Submission by AAPT Limited (September 2013)

to

Australian Competition and Consumer Commission

Domestic Transmission Capacity Service

An ACCC Discussion Paper reviewing the declaration for the Domestic Transmission Capacity Service (July 2013)

PUBLIC VERSION

A Introduction

1. AAPT Limited (**AAPT**) welcomes the opportunity to comment on the Australian Competition and Consumer Commission (**ACCC**) discussion paper entitled "*ACCC Discussion Paper reviewing the declaration for the Domestic Transmission Capacity Service*", dated July 2013 (**Discussion Paper**).

2. Backhaul transmission services are an essential input into AAPT's supply of fixed voice and data services to its consumers, which include wholesalers who provide downstream service throughout Australia. Accordingly, the price paid for transmission services has a direct and significant impact on the ability of AAPT to compete in the provision of downstream services with significant flow on effects to the long-term interests of end users (**LTIE**).

3. In AAPT's view, the Commission should maintain the declaration for the Domestic Transmission Capacity Service (**DTCS**). Telstra continues to be the dominant provider in the metropolitan, regional and rural transmission markets in which the DTCS is still an enduring bottleneck. Accordingly, access to the DTCS in these markets needs to continue to be regulated to ensure a level playing in the provision of downstream services and ultimately to ensure that the LTIE is adequately protected.

4. In this submission, AAPT sets out the reasons for why:

    - the DTCS should continue to be declared (refer to section B);
    - the deregulation of any DTCS routes within the metropolitan, regional and rural transmission markets should be reversed (refer to section C);
    - particular aspects of the DTCS service description need to be retained, while others require amendment (refer to section D); and

- the impediments to access to facilities for the DTCS need to be addressed via the declaration of a facilities access service (refer to section E).

5. Please note that this submission contains commercial in confidence information which is marked '[c-i-c]' and highlighted in yellow.

B The DTCS should continue to be declared

6. AAPT agrees with the ACCC's previously stated view that the DTCS has been considered to be an enduring bottleneck in certain areas because:

"…

- *Transmission networks are generally capital intensive and require large sunk investments. This makes it economically inefficient for competitors to duplicate existing transmission network infrastructure in certain geographic markets.*

- *Transmission networks underlie virtually every telecommunication service and are a critical input for the supply of all other downstream retail and wholesale telecommunications services, particularly on geographic routes which are considered to be natural monopolies or which are otherwise uncompetitive.*

- *Telstra remains the dominant supplier of transmission services across Australia, particularly in regional areas. Therefore, access to the DTCS on geographic routes, which are considered to be natural monopolies or which are otherwise uncompetitive, is critical to ensure that access seekers can achieve end-to-end connectivity to provide downstream services in different locations.*

- *Transmission services will also be necessary to support the delivery of NBN services. Retail Service Providers (RSPs) providing end-users with*

NBN voice and data services will require transmission services to carry traffic between the 121 NBN points of interconnection (NBN POIs) and their points of presence (POPs), usually located in a capital city location."[1]

7. AAPT considers the above statements still remain true and relevant and the DTCS should therefore continue to be declared. While there have been some important market developments - the most significant undoubtedly being the commencement of the National Broadband Network (**NBN**) rollout - AAPT does not any consider that there have been any changes to justify removal of the declaration of the DTCS at this stage.

8. Impact of the NBN on the DTCS market

    - AAPT agrees with the ACCC's view that RSPs providing end-users with voice and data services will require transmission services to carry increased traffic from an NBN point of interconnect (NBN POI) to their POP usually located in a capital city location. However, AAPT notes that service providers may also choose to locate a POP in regional locations in response to increased traffic. In any case, this is likely to create a greater demand for the DTCS to carry the increased volume of traffic. In AAPT's view, this will create a greater need for those transmission services to be regulated to promote competition and the LTIE, at least in the early stages of the NBN rollout.

