



TELSTRA CORPORATION LIMITED

**Submission to the Australian Competition
and Consumer Commission**

**Telstra's response to Questions from
ACCC Discussion Paper of October 2007**

PUBLIC VERSION

December 2007

Overview

Telstra believes that a robust case can be made for rolling back economic regulation of the Line Rental Service and the Local Carriage Service. Accordingly, it has applied to the Commission seeking exemption from the applicable standard access obligations in relation to its supply of these services within 387 exchange services areas (371 in July 2007 and 16 in October 2007).

This submission responds to issues raised by the Commission's discussion paper of November 2007 in relation to Telstra's exemption applications of 12 October 2007 in respect of the 16 additional exchange service areas.

Telstra considers that most, if not all, of the important matters relevant to the Commission's assessment of its exemption applications have already been addressed in its submissions (including independent expert reports) to date, both in this context and in the context of the exemption applications it submitted in July 2007. Telstra considers it unnecessary to repeat all of those submissions here.

In summary, Telstra believes that the time has come to wind back regulation of these services. As a matter of theory, economic commentators such as Martin Cave suggest that 'competition is the best regulator'. When access regulation is provided on an open-ended basis, it can lead to regulatory dependence, often reflected in the predominance of resale competition over facilities-based competition. The solution is to wean access seekers from open-ended access, and encourage them to rely increasingly on their own facilities.

In practice, ample evidence suggests that the time is ripe to exempt these services. There are numerous infrastructure-based alternatives (such as DSLAM-based ULLS, HFC and fixed wireless networks). From a technical perspective, these alternatives are feasible - more than 95 per cent of SIOs in the exemption area could switch to ULLS-based services. Moreover, there are few (if any) barriers to entry. DSLAMs, for example, are relatively short-lived, and can be installed at minimal cost.

Evidence suggests that DSLAM rollout is continuing at a rapid pace; there are now more than 1400 DSLAMs installed. Telstra's exemption application in respect of the 16 additional ESAs based on data one month from the time it lodged its original exemption application is a perfect example of this. The rollout is also being accompanied by technical advances, permitting access seekers to offer services such as VoIP and "naked DSL" to subscribers and complemented by the increasing availability of fixed wireless networks and 3G mobile's.

There are now three broad options for delivering the same services: regulated WLR/LCS; regulated access to ULLS/LSS; and independent network provision. Applying the "ladder" approach, it is time to

remove the lowest rung, the declared LCS/WLR. This will encourage access seekers to move to the next rung, DSLAM-based ULLS/LSS service provision, and would keep the following rung, full facilities based competition, firmly in view.

This will not hamper competition or any-to-any connectivity, and will have a positive impact on the efficient use of and investment in infrastructure.

Accordingly, granting the exemption applications is in the LTIE.

Response to Commission Questions

This submission responds to issues raised by the Commission's discussion paper of October 2007 ("**October Discussion Paper**") in relation to Telstra's applications for exemption ("**October Exemption Applications**") in 16 ESAs from the SAOs applicable to Telstra in respect of the declared LCS and the declared WLR services dated 12 October 2007. To the extent that they are not defined, terms used in this submission have the meanings given by Telstra in its earlier submissions on this matter.

The October Discussion Paper expressly adopts the Commission's list of questions from its discussion paper of August 2007 ("**August Discussion Paper**") in relation to Telstra applications for applications for exemption ("**July Exemption Applications**") in 371 ESAs in respect of the LCS and the WLR dated 9 July 2007. The Commission also encouraged parties to reference their submissions to the August Discussion Paper in responding to the October Discussion Paper.

