



Telstra's Access Undertaking for the Unconditioned Local Loop Service

Discussion Paper

June 2008

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Executive Summary

Under Part XIC of the *Trade Practices Act 1974 (Cth)* (the Act), the Australian Competition and Consumer Commission (ACCC) must consider undertakings submitted to it in relation to the proposed supply of declared services, and decide to accept or reject them.

On 3 March 2008, Telstra submitted an undertaking in respect of its supply of the unconditioned local loop service (ULLS). This undertaking superseded a previous ULLS undertaking that had been lodged by Telstra on 21 December 2007.

The ACCC adopts an open and public process when assessing undertakings, inviting parties to express their views and provide relevant information to the ACCC. After receiving and considering submissions from interested parties in response to this discussion paper, the ACCC will publish a draft report setting out its preliminary findings on Telstra's undertaking. The ACCC will provide an opportunity for comment to be made on the draft report before making its final decision.

On 3 March 2008, Telstra submitted an ULLS undertaking specifying a monthly charge of \$30 in Band 2 Exchange Service Areas (ESAs) covering the period from the ACCC's acceptance of the undertaking to 31 December 2010. In support of its undertaking, Telstra submitted version 1.0 of the Telstra Efficient Access (TEA) model and accompanying documentation. The TEA model estimates the ULLS network costs for all 583 Band 2 ESAs. All public material in support of the undertaking is located on the ACCC website.

The Undertaking only deals with the monthly charge for Band 2 ESAs - monthly charges for the ULLS in areas other than Band 2 ESAs, ULLS connection charges and charges for operational aspects of the service are not included in this Undertaking.

Telstra's ULLS undertaking price of \$30 is below Version 1.0 of the TEA model's estimate of \$49.27 in Band 2 ESAs. Telstra explains that the proposed undertaking price of \$30 is only for the term of the undertaking. After the term of the undertaking, ULLS prices can be increased to TSLRIC+ (estimated as \$49.27 in the TEA model) either through commercial negotiation, arbitration or Telstra lodging another undertaking.

Some general observations can be made about the TEA model network cost estimates:

- main and distribution ducts and pipes contributes the most to the total annual cost of the copper access network (about 55 per cent). Of that 55 per cent, capital costs makes up a significant proportion - more than 90 per cent - of total costs.
- the cost of main and distribution copper cables also contribute significantly to the total annual cost (about 35 per cent).
- operating and maintenance costs contribute almost 10 per cent to total annual costs, and indirect costs contribute about 14 per cent to total annual costs.

These observations suggest that capital costs, particularly that for ducts and pipes, are a major cost contributor to the total cost of providing the ULLS. In this regard, parties should carefully consider the issues raised in this discussion paper relating to capital cost estimates; in particular, how assets are valued, cost of capital, rate of depreciation, and the inclusion of the cost of surface barriers to the cost of ducts and pipes.

Telstra has stated that it will provide access to the TEA model and confidential versions of its supporting documents to parties who sign confidentiality undertakings it deems appropriate. It has implemented a process for parties to gain access to material (over which Telstra claims confidentiality) needed to assess its ULLS undertaking which is of significant concern to the

ACCC. In particular, the ACCC is concerned that such a process has considerable potential to be onerous and confusing.

The ACCC reminds Telstra that interested parties require reasonable access to information submitted in support of its undertaking, in terms of both sufficient review time and the terms and conditions on which interested parties may access the information. If Telstra does not make information submitted in support of its undertaking available to other parties in a manner which allows full, timely analysis and comment, the ACCC will not be able to place the same weight on that information as on information readily available for scrutiny by all interested parties. It is the ACCC's view that an approach which reasonably balances Telstra's need for confidentiality and the public interest in fully informed submissions should be adopted.

A copy of all confidentiality undertakings can be found in Appendix A and B of this discussion paper. Versions of the confidentiality undertakings are also available on the ACCC website.

Parties wishing to gain access to the TEA model and other supporting confidential material (if applicable) should execute the appropriate undertaking and send it to Rebecca Mitchell of Telstra at rebecca.mitchell@team.telstra.com, copied to Kim Huynh of the ACCC at kim.huynh@acc.gov.au. Interested parties unable to gain access to confidential material should advise the ACCC.

Given the complex nature of the TEA model, the ACCC has provided more detail and focus in this discussion paper as to the key issues required for comment. Due to the extensive material that is required to be reviewed in relation to Telstra's ULLS undertaking including the TEA model, the ACCC has set a 9 week period during which submissions must be made. Please forward written submissions by close of business on **12 August 2008** to:

Kim Huynh
A/g Director
Communications Group
Australian Competition and Consumer Commission
GPO Box 520
MELBOURNE VIC 3000

Any queries on this discussion paper should be directed in first instance to Kim Huynh on 9290 1960 or kim.huynh@acc.gov.au.

1. Introduction

On 3 March 2008, Telstra submitted an ULLS undertaking ('the Undertaking') specifying a monthly charge of \$30 in Band 2 ESAs. If the Undertaking is accepted, it will cover the period from the ACCC's acceptance of the undertaking to 31 December 2010. In support of its undertaking, Telstra submitted version 1.0 of the TEA model and accompanying documentation.

The Undertaking does not set a once-off connection charge, nor a charge for operational aspects involved in providing the service and contains limited non-price terms and conditions.

This Undertaking was lodged at the same time that Telstra withdrew its ULLS Undertaking of 21 December 2007.

1.2 Purpose

The purpose of this discussion paper is to:

- inform interested parties of the matters the ACCC must take into consideration in making the decision to accept or reject an undertaking;
- initiate an external review of the Undertaking and to specify a number of issues the ACCC would like interested parties to address in submissions; and
- outline the process the ACCC will follow in assessing the Undertaking.

1.3 Regulation of the ULLS

The ULLS was first 'declared' by the ACCC under Part XIC of the Act in August 1999¹ and was subsequently re-declared by the ACCC in July 2006 for a further three years.² This declaration took effect from 1 August 2006. The ULLS declaration places access obligations on all potential providers of a ULLS. In practice these obligations primarily fall upon Telstra as the incumbent telecommunications provider.

Declaration of the service has two important consequences. Firstly, Telstra, as a supplier of the ULLS, is required to supply the service to all service providers upon request. Secondly, if Telstra and a service provider cannot agree on the terms and conditions of supply, one of them can notify the ACCC of a dispute. The ACCC can then arbitrate and resolve the dispute.

To reduce the scope for disputes, and therefore the need for the ACCC to conduct arbitrations, a supplier of a declared service can offer the ACCC an undertaking setting out particular terms and conditions of supply. If the ACCC accepts the undertaking, then it is prevented from making an arbitral determination that is inconsistent with the undertaking.

In December 2007, March 2008 and April 2008, the ACCC made final determinations in the arbitration of eight disputes between Telstra and access seekers regarding the supply of the ULLS. These final determinations specify the monthly charges for which Telstra supplies the ULLS to access seekers and will expire on 30 June 2008. The ACCC is currently arbitrating over six ULLS access disputes, all of which involve ULLS monthly charges.

¹ ACCC, *Declaration of local telecommunications services*, July 1999.

² ACCC, *Declaration inquiry for the ULLS, PSTN OTA and CLLS—final determination*, July 2006.

Most recently, the ACCC released indicative prices on the ULLS monthly charge. On 23 April 2008, the ACCC released draft pricing principles for the ULLS which included ULLS indicative prices to apply until July 2009.

The undertaking lodged by Telstra on 3 March 2008 follows a series of decisions on ULLS monthly charges made by the ACCC since 2003.

Telstra lodged a set of access undertakings with the ACCC on 9 January 2003 specifying the price-related terms and conditions upon which Telstra undertakes to meet its standard access obligations to supply the PSTN originating and terminating access service, the ULLS and the LCS.

In October 2003, the ACCC published model price and non-price terms and conditions for core services, which included the ACCC's views on appropriate pricing of the ULLS. Subsequently, Telstra withdrew its 9 January 2003 undertakings by way of submitting replacement undertakings on 14 November 2003. The PSTN and LCS undertakings were accepted in 2004. However, following the ACCC's draft decision to reject the ULLS undertaking, Telstra withdrew this and submitted revised ULLS monthly charge undertakings on 13 December 2004. These undertakings contained geographically de-averaged prices according to geographical areas (Bands 1 – 4).

On 21 December 2005, the ACCC issued a final decision to reject these undertakings. In rejecting the undertakings, the ACCC formed the view that the monthly access charges proposed by Telstra were higher than what is required to recover costs of provision of the ULLS in full.

On 23 December 2005, Telstra lodged ULLS monthly charge undertakings proposing a single (average) price of \$30 per month. In August 2006, the ACCC rejected Telstra's ULLS Undertaking.³ The ACCC's decision was upheld by the Australian Competition Tribunal which was not satisfied that the ULLS charge of \$30 per service per month was reasonable.⁴

1.3 Structure of this paper

The rest of this paper is structured as follows:

- *Section 2* sets out the timetable for the ACCC's assessment process of the Undertaking.
- *Section 3* contains a summary of the legislative framework governing the assessment of undertakings.
- *Section 4* summarises Telstra's ULLS undertaking.
- *Section 5* sets out the questions the ACCC would like interested parties to address in their submissions.

³ ACCC, *Assessment of Telstra's ULLS monthly charge undertaking - final decision*, August. 2006.

⁴ *Telstra Corporation Limited (No 3)* [2007] ACompT 3 (17 May 2007).

2. Timetable and public inquiry process

Due to the extensive material that is required to be reviewed in relation to Telstra's ULLS undertaking, the ACCC has set a 9 week period during which submissions must be made. Written submissions must be lodged by close of business day on **12 August 2008**.

The ACCC encourages industry participants and the public to consider the issues raised in this discussion paper and to make submissions to the ACCC to assist it in considering the Undertaking.

Following the receipt of submissions, the ACCC will publish a draft decision. Interested parties will then be given a shorter timeframe during which they can make further submissions relating to the draft decision. After the time for receiving further submissions has passed, the ACCC will then determine whether the undertaking should be accepted or rejected.