    - AAPT notes that the ACCC considers that the NBN may impact on the structure of the geographic market for the DTCS by encouraging competing providers to locate at or near NBN POIs. In AAPT's view, while this may happen, AAPT does not consider it will come to pass for a considerable time. Instead, AAPT believes RSPs will be seeking to acquire wholesale transmission services from existing providers to aggregate their

[1] Discussion Paper, p. 6.
[2] Draft final access determination for the domestic transmission capacity service, dated December

backhaul reach to avoid stranding any existing assets. They will only invest in relocations closer to the NBN POIs when demand is sufficient, which will not likely happen until substantial rollout of the NBN has occured. Until such time, dominant DTCS providers such as Telstra will still have an ability to extract monopoly rents for transmission services, unless it is sufficiently disciplined by regulation.

- In AAPT's view, given the current rate of the NBN rollout, it is still premature at this stage to assess whether any future regulatory arrangements for the DTCS should consider the new telecommunications network architecture that will introduced by the NBN, the availability of any new substitute fibre products that may be introduced by NBN Co, and the regulatory arrangements for NBN Co in respect of the copper tail-end DTCS service.

9. Accordingly, AAPT submits that the material question for the purposes of this DTCS declaration inquiry is not whether the DTCS should continue to be regulated. Rather, the material question is, how should the DTCS be regulated. In AAPT's view, even with current regulation, Telstra is still not sufficiently constrained from charging monopoly rents. For example, AAPT considers that Telstra still charges exorbitant prices in important and strategic regional routes such as those to, from and within the Pilbara region in Western Australia.

10. AAPT believes the reason Telstra can continue to charge monopoly rents for these route is because of the combination of the following:

    - the application of the "competition criteria" to remove a large number of routes from regulation (i.e. **Deregulated DTCS Routes**); and

    - Telstra's ability to offer up an 'all or nothing deal' that access seekers wanting commercial certainty have little choice but to accept, thereby locking themselves out (because of the regulatory hierarchy) from regulated pricing for routes where access to regulated pricing is most needed, for the term of the relevant contract (refer to section C below).

11. **[Start c-i-c]** [redacted] **[End c-i-c]**

C Deregulation of the metro, regional and rural transmission markets should be reversed

12. As stated in a past submission[2], AAPT has serious concerns about Telstra ability's to take advantage of the Deregulated DTCS Routes in much the same way that it was able to leverage the geographic exemptions relating to the Wholesale Line Rental (WLR) service. **[Start c-i-c]** [redacted]

    - [redacted]

    - [redacted]

13. AAPT notes that in the context of the transmission services, the rebalancing is a little different but the effect is the same. [redacted]

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[2] Draft final access determination for the domestic transmission capacity service, dated December 2011.

[redacted] **[End c-i-c]**. Telstra is able to do this because it understands and takes advantage of the various barriers experienced by AAPT (and other competitive carriers) to purchasing the DTCS from alternative suppliers, including:

- other providers products are not direct equivalents and only Telstra';
- other providers may not be able to offer all the speed requirements over the entire route that Telstra can;
- the difficultly for AAPT in building a ubiquitous, networked solution based on multiple suppliers; and
- Telstra retail's ability to selectively compete on price in the competitive areas at the retail level.

14. AAPT believes the exemption adds an undue layer of complexity without providing any real benefit to the LTIE. In AAPT's view, it only serves to give Telstra an ability to engage in pricing conduct which continues to thwart regulation and undermine the ability of access seekers (and their customers) to

compete with Telstra in the downstream markets. Accordingly, AAPT urges the ACCC to reverse the DTCS regulatory forbearance altogether for the metropolitan, regional and rural transmission markets.

15. AAPT does not consider that removal of the DTCS exemptions would have any negative impact on the LTIE given that any resulting regulated pricing will only serve as benchmark in the regulated areas. Moreover, if a service that is arguably competitive is regulated, access seekers are likely to seek to contract with access providers for those services on a commercial basis at prices which are lower than the DTCS FAD pricing. In contrast, if a DTCS route is removed from regulation, but it is in fact non-competitive (despite the application of the competition criteria), there is likely to result in significant detriment to the LTIE as explained above.

16. **[Start c-i-c]** [redacted] **[End c-i-c]** This suggests that the benchmarked DTCS FAD pricing for many DTCS routes are well above cost-based pricing. Accordingly, AAPT considers that it is imperative that the ACCC commence developing a cost-based model to determine DTCS pricing that is more reflective of efficient costs.