Accordingly, in responding to the October Discussion Paper, Telstra refers to and relies on all of the material it has already lodged in support of both the July Exemption Applications and the October Exemption Applications. Specifically, Telstra relies on the following documents which have already been provided to the Commission:

- (A) Telstra Supporting Submission on Local Carriage Service and Wholesale Line Rental Service Exemption Applications of 9 July 2007 ("**Telstra July Exemption Supporting Submission**"), including the following annexures:
 - (i) Annexure A - Statement by Dr Paul Paterson of CRA International for Mallesons Stephen Jaques on the Economic Considerations for LCS and WLR Exemptions dated 9 July 2007 ("**Paterson Statement**");
 - (ii) Annexure B - [c-i-c];
 - (iii) Annexure C - [c-i-c];
 - (iv) Annexure D - [c-i-c];
 - (v) Annexure E - [c-i-c];
 - (vi) Annexure H - [c-i-c];

- (vii) Annexure I - [c-i-c]; and
- (viii) Annexure J - [c-i-c];
- (B) Supplementary material in support of Telstra's Local Carriage Service and Wholesale Line Rental Service Exemption Applications of 27 August 2007 ("**Telstra Supplementary Submission**");
- (C) Further Telstra supplementary documents in support of the July Exemption Applications, including:
 - (i) Supplementary Statement by Dr Paul Paterson of CRA International for Mallesons Stephen Jaques on the Economic Considerations for LCS and WLR Exemptions dated 11 October 2007 ("**Supplementary Paterson Statement**");
 - (ii) Explanatory Statement to Annexure I;
 - (iii) [c-i-c];
 - (iv) [c-i-c]; and
 - (v) [c-i-c];
- (D) Telstra Supporting Submission on Local Carriage Service and Wholesale Line Rental Service Exemption Applications of 12 October 2007 ("**Telstra October Exemption Supporting Submission**"); and
- (E) Telstra Response to Questions from ACCC Discussion Paper of August 2007 ("**August Discussion Paper Response**") of 1 November 2007, including the following annexures:
 - (i) Expert Report by Dr Paul Paterson of CRA International for Mallesons Stephen Jaques on the ACCC Discussion Paper 'Telstra's local carriage service and wholesale line rental exemption applications' August 2007 dated 1 November 2007 ("**August Discussion Paper Report**");
 - (ii) Statement of Craig Lordan from Evans & Peck Engineering Consultants on the Technical Feasibility of using ADSL Networks to Supply Voice Services that Replicate PSTN Services dated 1 October 2007 ("**Lordan Statement**");

- (iii) Report from Market Clarity on Australian Wholesale Voice Networks and Capabilities prepared for Mallesons Stephen Jaques dated 1 November 2007 (“**Market Clarity Report**”);
- (iv) [c-i-c];
- (v) [c-i-c]; and
- (vi) [c-i-c]

For the purposes of responding to the Commission’s questions in the October Discussion Paper, Telstra refers to and relies on its August Discussion Paper Response in the context of the July Exemption Applications. Given that the list of questions are identical, it is unnecessary to set out those responses again in full.

In short, Telstra submits that there is an overwhelming volume of evidence that justifies exemption of the LCS and WLR in accordance with the October Exemption Applications (and the July Exemption Applications). Telstra has demonstrated comprehensively that, in the absence of regulation of the LCS and WLR in the Further Exemption Area (and the Exemption Area):

- competition will remain effective in the downstream retail markets; and
- the incentives for the rollout of infrastructure, such as DSLAMs by telecommunication companies, will be further enhanced.

The evidence in support of the October Exemption Application makes it clear that Telstra’s contentions about the existence and continued growth of competing infrastructure are not merely theoretical - but reflect the current realities of the markets in which the LCS and WLR are being supplied. Further, the endorsement (albeit qualified) by Optus of the July Exemption Applications in its response to the August Discussion Paper indicates that Telstra is not alone in its view that the de-regulation of the LCS and WLR in the Exemption Area and the Further Exemption Area will be in the LTIE.

Accordingly, the Commission should now grant the October Exemption Applications.

Confidentiality

This submission and all the information contained in it is confidential to Telstra and may only be disclosed by the Commission to persons approved of in writing by Telstra who have signed confidentiality undertakings that are acceptable to Telstra.

Telstra will provide this submission and the information contained in it to interested parties subject to those parties signing appropriate confidentiality undertakings. The confidentiality undertakings do not limit the extent to which interested parties, and the Commission, can analyse and comment on the content of this submission. Rather, they are intended to prevent the distribution and use of the confidential material contained in this submission for purposes other than participating in the Commission's public inquiry relating to these exemption applications.

Telstra will also provide a public version of this document in which confidential information will be deleted.

Telstra Corporation Limited

14 December 2007