The ACCC has a six month period in which to make the decision to accept or reject the Undertaking.⁵ This six month timeframe does not include any period where the ACCC has published the application and invited people to make submissions within a specific time limit, or where there is an outstanding response to an information request.⁶ The ACCC has requested further information from Telstra on two occasions under section 152BT of the Act.⁷ For the time that the requests remain unfulfilled, this period will not be included in the calculation of the six month timeframe. Furthermore, the ACCC may extend the six month period by a further three months in certain circumstances.⁸

2.1 Format of submissions in response to the discussion paper

The ACCC prefers to receive electronic copies of submissions. Electronic submissions should be in a PDF, Microsoft Word or (if appropriate) Microsoft Excel format that is text-searchable and allows a "copy-and-paste" function. Electronic submissions should be provided by email to:

Robert Wright
General Manager
Compliance and Regulatory Operations
Communications Group
Australian Competition and Consumer Commission
robert.wright@acc.gov.au

The ACCC asks that any electronic submission is also copied to:

⁵ Subsection 152BU(5)

⁶ Subsection 152BU(6)

⁷ First, on 3 January 2008 and then on 28 March 2008.

⁸ Subsection 152BU(7)

Kim Huynh
A/g Director
Compliance and Regulatory Operations
Communications Group
Australian Competition and Consumer Commission
kim.huynh@acc.gov.au

The ACCC also accepts hard copies of submissions. Any hard copy should be sent to the following address:

Robert Wright
General Manager
Compliance and Regulatory Operations
Communications Group
Australian Competition and Consumer Commission
GPO Box 520
Melbourne VIC 3001

2.1.1 Confidentiality claims on submissions

To allow for an informed and open consultation, the ACCC will treat all submissions as non-confidential, unless the author of a submission requests that the submission be kept confidential. In such a case, the author of the submission must provide a non-confidential version of the submission.

Non-confidential submissions will be published by the ACCC on its website.

Telstra has provided confidential material in support of its ULLS undertaking.

The ACCC is aware of the need to protect confidential information provided by interested parties. The ACCC is therefore not opposed to requiring parties wishing to gain access to confidential information to execute confidentiality undertakings. However, the ACCC believes that such undertakings should enable the relevant party to view all information supplied by Telstra and other parties to the ACCC in these proceedings. Should any party choose to not make confidential information available to other parties wishing to access it, the ACCC's policy is that such information may be given less weight than information that is available for scrutiny by all interested parties.

In addition, the ACCC notes that it is unlikely to accept any confidentiality claims over economic thought or arguments. The ACCC believes that public debate over economic arguments is essential to the assessment process.

2.2 Telstra's confidentiality arrangements

Telstra has stated that it will provide access to the TEA model and confidential versions of its supporting documents to parties who sign the confidentiality undertakings it deems appropriate. It has implemented a process for parties to gain access to material (over which Telstra claims confidentiality) needed to assess its ULLS undertaking which is of significant concern to the ACCC. In particular, the ACCC is concerned that such a process has considerable potential to be onerous and confusing.

The ACCC reminds Telstra that interested parties require reasonable access to information submitted in support of its undertaking, in terms of both sufficient review time and the terms and conditions on which interested parties may access the information. If Telstra does not

make information submitted in support of its undertaking available to other parties in a manner which allows full, timely analysis and comment, the ACCC will not be able to place the same weight on that information as on information readily available for scrutiny by all interested parties. It is the ACCC's view that an approach which reasonably balances Telstra's need for confidentiality and the public interest in fully informed submissions should be adopted.

Telstra's proposed process for parties to gain access to material over which it claims confidentiality in order to assess the ULLS undertaking is outlined in the table below. As the table shows, separate confidentiality undertakings are available for execution to applicable parties - one version is to access the TEA model, and other version is to access other confidential supporting material.

Table 2.1

Type of Confidentiality Undertaking	Who may execute the confidentiality undertakings	Material that may be accessed
<i>TEA model undertakings</i>	1. Access seekers' external consultants, legal advisors and their employees with a non-commercial role.	A full version of the TEA model
	2. Access seekers' employees with a full or partly commercial role	Redacted version of the TEA model - allows for one simulated exchange and does not contain commercially sensitive information.
<i>Confidential material undertakings</i>	1. Access seekers' external consultants, legal advisors and their employees with a non-commercial role.	Access to existing and future confidential supporting information.
	2. Access seekers' employees with a full or partly commercial role	Modified version of existing and future confidential supporting information

The ACCC expects that interested parties will not be required to sign other forms of confidentiality undertakings. It is the ACCC's view that any confidentiality undertaking that Telstra seeks from access seeker employees or external advisers should allow those who execute the undertaking to view all subsequent confidential supporting material that Telstra submits in relation to the ULLS undertaking. The ACCC will continue to monitor the progress of negotiations between Telstra and access seekers regarding access to Telstra's information.

Parties wishing to gain access to the TEA model and other supporting confidential material (if applicable) should execute the appropriate undertaking and send it to Rebecca Mitchell of Telstra at rebecca.mitchell@team.telstra.com, copied to Kim Huynh of the ACCC at kim.huynh@acc.gov.au. Interested parties unable to gain access to confidential material (including the TEA model) should advise the ACCC. A copy of all confidentiality undertakings – 'the TEA model confidentiality undertakings' and 'the Confidential material undertaking' - can be found in Appendix A and B of this discussion paper. Versions of the confidentiality undertakings are also available on the ACCC website.

The ACCC will soon be implementing procedural rules under section 152ELA of the Act and anticipates that such rules will apply to the processes for undertaking assessments in the future, including rules relating to the confidentiality of documents given to the ACCC.

3. Legislative Framework

3.1 Role of undertakings

Under Part XIC of the Act, the ACCC may declare carriage services and related services. Once declared, carriers and carriage service providers who supply a declared service must comply with standard access obligations (SAOs) in relation to those services. The SAOs facilitate the supply of declared services by access providers to access seekers, allowing access seekers to provide carriage services and/or content services.

Subsection 152AY(2) specifies how the terms and conditions upon which the access provider must comply with the SAOs are determined. These terms may be negotiated between the parties, as set out in an accepted access undertaking or as determined by the ACCC under Division 8 of Part XIC of the Act.

Where an access provider submits an undertaking, section 152BS provides that this is a written document given to the ACCC which indicates how the carrier or provider undertakes to comply with the terms and conditions specified in the undertaking in relation to the applicable SAOs. Section 152BS sets out that an ordinary undertaking may be one of the following types:

- an undertaking containing terms and conditions that are specified in the undertaking; or
- an undertaking where the terms and conditions are specified by adopting a set of model terms and conditions set out in the telecommunications access code, as in force from time to time.⁹

Telstra's undertaking falls into the first category where the terms and conditions are specified in the undertaking.

3.2 Criteria for assessing undertakings

Section 152BV of the Act sets out the ACCC's obligations in assessing an undertaking. It applies where an ordinary access undertaking is given to the ACCC and the undertaking does not adopt a set of model terms and conditions set out in the telecommunications access code.

Section 152BV of the Act provides:

- (1) *This section applies if:*
 - (a) *an ordinary access undertaking is given to the Commission by a carrier or a carriage service provider; and*
 - (b) *the undertaking does not adopt a set of model terms and conditions set out in the telecommunications access code.*
- (2) *The Commission must not accept the undertaking unless:*
 - (a) *the Commission has:*
 - (i) *published the undertaking and invited people to make submissions to the Commission on the undertaking; and*
 - (ii) *considered any submissions that were received within the time limit specified by the Commission when it published the undertaking; and*

⁹ Subsections 152BS(3) and (4).

- (b) *the Commission is satisfied that the undertaking is consistent with the standard access obligations that are applicable to the carrier or provider; and*
- (c) *if the undertaking deals with price or a method of ascertaining price-the Commission is satisfied that the undertaking is consistent with any Ministerial pricing determination; and*
- (d) *the Commission is satisfied that the terms and conditions specified in the undertaking are reasonable; and*
- (e) *the expiry time of the undertaking occurs within 3 years after the date on which the undertaking comes into operation.*

Note: Section 152AH contains a list of matters to be taken into account in determining whether terms and conditions are reasonable.

Each of the matters set out in section 152BV are explained below.

3.2.1 Publishing the undertaking and inviting submissions: sub-paragraph 152BV(2)(a)(i)

Sub-paragraph 152BV(2)(a)(i) of the Act requires the ACCC to publish an undertaking and invite submissions before accepting the undertaking. The ACCC has published Telstra's undertaking on its website (see <http://www.accc.gov.au>) and with the release of this discussion paper is now inviting parties to make submissions on the undertaking within the time limit the ACCC has specified.

This discussion paper has been based on information provided by Telstra in support of its undertaking and includes information over which Telstra has made a claim of confidentiality.

While the ACCC will have regard to all submissions received before the closing date, the ACCC strongly encourages all interested parties to make their submissions as soon as they are in a position to do so.

The ACCC also encourages parties to make their submissions in a way that facilitates the efficient assessment of its representations, including the verification of facts upon which those representations are made. Therefore, to allow critical assessment, parties are encouraged to restrict confidentiality claims to a minimum and to establish appropriate arrangements for the disclosure of any confidential information to interested parties. Accordingly, the ACCC requests that should it be the case that a party intends to provide confidential information, that it also provide a non-confidential version of that information which can be used for public disclosure, at the same time as making a claim for confidentiality.

3.2.2 Considering submissions: sub-paragraph 152BV(2)(a)(ii)

Sub-paragraph 152BV(2)(a)(ii) requires the ACCC to consider submissions received within the time limit specified by the ACCC. In this case, the ACCC has allowed 9 weeks for interested parties to make submissions. This provides enough time to gain access to Telstra's confidential information and for submissions to be prepared. Telstra's confidential information includes:

- (a) the TEA model
- (b) Access Network Modelling Costing Information
- (c) a confidential version of the Operations and Maintenance and Indirect Cost Factor Study
- (d) a confidential version of the Factor Calculation worksheet.

Following its analysis of the undertaking and submissions from interested parties, the ACCC expects to publish the findings of its initial analysis and its draft decision. The ACCC will invite further submissions on its draft decision for a specified period. After taking into account these additional submissions, the ACCC will form a final view on whether to accept or reject the undertaking and publish the reasons for its decision.