17. **Competition Criteria**

- If the ACCC is minded to retain the application of the competition criteria to define competitive markets for deregulation of the DTCS, AAPT considers the "two providers additional to Telstra" rule of thumb requires further consideration. AAPT would like more transparency and access to information to be provided to access seekers about the two additional competitive fibre transmission providers identified for each DTCS route.

This will among other things, assist AAPT and other competitive carriers to better facilitate commercial engagement with those alternative providers. In AAPT's view, it is not always appropriate to include a utility company as an alternative provider to Telstra in applying the competition criteria.

- First, providing transmission services is not their core business and such transmission is primarily utilised for their own internal needs.

- Secondly, even if these entities are willing to provide telecommunications transmission services, it is unlikely they would have a fully functioning wholesale business in place. This means that acquiring the DTCS from them may be problematic, particularly if their services may not be direct equivalents and they may not be able to offer all the speed requirements over the entire route that Telstra can.

D DTCS Service description

18. **DTCS geographic boundaries -** As set out above, AAPT considers that the ACCC should reverse the DTCS regulatory forbearance for the metropolitan, regional and rural transmission markets altogether. Accordingly, any definitions that define the boundaries of these markets should only be included in the final DTCS service description to provide a guide for how a declared DTCS route should be classified for pricing purposes.

19. **Definition of 'protected DTCS services'** – AAPT consider that it is appropriate to update the DTCS service description to include the definition for protected DTCS services as set out under the DTCS FAD. That is, a protected service is defined as geographic path diversity in the inter-exchange component of inter-capital, metropolitan and regional services but does not extend to standalone tail-end metropolitan or tail-end regional services.

20. In addition, AAPT considers it appropriate to continue to define the declared DTCS (in the DTCS service description) as 'symmetric' and 'uncontended'.

E Impediments to facilities Access for the DTCS

21. In Section 3.6 of the Discussion Paper, the ACCC seeks stakeholders' views on whether there are any impediments for access to facilities, including access to ducts and the Telstra Equipment Building Access (**TEBA**) in relation to the DTCS or whether there are any other issues relating to facilities access.

22. AAPT agrees with the ACCC's view that access to facilities is an important component for the provision of telecommunications services to consumers and that access to facilities such as ducts and TEBA space are necessary for service providers to interconnect their equipment and access the declared DTCS.

23. Access to Telstra's facilities is essential to AAPT's business. AAPT requires access to Telstra's exchange buildings, interconnect facilities and ducts in order for AAPT to provide a range of wholesale and retail services to its customers. Access to Telstra's bottleneck facility services has become increasingly important to AAPT [**Start c-i-c**] [redacted] [**End c-i-c**];

24. As AAPT has stated in previous submissions[3] to the ACCC, given that Telstra will own and operate the passive infrastructure (i.e. TEBA and External Interconnect Facilities) which AAPT will be reliant upon to access NBN Co's facilities at the bulk of the NBN POI locations, there are a myriad of ways in

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[3] For example, AAPT Limited, *Submission on Australian Competition and Consumer Commission (ACCC) Draft Decision to vary "A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities (October 1999)"*, 31 May 2013.

which Telstra will be able to take advantage of its position to the detriment of AAPT and other access seekers and ultimately the LTIE.

25. Telstra's history of using its considerable market power in a manner that is contrary to competition and the LTIE strongly suggests it is likely to continue to overcharge for TEBA and other facilities access services, impose unreasonable access terms or to implement access in a manner that is detrimental to its competitors. It is for these reasons that AAPT has argued for a facilities access service to be declared. In AAPT's submission made in response to ACCC Fixed Services Review Discussion Paper on the Declaration Inquiry, AAPT made the following submissions:

[Start c-i-c]

- [redacted][4]

[4] See Open Reach Physical Infrastructure Pricing Price List at: http://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=z75T9D0yfFKL0UorCMMA7OVMbA8c5ofXzFv23yZvBj9Z6rNZujnCs99NbIKJZPD9hXYmiijxH6wr%0ACQm97GZMyQ%3D%3D

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[End c-i-c]

F Conclusion

26. For the reasons set out above, AAPT considers that:

- continued declaration of the DTCS;
- the reversal of deregulation of any DTCS routes in the metropolitan, regional and rural transmission markets; and
- addressing impediments to access to facilities for the DTCS via the declaration of a facilities access service,

would promote efficiency and competition, and ultimately the LTIE.