerTel believes that without regulated and appropriate non-price terms and conditions:

- carriers cannot differentiate themselves with respect to non-price areas (eg. service levels) in this market;
- the competitive market place is unsustainable; and
- access providers have no incentive to become efficient.