3.2.3. Consistency with standard access obligations: paragraph 152BV(2)(b)

Under paragraph 152BV(2)(b) the ACCC must be satisfied that an undertaking is consistent with the applicable SAOs specified in section 152AR of the Act. Subject to exemptions made by the ACCC, a carrier or carriage service provider must comply with the SAOs in regard to declared services it supplies either to itself or to other persons. In particular, access providers are required to, amongst other things –

- supply the declared service
- take all reasonable steps to ensure that the technical and operational quality of the service supplied to the service provider is equivalent to that which the access provider is supplying to itself
- take all reasonable steps to ensure that the fault detection, handling and rectification which the service provider receives in relation to the declared service is of equivalent technical and operational quality as that provided by the access provider to itself
- permit interconnection of its facilities with the facilities of the service provider
- take all reasonable steps to ensure that the technical and operational quality and timing of the interconnection is equivalent to that which the access provider provides to itself
- take all reasonable steps to ensure that the service provider receives interconnection fault detection, handling and rectification of a technical and operational quality and timing that is equivalent to that which the access provider provides to itself
- if a standard is in force under section 384 of the *Telecommunications Act 1997*, take all reasonable steps to ensure that the interconnection complies with the standard
- if requested by the service provider, provide billing information in connection with matters associated with, or incidental to, the supply of the declared services
- if a declared service is supplied by means of conditional-access customer equipment, the access provider must, if requested to do so by a service provider supply any service that is necessary to enable the service provider to supply carriage services and/or content services by means of the declared service and using the equipment.

3.2.4 Consistency with Ministerial pricing determinations: paragraph 152BV(2)(c)

Division 6 of Part XIC provides that the Minister can make a written determination setting out principles dealing with price-related terms and conditions relating to the SAOs. Subsection 152CI(1) of the Act provides that if a provision of an access undertaking is inconsistent with any Ministerial pricing determination, the provision will have no effect to the extent of the inconsistency.

Paragraph 152BV(2)(c) provides that the ACCC must not accept an undertaking dealing with price or a method of ascertaining price unless the undertaking is consistent with any Ministerial pricing determination.

3.2.5 Reasonableness of terms and conditions: paragraph 152BV(2)(d)

Subsection 152BV(2)(d) provides that the ACCC must not accept an undertaking unless satisfied that the terms and conditions specified in the undertaking are reasonable. When assessing an undertaking the ACCC must have regard to both the objective of the Part XIC telecommunications access regime outlined in section 152AB and also, more specifically, whether an undertaking meets the range of matters set out in section 152AH of the Act.

Section 152AB (1) notes that the objective of the telecommunications access regime is to promote the long term interests of end users (LTIE). The Act notes that the LTIE is likely to be promoted by the achievement of the following objectives –

- promoting competition in markets for telecommunications services
- achieving any-to-any connectivity in relation to carriage services that involve communication between end-users
- encouraging the economically efficient use of, and the economically efficient investment in, the infrastructure by which telecommunications services are supplied.¹⁰

In addition to considering whether the Undertaking meets the objective of the telecommunications access regime, section 152 AH of the Act requires the ACCC to assess whether the terms and conditions of the Undertaking are reasonable having regard to the following criteria –

- whether the terms and conditions promote the LTIE of carriage services or of services supplied by means of carriage services
- the legitimate business interests of Telstra, and its investment in facilities used to supply the declared services
- the interests of all persons who have rights to use the declared services
- the direct costs of providing access to the declared services
- the operational and technical requirements necessary for the safe and reliable operation of a carriage service, a telecommunications network or facility
- the economically efficient operation of a carriage service, a telecommunications network or a facility.

In addition, the ACCC may consider any other relevant matter.¹¹

Appendix C contains a summary of the key phrases and words used in the above matters. In addition, the ACCC publication on declaration provisions, whilst written in the context of declarations, provides further guidance as to the ACCC's understanding of the meaning of the LTIE.¹²

¹⁰ Subsection 152AB(2)

¹¹ Section 152AH does not use the expression 'any other relevant matter'. Rather, section 152AH(2) states that the matters listed in s. 152AH(1) do not limit the matters to which the ACCC may have regard. Thus, the ACCC may consider any other relevant matter.

¹² ACCC, *Telecommunications Services – Declaration Provisions: a Guide to the Declaration Provisions of Part XIC of the Trade Practices Act*, July 1999.

3.2.6 Expiry time: paragraph 152BV(2)(e)

Subsection 152BS(7) of the Act provides that an ordinary access undertaking that specifies the terms and conditions, as opposed to one that adopts a set of model terms and conditions set out in the telecommunications access code, must specify the expiry time of the undertaking. Further, paragraph 152BV(2)(e) provides that the expiry time of the undertaking must be within three years after the date on which the undertaking comes into operation. In the present case, Telstra submits that the undertaking will be valid from the date of ACCC acceptance of the undertaking until 31 December 2010, unless withdrawn earlier by Telstra.

4. Summary of the Telstra ULLS undertaking

This section summarises price and non-price terms and conditions in Telstra's ULLS undertaking.

4.1 Telstra's ULLS undertaking and supporting documentation

Telstra submitted the following material to support its ULLS undertaking. This material has been categorised according to the degree of confidentiality attached to the material - this is to provide parties with guidance as to the material they should have access to when executing applicable confidentiality undertakings.

Table 4.1

Available to the following persons	Supporting material	Confidentiality undertaking required?
Access seekers' external consultants, legal advisors and employees with a non-commercial role	Full version of the TEA model	TEA model undertaking
	Confidential version of Telstra study: Operations and Maintenance and Indirect Cost Factor Study, 11 April 2008.	Confidentiality material undertaking
	Confidential version of Excel worksheet, 'Factor Calculations', 11 April 2008.	Confidentiality material undertaking
Access seekers' employees with a fully or partly commercial role	Redacted version of the TEA model (with one simulated exchange and commercially sensitive information removed)	TEA model undertaking
Public	Telstra Ordinary Access Undertaking, 3 March 2008	None. All public documents can be found on the ACCC's website.
	Model documentation of TEA model, 1 March 2008.	
	Report on Access Network Dimensioning Rules - Long run incremental costing model input, 3 March 2008	
	Telstra submission: Telstra's ULLS Undertaking is Reasonable, 4 April 2008	
	Telstra submission: ULLS Undertaking: Weighted Average Cost of Capital (WACC), 4 April 2008	
	Public version of Telstra study: Operations and Maintenance and Indirect Cost Factor Study, 11 April 2008.	
	Public version of Excel worksheet, 'Factor Calculations', 11 April 2008.	
	Report by Professor Robert G. Bowman prepared for Telstra, " <i>Report on the Appropriate Weighted Average Cost of Capital for the Services Provided over the CAN</i> ", May 2007	
	Telstra submission: Accessing Telstra's Confidential Information, 23 May 2008.	

In assessing Telstra's ULLS Undertaking, the ACCC intends to have regard to information submitted as part of the withdrawn 21 December Telstra ULLS Undertaking. All material, except the previous version of the TEA model, is publicly available.

4.2 Telstra's ULLS monthly charge

Telstra submits that the ULLS charges payable by the access seeker to Telstra should comprise:

- a once only charge payable at connection ('connection charge');
- a monthly charge;
- charges for other aspects of the service, including operational aspects such as service qualification inquiries and order withdrawals.

The Undertaking only deals with the monthly charge for Band 2 ESAs, which it proposes to set at \$30. In other words, monthly charges for the ULLS in areas other than Band 2 ESAs, ULLS connection charges and charges for operational aspects of the service are not included in this Undertaking.

Telstra's ULLS undertaking price of \$30 is below Version 1.0 of the TEA model's estimate of \$49.27 in Band 2 ESAs.

Telstra explains that the proposed undertaking price of \$30 is only for the term of the undertaking. After the term of the undertaking, ULLS prices can be increased to TSLRIC+ either through commercial negotiation, arbitration or Telstra lodging another undertaking.

Telstra submits that a \$30 ULLS price, while at this stage is below TSLRIC+, is a reasonable first step for industry to take toward TSLRIC+-based pricing and cost recovery, as the \$30 undertaking price reflects the level sought in commercial negotiations with access seekers as well as in previous regulatory proceedings. In this regard, Telstra contends that this minimises the 'rate shock' for access seekers.

Telstra proposes its ULLS monthly charge of \$30 is reasonable because:

- the TEA model is a TSLRIC+ model consistent with ACCC pricing principles;
- the ACCC considers prices based on TSLRIC+ reasonable; and
- using reasonable assumptions the TEA model supports the \$30 access price.¹³

4.3 The Telstra Efficient Access model

The TEA model estimates the ULLS network costs for all 583 Band 2 ESAs. In brief, Telstra submits that the model:

- uses actual data including actual customer locations, actual pillars and exchange locations and actual cable routes;
- does not include any duplicative cable;¹⁴
- allows variability in the price inputs for the equipment, materials, supplies and contract labour required to construct the CAN;
- uses application ratios designed to account for variations in terrain in which the plant will be placed (ie. rocky or normal terrain, turf or under roads, footpaths and driveways);

¹³ Telstra Corporation Limited, *Telstra's ULLS Undertaking is Reasonable*, 4 April 2008, p. 2.

¹⁴ Legacy effects, such as duplicative cable runs, inherent in Telstra's current network as a result of the construction and reinforcement of the network over the course of a number of years.

- models every individual exchange;
- limits equipment choices to those that satisfy the ULLS product definition (i.e. an all copper unconditioned loop), even though Telstra currently deploys only fibre main cable in new construction. Therefore, distribution areas of the existing Telstra network that are fed by fibre are not modelled because ULLS is not available in those areas. The sharing of trenching and conduit between Fibre Main Cable and Copper Main Cable is accounted for in the model;
- the user can select a tapered or non-tapered distribution cable design; and
- two databases have been used: the Cable Plant Records database which records Telstra's records of physical cables; and the Network Plant Assignment and Management System which stores information about the customer services and network plant interconnectivity.

4.4 Non-price terms and conditions

Telstra's ULLS Undertaking prescribes a limited number of non-price terms and conditions. These set out:

- the description of the ULLS that Telstra undertakes to supply access seekers;
- that the service may vary depending on the geographic and technical capability of the Telstra network when a request for the ULLS is made or the ULLS is delivered;
- in accordance with the *ULLS Ordering and Provisioning Code* (ACIF C569:2005), that Telstra will provide the access seeker with information in Telstra's records about the cable plant used to provide the ULLS. Telstra makes no representation as to the accuracy of that information;
- that the access seeker comply with applicable industry safety standards, including the *Network Deployment Rules* (ACIF C559:2005) for voltages and currents on the ULLS. The access seeker must install all necessary surge protection to safeguard against personal injury and damage to equipment;
- that the access seeker must comply with the *ULL Fault Management Guideline*, the *Network Deployment Rules* (ACIF G572:2001) and the *ULL Ordering and Provisioning Code* (ACIF C569:2005);
- that the access seeker enter into, with Telstra, facilities access arrangements necessary for it to connect its network to Telstra's ULLS at the ULL Point of Interconnection (POI). Telstra notes that its Undertaking does not deal with facilities access; and
- that the access seeker is responsible for billing the end user for the telecommunications service provided by the access seeker to the end user.

5. Questions about the Undertaking

This section sets out the particular issues the ACCC would like interested parties to focus on in providing submissions to this discussion paper.

In assessing the Undertaking, the ACCC must have regard to *inter alia* whether:

- it is consistent with the SAOs as set out in section 3.2.3 of this discussion paper; and
- the terms and conditions in the Undertaking are reasonable, having regard to the criteria set out in section 152AH of the Act.

The discussion and specific issues outlined in this section are therefore categorised with this assessment criteria in mind. Interested parties may also wish to provide submissions on relevant issues not directly raised in this section. The full list of questions is set out in Appendix D.

5.1 Consistency with the standard access obligations

This section sets out a series of questions to consider when assessing whether Telstra's Undertaking is consistent with the applicable SAOs.

Under paragraph 152BV(2)(b), the ACCC must not accept an undertaking unless it is satisfied that it is consistent with the SAOs (set out in section 152AR) that are applicable to the relevant carrier or provider – in this case, Telstra. An access provider that supplies a declared service to itself or others must comply with any applicable specified obligations.

The purpose of this provision is to ensure that an undertaking is only accepted by the ACCC where the undertaking is consistent with the SAOs applicable to the carrier or carriage service provider for the declared services. This ensures that the carrier or carriage service provider is not subject to inconsistent obligations if the undertaking is accepted.

5.1.1 ACCC's assessment of consistency with the SAOs

The Act does not detail a specific approach for assessing whether the terms and conditions in an undertaking are consistent with the SAOs applicable to an access provider. The ACCC finds it useful to consider whether the terms and conditions in an undertaking raise any inconsistencies with the SAOs. If the terms and conditions are not inconsistent with the obligations, the ACCC is likely to regard them as consistent.

The ACCC considers that terms and conditions specified in an undertaking would be inconsistent with the SAOs if an access provider in giving effect to those terms and conditions would not satisfy each of the applicable obligations. Such inconsistency could arise either expressly or by implication from the circumstances in which the terms and conditions could be satisfied.

The purpose of this assessment is to ensure that an access provider would be able to comply with the SAOs should the undertaking be accepted. The ACCC is not here concerned with the reasonableness of the terms and conditions of the undertaking. Reasonableness is assessed separately when having regard to the criteria set out in section 152AH.

Non-exhaustive scope of an undertaking

The ACCC is of the view that it is not necessary for an undertaking to exhaustively address all matters that could relate to the applicable SAOs.

Any relevant matters that are not addressed in the undertaking could be settled by commercial negotiation. Should the parties be unable to reach agreement, a party may notify the ACCC of the existence of a dispute and the ACCC may then arbitrate over the matter.

Accordingly, the ACCC considers that the absence of terms and conditions about certain matters does not, of itself, make an undertaking inconsistent with the SAOs. However, it is open to the ACCC to take such an absence into account in conducting its assessment under subsection 152BV(2).

5.1.2 Issues

The Undertaking includes limited non-price terms and conditions for the supply of ULLS. These non-price terms and conditions are described in section 4.4 of this paper, and are also set out in Part B of *Telstra Ordinary Access Undertaking to the Australian Competition and Consumer Commission*.¹⁵

Whether the Undertaking specifies terms and conditions in respect of services other than the declared service

Telstra has defined the ULLS as:

...a service for the use of a[n] unconditioned Communications Wire between the Network Boundary at the End User Premises and a ULL POI associated with the TCAM serving that End User.

The ACCC notes that Telstra's ULLS description in the Undertaking is not defined in the same precise form as the ULLS Declaration. For instance, Telstra's ULLS service description involves the use of a continuous metallic twisted pair, whereas the Declaration for the declared service involves the use of an unconditioned copper based wire.

Questions

- Do you think Telstra's ULLS description is more limited than the ULLS Declaration to the extent that it would affect the ability of Telstra to meet its SAOs? If so, provide examples of potential situations where you consider the ULLS service as described by Telstra would not fall within the scope of the Declaration for the declared service.

Supply, quality and fault handling in relation to the declared services

The Undertaking does not contain terms and conditions specifying how Telstra will satisfy its obligations regarding the provision of equivalent supply, quality and fault handling of the declared service.

Questions

- If you consider that Telstra's Undertaking should specify requirements, relating to the provision of equivalent supply, quality and fault handling of the declared service, provide example(s) of terms that are consistent with the obligation of providing equivalent supply, quality of service and fault handling performance.

¹⁵ *Telstra Ordinary Access Undertaking to the Australian Competition and Consumer Commission under Division 5 of Part XIC of the Trade Practices Act 1974 (Cth)*, 3 March 2008, pp. 11-12.

Interconnection of facilities

The Undertaking specifies how the location of POI between Telstra's network and the service provider's network are to be determined. The Undertaking states that the ULL POI means, in relation to a line:

a point that is an agreed point of interconnection located at or associated with a TCAM and located on the End User side of the TCAM.¹⁶

The Network Boundary at an End User's Premises is defined to mean:

...a line that enters a building on the End User Premises:

- (a) if there is an MDF in the building and the line is connected to the MDF - a two wire point on the side of the MDF nearest to the End User; or
- (b) if paragraph (a) does not apply but the line is connected to a network termination device located in, on or within close proximity to, the building - the side of the device nearest to the End User; or
- (c) if neither paragraph (a) nor (b) applies - the point ascertained in accordance with section 22 of the Telecommunications Act.¹⁷

Questions

- Do you think the POI and Network Boundary described in the Undertaking is consistent with the SAO to permit interconnection of facilities? If not, please explain, and propose alternative terms that you consider are consistent with the SAOs.

Provision, timing and content of billing information

The Undertaking refers to the *ULLS Ordering and Provisioning Code* (ACIF C569:2005), indicating that Telstra will provide the access seeker with information in Telstra's records about the cable plant used to provide the ULLS, but that Telstra makes no representation as to the accuracy of that information.

There is also reference to end customer billing that states that the access seeker is responsible for billing the end users for the telecommunications service.

The ACCC notes that subsection 152AR(7) of the Act provides that the billing information that must be provided by an access provider to a service provider must be given at such times and in a manner ascertained in accordance with the *Trade Practices Regulations 1974 (Cth)*. Regulation 28S provides that billing information must be given in a manner and form, and at the time, agreed by the access provider and service provider. It also sets out the type of billing information that must be given.

¹⁶ *Telstra Ordinary Access Undertaking to the Australian Competition and Consumer Commission Under Division 5 of Part XIC of the Trade Practices Act 1974 (Cth)* – Service Schedule x167 – Telstra Unconditioned Local Loop Service – Part A: General, 3 March, 2008, p. 10.

¹⁷ *Telstra Ordinary Access Undertaking to the Australian Competition and Consumer Commission Under Division 5 of Part XIC of the Trade Practices Act 1974 (Cth)* – Service Schedule x167 – Telstra Unconditioned Local Loop Service – Part A: General, 3 March, 2008, p. 9.

Questions

- Should the Undertaking contain further terms and conditions relating to the provision, timing and content of billing information? If not, please provide reasons for that view. If so, please propose alternative terms that you consider are consistent with the SAOs.

5.2 Reasonableness of terms and conditions

In forming a view about whether particular terms and conditions are reasonable, the ACCC must have regard to the range of matters set out in subsection 152AH(1) of the Act and detailed in section 3.2.5 of this discussion paper. Further interpretation of these legislative provisions is provided in Appendix C. Submissions should therefore address these provisions, where possible, in responding to the issues below.

5.2.1 ACCC's assessment of reasonableness of terms and conditions

The ACCC cannot accept an undertaking unless it is satisfied that the terms and conditions are reasonable. As the TEA model has been submitted as material in support of the terms and conditions of the Undertaking, the ACCC must also be satisfied that the TEA model generates reasonable cost estimates that are consistent with the legislative criteria set out in section 152AH.

The ACCC considers that, in general, prices which reflect the costs of providing the service are most likely to achieve access prices consistent with the matters to which regard must be had under section 152AH. The ACCC has previously noted that for some services, an access price that adheres to TSLRIC principles is likely to be consistent with the legislative criteria under section 152AH.

The ACCC's approach to access pricing is not static and will be determined on a case-by-case basis¹⁸. However, the ACCC has previously noted that the application of TSLRIC principles is likely to be appropriate for services possessing particular characteristics, namely, where the service is necessary for competition in dependent markets, where the forces of competition do not constrain the price of access to efficient levels, and the services are well-developed in the market.¹⁹ The ACCC will take into account any submission made by interested parties in respect of the ACCC's approach to pricing.

Of particular relevance to the ACCC is whether the ULLS price is based on a cost-based approach that reflects the efficient and forward-looking cost of providing the service. Interested parties should refer to the ACCC's *Access Pricing Principles* (APPs),²⁰ which describes pricing principles that will guide the ACCC when considering the appropriate access pricing approach.

The ACCC has identified the following issues it would like interested parties to provide comment on:

- ability to properly assess the TEA model;

¹⁸ ACCC, *Access Pricing Principles - Telecommunications, a guide*, July 1997, p.13.

¹⁹ *ibid*, p.28.

²⁰ ACCC, *Access Pricing Principles - Telecommunications, a guide*, July 1997.

- Telstra's proposed ULLS monthly charge;
- network design and engineering rules;
- cost valuation;
- trenching costs;
- trench sharing;
- methodology to calculate operations and maintenance and indirect cost factors;
- cost of capital; and
- calculating annualised and unitised ULLS costs; and
- depreciation.

These issues may require comment on the 'default' values in the TEA model - these are indicative values that broadly represent Telstra's preferred values.

This list is not exhaustive. Industry may wish to provide comments on other issues.

5.2.2 Context

This section provides some context to the issues raised about Telstra's ULLS undertaking.

Table 5.1 sets out the contribution that each of the major assets has on the total annual cost of the copper access network. The table also shows the percentage point contribution that capital costs, O&M costs, indirect costs and sharing revenue makes to total costs.

Table 5.1

<i>Asset category</i>	<i>% contribution to total annual cost</i>	<i>percentage point contribution</i>			
		<i>capital cost</i>	<i>O&M costs</i>	<i>indirect cost</i>	<i>conduit sharing revenue</i>
Main					
Ducts and Pipes	11.78% ^a	10.968	0.201	1.031	-0.423
Copper cables	20.27%	10.673	4.640	4.961	
Optical Fibre	0.20%	0.132	0.028	0.036	
Pair Gain System	1.92%	1.289	0.288	0.344	
Network Building	0.05%	0.043	0.000	0.003	
Switching Equipment	0.43%	0.307	0.054	0.068	
Total Main	34.28%	23.169	5.157	6.376	-0.418
Distribution					
Ducts and Pipes	43.19%	38.850	0.708	3.627	
Copper cables	15.10%	7.096	3.871	4.138	
Total Distribution	58.29%	45.946	4.578	7.765	
Lead-ins	7.06%	7.065	0.000	0.000	
Total Band 2 Annual cost	100%	76.425	9.790	14.209	

Source: derived from Telstra Efficient Access Version 1.0 model

a. for example, capital costs contribute 10.968 percentage points (or almost 93 per cent) of the 11.78 per cent to the cost of ducts and pipes in the main network.

A number of observations can be made from the table. Some key observations are that:

- main and distribution ducts and pipes contributes the most to the total annual cost of the copper access network (about 55 per cent). Of that 55 per cent, capital costs makes up a significant proportion - more than 90 per cent - of total costs.
- the cost of main and distribution copper cables also contribute significantly to the annual total cost (about 35 per cent).
- operating and maintenance costs contribute almost 10 per cent to total annual costs, and indirect costs contribute about 14 per cent to total annual costs.

These observations suggest that capital costs, particularly that for ducts and pipes, are a major cost contributor to the total cost of providing the ULLS. In this regard, parties should carefully consider the issues raised in this discussion paper that affect capital cost estimates; in particular, how assets are valued, WACC, rate of depreciation, and inclusion of the cost of surface barriers to the cost of ducts and pipes.

5.2.3 Ability to properly assess the TEA model

In testing the robustness of the model, the ACCC will consider the extent to which the TEA model allows the ACCC and interested parties to properly assess the content and assumptions in the model. The ACCC refers interested parties to the model documentation Telstra submitted to accompany the TEA model.

The ACCC considers that the cost model must:

- be sufficiently transparent to that the ACCC and interested parties could reasonably assess the inputs and outputs at a disaggregated level;
- allow users to test the assumptions in the model and analyse the impact of different changes in inputs (and architecture) on outputs by understanding the linkages within the model;
- allow users to assess how element costs and capital are allocated within services.²¹

The ACCC considers it Telstra's responsibility to enable the ACCC, and other parties, to sufficiently scrutinise its model and to enable sensitivity testing of Telstra's preferred assumptions and input values such that the ACCC can be satisfied that the model is capable of generating efficient forward-looking cost estimates.

Questions

- Is the documentation provided by Telstra sufficiently comprehensive and clear for parties to understand and navigate the TEA model? If not, indicate what other information you require to be able to assess the TEA model.
- Is the TEA model sufficiently flexible to allow reasonable ranges of values for key parameters to run different scenarios at an appropriately disaggregated level? If not, provide evidence to support your reasons.
- Does the TEA model identify all relevant parameters required to assess the cost outcomes? If not, provide evidence to support your reasons.

²¹ ACCC, *Assessment of Telstra's ULLS monthly charge undertaking, Final Decision, August 2006*, p.45.

- Do you consider the formulas underlying each individual module (and any assumptions behind the use of these formulas and modules) to be sound? If not, provide evidence to support your reasons.
- Do you consider the reactions of the model to changes in values of key inputs to be consistent based on your experience, economic intuition and financial principles? If not, provide evidence to support your reasons.
- Do you consider there are any internal inconsistencies in the model or the formulas? If so, provide evidence to support your reasons.

5.2.4 Telstra's proposed ULLS monthly charge

Telstra proposes a ULLS monthly charge of \$30 per Service In Operation (SIO) per month in Band 2 ESAs, below Version 1.0 of the TEA model's estimate of \$49.27. Telstra submits that:

...a \$30 ULLS price, while at this stage below TSLRIC+, is a reasonable first step for industry to take toward TSLRIC+-based pricing and cost recovery.²²

The ACCC observes that Telstra's ULLS undertaking appears to relate only to one part of the ULLS monthly charge - that associated with network costs. Network costs refer to the capital, operational and maintenance and indirect costs used in the provision of the ULLS. The ACCC considers that the ULLS network costs should only include those costs that Telstra legitimately incurs in the provision of the service, (namely costs that are not recovered elsewhere), and are part of the forward-looking costs of providing ULLS.

Telstra notes that, besides a once only connection charge, there will be:

...(c) charges for other aspects of the service, including operational aspects such as service qualification inquiries and order withdrawals (although these charges are not a matter dealt with by this Undertaking).²³

The ACCC also observes that it is unclear to what year(s) the TEA model cost estimates apply. The network cost estimates for all years within the Undertaking period are not currently available in the TEA model.

Questions

- Do you consider the TEA model capable of producing reasonable TSLRIC estimates having regard to the legislative criteria set out in section 152AH? Please provide reasons to support your view.
- Do you consider the model takes account of existing and future demand? Do you consider this relevant in considering whether the cost model is capable of producing reasonable TSLRIC estimates? Please provide reasons to support your view.
- The ULLS Undertaking does not appear to specify a ULLS specific charge. Should the ACCC consider the assessment of only one part of the ULLS monthly charge?

²² Telstra Corporation Limited, *Telstra's ULLS Undertaking is Reasonable*, 4 April 2008, p. 5.

²³ *Telstra Ordinary Access Undertaking to the Australian Competition and Consumer Commission Under Division 5 of Part XIC of the Trade Practices Act 1974 (Cth)*, Part C: Telstra Price List, 3 March, 2008, p. 13.

5.2.5 Network design and engineering rules

The network design assumptions and engineering rules provide the underlying basis of determining ULLS network costs.

Telstra has described its TEA model network design and engineering rules in *Access Network Dimensioning Rules*²⁴ ('TEA Dimensioning Rules') and *Telstra's Efficient Access model - Model Documentation*²⁵ ('TEA Model Documentation'). This section provides a brief summary of some of the issues in relation to network design and dimensioning rules. Interested parties should refer to the aforementioned documents for a more detailed description in relation to these issues.

Telstra submits that the TEA model represents its actual existing network, which is based upon Telstra's records of the locations of its equipment and customers, rather than a hypothetical lay-out of its network.

Telstra has also stated that for the purposes of the TEA model it is assumed that the following components of the existing network are retained:

- the exchange location;
- distribution area boundaries;
- pillar locations;
- customer locations;
- Distribution and Main Cable routes. These are to be an optimised subset of the existing main cables and conduit routes from the exchange to the pillars using the existing right of ways, and the existing cables and conduit routes from the pillar to the customer premises using the existing right of ways.²⁶

In respect of the last point, it would appear that the optimised subset refers to the TEA model avoiding using duplicative cable runs present in network that were built over extended periods of time.²⁷

As the actual location of pillars is assumed, Telstra has indicated that the TEA model does not apply a scorched node approach:

...the network in this model is based on the locations of the pillars in Telstra's network. As such, this model does not adhere to the "scorched node" approach, which is common to other cost models. In keeping with the hypothetical nature of the networks and customer locations in other models, the scorched node approach ignores the locations of nodes in the "outside plant" portion of the network.²⁸

²⁴ Telstra Corporation Limited, *Access Network Dimensioning Rules - Long run incremental costing model input*.

²⁵ Telstra Corporation Limited, *Telstra's Efficient Access Model - Model Documentation*, 1 March 2008.

²⁶ Telstra Corporation Limited, *Access Network Dimensioning Rules - Long run incremental costing model input*, p.3.

²⁷ Report by Professor Robert G. Harris, prepared for Telstra, "*Use of TEA cost model in ULLS Costing and Pricing*," 21 December 2007, p. 9.

²⁸ Professor R.G.Harris, *Use of the TEA model in ULLS Costing and Pricing*, 21 December 2007, p. 9

Telstra submits that the model is forward-looking in that the model determines efficient routes between network structure points and applies best-practice, widely used, forward-looking engineering practices to determine the plant and equipment needed for providing ULLS.²⁹

Some of the assumptions Telstra has made to represent the current network if newly built are as follows:

- cabinet fed pillars and direct branch cable fed customers are not modelled, rather the model assumes that the current best practice option is a Direct Main Cable fed pillar and Direct Main Cable fed customer;³⁰
- the only cable gauges installed in the network today are:
 - 0.32mm in CBD areas where there is limited housing capacity and a short loop length requirement to the customer;
 - 0.40mm in urban areas; and
 - 0.64 mm may be used in urban areas to reach customers in distribution areas which are currently fed by cable but are beyond 0.40mm transmission limits³¹
- For details on the assumptions about the distribution network, interested parties should refer to pp. 6-11 of TEA Dimensioning Rules and pp. 3-23 of the TEA Model Documentation. Some general observations are that:
 - a 100 pair non-tapered cable architecture is assumed. Telstra states that this is the standard network architecture used by it for deployment in new estates and is appropriate for a 'new start' approach to modelling the network.³²
 - for street distribution cables, only 100 pair cables are used. The distribution network is dimensioned to allow one pair per service address, using a fill factor of 60 per cent.³³
 - for lead-in distribution cables, Telstra assumes that the average number of 2-pair lead-ins served by a pit is 4, and that this is done 100 per cent of the time, using a fill factor of 60 per cent to each distribution cable.
- For details on the assumptions about the main network, interested parties should refer to pp. 11-14 of TEA Dimensioning Rules and pp. 25-44 of the TEA Model Documentation. Some general observations are that:

²⁹ Telstra Corporation Limited, *Telstra's ULLS Undertaking is Reasonable*, 4 April 2008, p. 3.

³⁰ Telstra Corporation Limited, *Access Network Dimensioning Rules - Long run incremental costing model input*, p. 4.

³¹ Telstra Corporation Limited, *Access Network Dimensioning Rules - Long run incremental costing model input*, pp. 4-5.

³² Telstra Corporation Limited, *Access Network Dimensioning Rules - Long run incremental costing model input*, p. 6.

³³ Telstra Corporation Limited, *Access Network Dimensioning Rules - Long run incremental costing model input*, p 9.

- demand points for the main cables are identified as pillars and direct fed buildings. Demand from each of these sources are in multiples of 100 pairs.³⁴ TEA model uses a fill factor of 90 per cent for the feeder main cable design, and a fill factor of 90 per cent for the multiplexing cabinet design.

Questions

- Do you consider the model applies best-practice, forward-looking engineering practices to determine plant and equipment requirements for providing ULLS? In discussing this issue, interested parties are asked to address the relevant statutory criteria in their comments.
- Is a model based on the actual existing Telstra network likely to generate cost estimates that are forward looking and efficient (and therefore in line with the section 152AH criteria)? Would these estimates differ from those of a hypothetical efficient forward-looking network?
- Do you consider Telstra has used the appropriate network assets to model an efficient forward-looking network that provides ULLS? Comment on whether the TEA model includes costs that are legitimately incurred in the efficient and forward-looking provision of the ULLS. Is there over-provisioning of elements in the network?
- Do you consider that the manner in which Telstra has optimised the distribution and main cable routes is appropriate to model an efficient and forward-looking model?

5.2.6 Cost valuation

Estimates for the cost of network inputs and deployment activities are available only in the full version of the TEA model. In this regard, only those with access to this version will be able to answer the majority of the questions set out here.

Telstra submits that the TEA model is based on the ongoing costs of supplying ULLS using efficient means of supply and technologies that are currently in widespread commercial use. In particular, Telstra submits that one way the model achieves this is by using competitive market rates for valuing plant and equipment.³⁵

The ACCC has previously indicated that replacement cost is the cost methodology most consistent with an efficient forward-looking network. Replacement cost refers to the current cost of replacing the asset that provides the same service potential - it does not have to be the same asset but should be the best (least-cost) option under current technology. In a practical sense, this means building a network that reflects best-in-use or best commercially available technology.³⁶

³⁴ Telstra Corporation Limited, *Access Network Dimensioning Rules - Long run incremental costing model input*, p. 11.

³⁵ Telstra Corporation Limited, *Telstra's ULLS Undertaking is Reasonable*, 4 April 2008, p. 3.

³⁶ ACCC, *Access Pricing Principles - Telecommunications, a guide*, July 1999, pp.42-3.

Loading factor for indirect costs

Telstra applies a default loading factor for indirect overhead costs of 13 per cent to some capital inputs. For example, conduit costs are composed of the sum of the conduit cost, the breakout and reinstatement costs and the indirect overheads.

Questions

- Do you consider the cost estimates reflect the 'replacement' cost of network assets, that is do they:
 - reflect the most efficient technology,
 - reflect the competitive market rates for relevant plant and equipment.
- The model does not appear to determine the forecasted network cost estimates for each year of the Undertaking. What do you consider would be appropriate price trends for these cost estimates?
- Comment on the appropriateness of the value for the loading factor for indirect overheads.

5.2.7 Trenching costs

Trenching costs represent a significant network cost component in the provision of the ULLS as reflected in the significant capital cost attributed to the cost of ducts and pipes (see Table 5.1). In this regard, the ACCC is particularly interested in comments regarding the estimates of trenching costs in the TEA model. In estimating the trench costs, the TEA model includes:

- the cost of digging (breaking and re-instating) the concrete surface;
- underground boring rather than digging where there are driveways in the way of trenches;
- costs for back filling trenches with soil and re-instating the surface with turf for main cable, where cables are laid in areas which do not have existing infrastructure;
- taking account of the gradient of the terrain within an ESA.

To examine the effect that the cost and preparation of surface barriers may have on total annual cost, the TEA model was run assuming trenching of turf only. Testing this assumption in no way suggests that this is an appropriate modelling assumption. The results of running TEA model with this assumption are intended to illustrate the significant effect that the cost of digging different surfaces has on trench costs. The results suggest that the fall in the annual cost to total ducts and pipes, and in turn, to total annual cost, is highly significant - a fall of almost 24 per cent in the total annual cost. The results also show that the annual cost for ducts and pipes in the main part of the network fall by about 51 per cent and, in the distribution network, these fall by about 42 percent.³⁷

³⁷ Source: derived from Telstra Efficient Access Version 1.0 model. Results obtained by assuming the cost of breakout and reinstatement of that for trenching turf (no difference in surface). The cost per metre for placing conduit runs for distribution and main is assumed to be that for trenching turf (no difference in surface).

Telstra submits that when building a new network, an operator will face various types of environments where facilities would need to be constructed, and these should be accounted for:

...In dense central business districts almost all placement of conduit and manholes would occur in areas with existing concrete or pavement. In rural areas, the probability that the trenching or constructing activity would require dealing with concrete or pavements is significantly less.³⁸

The TEA model uses the following ratios to reflect the actual environment in which new construction would occur:

- ratios for determining the type and thickness of concrete that would be encountered in building facilities in different areas;
- ratios for identifying the portion of time each type of breakout and reinstatement activity would be encountered when placing pits and manholes in different areas;
- ratios for identifying the portion of time each type of breakout and reinstatement activity would be encountered when placing conduit in different areas; and
- ratios for identifying the type of trenching or ploughing activity that would be required when placing conduit.³⁹

Questions

- Comment on Telstra's approach of deriving trenching costs. Having regard to the reasonableness criteria under section 152AH, do you consider that trenching costs should take account of the different surfaces (and therefore different construction activities) in estimating the cost of the ULLS? If Telstra were to lay copper today, would it face trenching costs that take account of different surfaces? Provide reasons to support your submissions.
- Comment on the appropriateness of the application of input ratios that identify the percentage of instances of different types of terrain, and probable occurrence of various types of placement activities where a plant is built.
- What should the surface barrier assumption be?

5.2.8 Trench sharing

Trench sharing has the overall effect of reducing the cost of trenches in the provision of fixed line network services, including the ULLS. The TEA model includes three types of trench sharing:

- the sharing of entrance facility costs between the inter-exchange and distribution network - this is likely to have the effect of reducing the total trench length. Telstra has used a default value of 5 per cent;

³⁸ Telstra Corporation Limited, *Telstra's Efficient Access Model - Model documentation*, 1 March 2008, pp. 47-8.

³⁹ Telstra Corporation Limited, *Telstra's Efficient Access Model - Model documentation*, 1 March 2008, p. 48.

- sharing with utilities in new estates - this is likely to have the effect of reducing the costs allocated to the ULLS. Telstra has used a default value of 1 per cent; and
- the sharing of trenching and conduit between fibre main cable and copper main cable is accounted for in the model (the demand at fibre fed pillars is deducted from the total demand in the exchange).

Questions

- If Telstra were laying the copper today, would Telstra be able to avail itself of the existing conduits laid by gas, electric or water utilities? Are there limitations that Telstra might face in its ability to share with other utilities?
- Is it appropriate to have regard to Telstra's historical trench sharing figures under a forward-looking network?
- Has Telstra taken account of all trench sharing activities in the copper network?
- Comment on the trench sharing default parameter values. Are these appropriate values?

5.2.9 Operations and maintenance and indirect cost factors

The O&M and indirect cost factors are calculated using Telstra's accounts prepared under the historical values in the Regulatory Accounting Framework (RAF) for the 2005/06 period. The RAF data provides revenue and cost data for a range of Telstra's networks (including fixed and mobile networks). The RAF data is not split across Bands.

Telstra documents the approach used to calculate the O&M and indirect cost factors in *Operations and Maintenance and Indirect Cost Factor Study*⁴⁰ ('TEA model Factor Study') and in the excel worksheet, 'Factor Calculations'. A brief outline of Telstra's methodology used to calculate factor percentages is detailed in this section but interested parties should refer to the aforementioned material for more information.

Calculating operations and maintenance cost factors

Telstra submits that another way the TEA model demonstrates it is forward-looking is that operating and maintenance costs and indirect costs are adjusted in proportion to efficiency savings in construction costs.⁴¹

These factors are calculated in the same way, as follows:

$$O \& M _ Factor = \frac{OperatingExpense}{InvestmentCost}$$

Deriving investment costs

To estimate Investment costs for each category of plant and equipment, Telstra uses the total value (total asset value prior to depreciation) across all RAF products for both Internal and

⁴⁰ Telstra Corporation Limited, *Operations and Maintenance and Indirect Cost Factor Study*, Confidential, 7 April 2008.

⁴¹ Telstra Corporation Limited, *Telstra's ULLS Undertaking is Reasonable*, 4 April 2008, p. 3.

External Wholesale Businesses. Telstra submits that the total value is appropriate to calculate O&M factors as the factors are applied to the full modelled TEA investment costs.

A forward-looking adjustment is made to two plant and equipment categories which adopt the full investment cost from the TEA model:

- Ducts and Pipes, the value of which increases by about 70 per cent;
- Copper Cables, the value of which falls by about 21 per cent.

Telstra submits that 96 per cent of O&M expenses are associated with these two categories of plant and equipment. Therefore, while other categories use the RAF investment cost, the majority of O&M expenses in the TEA model are based on O&M factors that use the modelled investment costs as the denominator.

An additional adjustment - reclassifying certain assets - is also made to the investment cost estimate.

Deriving operating expenses

The O&M expenses used in the factor calculation are lower (about 10 per cent lower) than Telstra's actual O&M expenses allocated to ULLS in the RAF - Telstra makes an adjustment for this. This lower O&M expenses value is intended to reflect network efficiencies.

To estimate O&M expenses for each category of plant and equipment, Telstra uses the total value across all RAF products for both Internal and External Wholesale Businesses.

Two other adjustments are made to the operating expenses estimate - reclassifying cable costs and eliminating installation costs.

Calculating indirect factors

The TEA model applies three sets of indirect factors:

- indirect expense factor: this factor is applied to O&M expenses to obtain indirect expenses;
- network support asset factors; and
- indirect asset factors.

The indirect expense factor for each category is calculated as follows:

$$\text{IndirectExpense}_{\text{Factor}} = \frac{\text{IndirectExpense}}{\text{TotalDirectExpense}}$$

To estimate Indirect expenses, Telstra uses the total value across all RAF products for both Internal and External Wholesale Businesses. Some adjustments are then made to the indirect expense items from the RAF.

The value for Total Direct Expense is the estimate for O&M expense (described above).

The Network Support Asset Factor for each category is calculated as follows:

$$\text{NetworkSupportAsset}_{\text{Factor}} = \frac{\text{CAN}_{\text{NetworkSupportAssets}}}{\text{CAN}_{\text{DirectAssets}}}$$

To estimate network support assets in the CAN, Telstra identifies what share of total support assets are related to the CAN (estimated as 100% of support assets associated with Copper Cables, Multiplexing Systems and CAN-related Radio Bearer Equipment). Telstra estimates that this amounts to a certain percentage (confidential) of the total support asset costs. this is within the range of (10 to 30 per cent).

The Indirect Asset Factor for each category is calculated as follows:

$$\text{IndirectAsset_Factor} = \frac{\text{IndirectAssets}}{\text{Total_DirectAssets}}$$

To estimate Indirect assets for each category, Telstra uses the total value across all RAF products for both Internal and External Wholesale Businesses and the Retail Business. Some adjustments are then made to the indirect asset items from the RAF.

The value for Total Direct Assets is the estimate for total Investment cost (described above).

Questions

- The RAF does not distinguish between costs across Bands. The RAF also provides revenue and cost data for a range of Telstra's networks (fixed and mobiles). As the Undertaking is for only Band 2 and relates only to the CAN, is the approach used by Telstra to estimate costs using the total value of all the services in the RAF reasonable?
- Do you consider that the O&M costs for the distribution and main network should include only those costs associated with the copper network (that is, properly exclude provision of the service on the fibre network)?
- Comment on Telstra's approach to calculating O&M expense and indirect cost factors. In particular, provide views on Telstra's approach to using:
 - the total sum of the cost to all RAF products;
 - the total sum of all directly attributable, attributable and non-attributable costs for all these products;
 - the total sum of the cost to Internal and External Wholesale Businesses.
- Comment on whether Telstra should be using historical or current costs in factor cost estimates. Comment on whether the historical O&M and indirect costs used to calculate factor percentages reflect efficient costs. Are Telstra's historic cost estimates for the ULLS reasonable? In discussing this issue, interested parties are asked to address their comments in accordance with the relevant statutory criteria.
- Are the categories used to calculate O&M and indirect cost factors appropriate?
- Are the adjustments applied to the O&M and indirect costs appropriate? For instance, is the forward-looking adjustment for Investment Costs in Ducts and Pipes and Copper Cables appropriate?
- Do you consider that Telstra is more efficient under a TEA model design where the level of O&M expenses calculated in the TEA model is approximately 10 per cent below Telstra's actual O&M expenses allocated to ULLS in the RAF?

5.2.10 Cost of capital

The weighted average cost of capital (WACC) is the weighted average of the required rate of return on debt and equity. It is used to calculate a fair return on capital employed and is an important component in the calculation of annual capital costs which determine efficient ULLS costs.

The formula for the post-tax vanilla WACC is as follows:

$$WACC = \frac{D}{V} \cdot r_d + \frac{E}{V} \cdot r_e$$

Where;

D/V = the ratio of debt to the total firm value (debt and equity)

E/V = the ratio of equity to the total firm value

r_d = the allowed return on debt, and

r_e = the allowed return on equity

This section provides a brief outline of Telstra's reasons for its preferred WACC input values. Interested parties should refer to Telstra's documentation, *ULLS Undertaking: Weighted Average Cost of Capital (WACC)*⁴², for a more detailed discussion.

As noted in the table below, Telstra submits that its preferred vanilla WACC as at 1 January 2008 ranges from 10.49 per cent to 13.91 per cent. In a letter of 4 April 2008, Telstra indicated that the WACC point estimate value in Version 1.0 of the TEA model of 11.86 per cent has been updated to 12.28 per cent to reflect actual outcomes for the risk-free rate and debt risk premium as at 1 January 2008.⁴³

⁴² Telstra Corporation Limited, *ULLS Undertaking: Weighted Average Cost of Capital (WACC)*, 4 April 2008.

⁴³ Telstra letter of 4 April 2008, 'Telstra's March 2008 ULLS Undertaking for Band 2: Request for further information'.

Table 5.2

Parameter	Point estimate	High estimate	Low estimate
Risk free rate	6.33%	6.33%	6.33%
Debt ratio	30%	30%	30%
Debt risk premium	1.95%	2.10%	1.80%
Debt issuance cost	0.15%	0.22%	0.07%
Cost of debt	8.43%	8.65%	8.20%
Debt beta	0	0	0
Tax rate	30%	30%	30%
Asset beta	0.725	0.825	0.625
Equity beta	1.028	1.170	0.887
Equity issuance cost	0.40%	0.47%	0.27%
Market risk premium	7.0%	8.0%	5.5%
Cost of equity capital	13.93%	16.16%	11.48%
Vanilla WACC	12.28%	13.91%	10.49%

Source: Telstra Corporation Limited, ULLS Undertaking: Weighted Average Cost of Capital (WACC), 4 April 2008.

Telstra states that there is a reasonable range of WACC values and that the upper value of that range is extended by more than the lower value. Telstra also submits that the adverse effects of choosing a WACC that is below the true WACC will be greater than the adverse effects of choosing a WACC that is above the true WACC, therefore, a WACC higher on the range of values should be chosen. Telstra submits that this is because:

...the foregone benefits of investment (the entire consumer and producer surplus) are, under any reasonable assumptions, greater than the loss of surplus associated with marginally higher prices.⁴⁴

Risk-free rate

Telstra uses a 10-year government bond as a proxy for the risk-free investment for estimating both the cost of equity (applying the CAPM) and the cost of debt. Telstra considers that a prime determinant of the maturity of the risk-free investment in regulated circumstances should be the lives of the relevant assets - as the CAN is a long-lived asset, the maturity of the debt and equity should be set to match this long life. Telstra contends that the alternative approach of matching the maturity of the risk-free investment to the regulatory cycle is inferior.

Telstra does not apply a range to the risk-free rate, rather it prefers to use a point estimate. Telstra submits that the observed closing yield on a particular trading day is the best unbiased estimate of the opening yield on the next trading day and any divergence from this is likely to be immaterial from a WACC perspective. Telstra uses the RBA data for a closing yield on government 10-year bonds of 6.33 per cent as at market closure on 31 December 2007. This rate has been applied as an unbiased estimate of the rate applicable at the opening of trading on 1 January 2008.

⁴⁴ Telstra Corporation Limited, ULLS Undertaking: Weighted Average Cost of Capital (WACC), 4 April 2008, pp.6-7.

Debt risk premium

Telstra submits that as the debt risk premium (DRP) is a component of the cost of debt it must be set relative to and consistent with the risk-free rate.

Telstra submits there is no direct empirical support for this metric as Telstra does not issue debt relevant only to CAN-related assets. Telstra applies a Telstra-wide DRP as the most reliable, market-driven guide to the DRP relevant for the CAN assets. The Telstra-specific DRP as at close of trading on 31 December 2007 was 1.95 per cent.

Debt issuance costs

Telstra has included debt issuance costs as a component of the cost of debt. Telstra submits that an indicative figure for annualised debt issuance costs for the CAN-related assets would be within the range of 7 to 22 basis points (with a mid-point of approximately 15 basis points).

Market risk premium

Telstra submits a reasonable range for the market risk premium (MRP) would be around 5.5 per cent to around 8.0 per cent. Telstra cites the empirical work by Gray and Officer⁴⁵, Professor Bowman's report⁴⁶, and Dimson, Staunton and Marsh study⁴⁷ to support a value for the MRP closer to 7 per cent. It, therefore, indicates that the future *ex ante* MRP for Australia should be 7 per cent.

Telstra also considers that a MRP of 7 per cent is conservatively low as it does not take account of the structural shifts that generated excess demand in bond markets in 2004. To take account of the structural shift, the cost of debt and cost of equity require a higher risk premium to reflect the lower risk-free rate and unchanged riskiness in bonds and equity.

Corporate tax rate

Telstra applies the statutory corporate tax rate of 30 per cent, consistent with Professor Bowman's view. Telstra submits that tax law changes have meant that the effective tax rate would approximately equal the statutory corporate tax rate. Also, Telstra submits that accelerated depreciation is not applicable to forward-looking costs of CAN-related assets notionally constructed in the years relevant to the Undertaking (from 2007-08 and onwards).

⁴⁵ S. Gray and R. R. Officer, "A Review of the Market Risk Premium and Commentary on Two Recent Papers, A Report Prepared for the Energy Networks Association", 15 August 2005 cited in Telstra Corporation Limited, ULLS Undertaking: Weighted Average Cost of Capital (WACC), 4 April 2008.

⁴⁶ Robert. G. Bowman, *Report on the appropriate weighted average cost of capital*, Prepared for Telstra, May 2007 cited in Telstra Corporation Limited, ULLS Undertaking: Weighted Average Cost of Capital (WACC), 4 April 2008.

⁴⁷ E. Dimson, P. Marsh and M. Staunton "Global Evidence on the Equity Risk Premium", *Journal of Applied Corporate Finance*, September 2002, cited in in Telstra Corporation Limited, ULLS Undertaking: Weighted Average Cost of Capital (WACC), 4 April 2008, p. 18

These years are after the discontinuance of accelerated depreciation and therefore are not relevant to build-buy decisions today.

Imputation

Telstra submits that the gamma value, which measures the effect of imputation on the cost of equity, is zero. Telstra cites Professor Bowman's report, which argues that the marginal investor for most (if not all) Australian listed entities relevant for quantifying gamma in a WACC-related context is likely to be an international investor given their significant representation on share registers across Australia. This means that the domestic supply of capital (what domestic capital providers are prepared to provide by way of equity funds) is less than the domestic demand for capital (what domestic businesses need in terms of capital). On that basis, domestic listed entities need to attract overseas investors. Given this, Telstra states that it is likely that overseas investors are the marginal stock investors in Australia and as such set the value of shares on the basis of the value of their earning stream to them (including imputation credits). Telstra consider that as overseas investors cannot use imputation credits they will have no value to these investors and this will be reflected in share prices. Therefore, Telstra argues the ACCC should set the value of imputation credits to zero.

Asset beta, debt beta and equity beta

Telstra assumes an asset beta for the CAN of approximately 0.725, and considers that a reasonable range is from 0.625 to 0.825. These values are based on a mix of sources:

- a Telstra-wide asset beta estimate;
- comparing the average estimated asset beta of the remaining regional Bell Operating Companies (RBOCs); and
- estimates of income elasticity for the products provided on the CAN to obtain a revenue weighted average income elasticity value (assumes a positive relationship between income elasticity and beta).

Telstra assumes a debt beta of 0.0.

Telstra applies an equity beta value of 1.03.

Equity issuance costs

Similar to the approach used to estimate the debt issuance costs, Telstra assumes equity issuance costs (EIC) for the total value of equity of the entire asset and then annualises these costs over the expected life of the asset. This equity issuance cost is included in the cost of equity. Telstra estimates a margin for inclusion in the cost of equity for equity related issuance costs of between 27 and 47 basis points and recommends an application of 40 basis points in the point estimate WACC.

The ACCC has previously allowed equity issuance costs only if equity is actually being raised and is a cashflow item by the regulated firm.

Debt gearing

Telstra applies an indicative target market gearing for Telstra of 30 per cent debt. Telstra uses a Telstra-wide target market gearing to estimate debt gearing for CAN-related assets. Telstra submits that the gearing structure applied should be market based so that opportunity costs are quantified in contemporary terms and on a target basis, as equity investors are interested in likely returns over the medium-to-long term.

Telstra submits that market based gearing of around 30 per cent debt would be typical across comparable telecommunications operators, and provides derivation of the indicative gearing across a select group of comparable telecommunication operators.⁴⁸

Questions

- Having regard to the regulatory criteria in section 152AH of the Act, is Telstra's range of WACC values appropriate and should the upper value of that range be extended by more than the lower value? Are the costs of under-estimating the WACC greater than those of over-estimating the WACC (i.e. are there any asymmetric costs)? Provide evidence, where possible, to support your submission.
- How should the WACC inputs be calculated? Provide evidence, where possible, to support your submission.
- Advise whether you consider Telstra preferred WACC parameter values are appropriate. Provide evidence to support your submission.
- Are there any other issues concerning the appropriate WACC, which the ACCC should consider?

5.2.11 Calculating annualised and unitised ULLS costs

For the purposes of calculating TSLRIC for a particular year or years, capital investment costs must be converted to annual capital costs. In order to convert capital costs to annual costs, the TEA model calculates capital cost factors for each year of the assets' life, which are comprised of depreciation and the opportunity cost of capital.

Telstra's documentation, *Telstra's Efficient Access Model - Model Documentation*, sets out the derivation of the annual capital cost factors and consequently the total annual cost per ULLS.

Annual capital cost factors

The annual capital cost factors calculated for each year of the asset's life are levelised over the relevant asset's life. The levelised capital cost factor is calculated by taking the present value of the capital cost factors across all years of the asset's life. The calculation is done assuming end of year cash flows to match the depreciation accruals.

⁴⁸ Telstra Corporation Limited, ULLS Undertaking: Weighted Average Cost of Capital (WACC), 4 April 2008, p. 43.

The sum of the present values is then converted to an annual capital cost factor that is equal in each period of the asset life and exactly returns the sum of the present values at the post-tax WACC rate of return.

Capital costs factors are applied to each of the investments for the various plant categories. This cost is combined with expenses and other costs - the total annual cost is then divided by twelve to derive the monthly cost for providing the service for all exchanges that are considered.

Questions

- Is Telstra's method of calculating annualising and unitising network costs appropriate? Provide reasoning to support your submission.
- Is assuming end of year cash flows an appropriate assumption? Provide reasoning to support your submission.

5.2.12 Depreciation

The ACCC considers that depreciation schedules should be based on the expected decline in the economic value of assets. The TEA model uses a straight-line method, where the level of depreciation is equal in every year of the asset's life.

The asset life directly affects the asset depreciation schedule and will therefore affect network cost estimates. An unreasonably short asset life will increase network cost estimates, as cost recovery will be spread over a shorter period, tending to inhibit competition and lead to the recovery of more than the direct costs of providing the ULLS. An unreasonably long asset life would tend to unduly favour access seekers and adversely affect the legitimate business or commercial interests of the access provider.

The TEA model default asset lives for each of its capital assets is set out in summarised form in the table below.

Table 5.3

Life	Capital asset
5 or less	Information Technology
	Software
	IEN Software
	Switching Software
10 - 20	Local Switching
	Misc. Transmission
	Other Indirect (Fleet, etc.)
	Building Fitouts
	Multiplexing Systems
	Copper Cables-Main
	Copper Cables-Distribution
	Radio Equipment-CAN
	Network Management
	Power Systems
	SDH Transmission Equipment
	Radio Transmission
	Radio Spectrum
	21 - 30
Lead-Ins	
Support Structures	
Buildings	
Optical Fibre Cables	
31-40	Ducts and Pipes-Main
	Network Buildings

Source: TEA model version 1.0.

Questions

- Comment on the appropriateness of Telstra's default depreciation schedule. Do the values appropriately reflect the expected decline in the economic value of the underlying assets? Provide evidence where possible, with reference to the reasonableness criteria set out in section 152AH of the Act.

5.2.13 Reasonableness of the non-price terms and conditions

As noted previously, the Undertaking includes limited non-price terms and conditions for the supply of ULLS. These non-price terms and conditions are set out in Part B of *Telstra Ordinary Access Undertaking to the Australian Competition and Consumer Commission*.⁴⁹

⁴⁹ *Telstra Ordinary Access Undertaking to the Australian Competition and Consumer Commission under Division 5 of Part XIC of the Trade Practices Act 1974 (Cth)*, 3 March 2008, pp. 11-2.

In responding to this part of the report, the ACCC would like interested parties to consider whether the non-price terms and conditions are reasonable having regard to the criteria set out in section 152 AH of the Act.

Questions

- Do you consider that these non-price terms and conditions ensure access seekers have the ability to reasonably access the ULLS? Provide reasoning to support your submission.
- Are non-price terms and conditions contained in the Undertaking consistent with the reasonableness criteria set out in section 152AH of the Act? Provide reasoning to support your submission.

Appendix A1: TEA model undertaking for access seekers' external consultants, legal advisors and employees with a non-commercial role

TEA MODEL ACCESS UNDERTAKING

**CONFIDENTIALITY UNDERTAKING
BY EXTERNAL ADVISOR OR CONSULTANT**

IN FAVOUR OF

TELSTRA CORPORATION LIMITED

I, _____, of _____ (“[]”) undertake to Telstra Corporation Limited (“**Telstra**”) that:

- 1 I have been engaged by [**name of access seeker**] (“**my client**”) for an Approved Purpose (as defined below).
- 2 Subject to the terms of this Undertaking, I will keep confidential at all times the information listed in Attachment 1 to this Undertaking (“**the Telstra confidential information**”).
- 3 I acknowledge that:
 - (a) this Undertaking is given by me to Telstra in consideration for Telstra making the Telstra confidential information available to me for the Approved Purposes (as defined below);
 - (b) all intellectual property in (or in any part of) the Telstra confidential information is and will remain owned by Telstra; and
 - (c) by reason of this Undertaking, no licence or right is granted to me, or any other employee, agent, representative, officer or member of [] in relation to the Telstra confidential information, except as expressly provided in this Undertaking.
- 4 I will:
 - (a) only use the Telstra confidential information for:
 - (i) the purposes of making submissions to the Australian Competition and Consumer Commission (“**ACCC**”) in the course of the conduct of an

access dispute, to which [] is a party, notified to the ACCC in accordance with Division 8 of Part XIC of the *Trade Practices Act 1974* (Cth) (“**TPA**”) and in which Telstra relies on the TEA Model and/or a redacted version of it; or

- (ii) the purposes of making submissions to the ACCC during the course of the ACCC’s consideration of an ordinary access undertaking given to the ACCC by Telstra in accordance with Division 5 of Part XIC of the TPA where Telstra relies on the TEA Model and/or a redacted version of it; or
- (iii) the purposes of any application made to the Australian Competition Tribunal (“**the Tribunal**”) under section 152CE of the TPA for review of a decision made by the ACCC in respect of an Access Undertaking; or
- (iv) any other purpose approved by Telstra in writing,

(“**the Approved Purposes**”), and, to the extent that any submission or other document is submitted to the ACCC, the Tribunal or given to any person by me or [] as permitted by this Undertaking and which contains any Telstra confidential information, that submission or document will be clearly marked as a confidential submission or confidential document containing Telstra confidential information and that is subject to this Undertaking;

- (b) comply with any reasonable request or direction from Telstra regarding the Telstra confidential information;
- (c) without limiting the generality of paragraph (b), I acknowledge that:
 - (i) I may review the code, worksheets, datafiles, user interfaces and structure of the TEA Model, and vary the assumptions or variables used in the TEA Model in order to obtain various outputs from the TEA Model, provided in each case that this is done solely for the Approved Purposes; and
 - (ii) to the extent that any changes are made to the TEA Model itself, or the inputs to the model, by anyone other than Telstra, when referring to the model in that altered form or the outputs from the model in that altered form for the Approved Purposes, I must acknowledge that the model has been altered, and not represent explicitly or implicitly that the model in that altered form is the version of the model created by Telstra, or that the

outputs from the model in that altered form are outputs from the version of the model created by Telstra.

5 Subject to paragraph 6 below, I will not disclose any of the Telstra confidential information to any other person without the prior written consent of Telstra.

6 I acknowledge that I may disclose the Telstra confidential information to which I have access to:

- (a) ACCC employees for the Approved Purposes;
- (b) any member of the Tribunal and their administrative assistants if the ACCC makes a decision to accept or reject an Access Undertaking and that decision is challenged in the Tribunal; and
- (c) any person for the Approved Purposes provided that:
 - (i) the person to whom disclosure is proposed to be made (“**the person**”) has been identified to Telstra in writing and Telstra has approved the person as a person who may receive the Telstra confidential information;
 - (ii) the person has signed a confidentiality undertaking in the form of this Undertaking or another form acceptable to Telstra; and
 - (iii) the signed confidentiality undertaking of the person has been served on Telstra.

Note: For the purpose of paragraph 6(c) above, an employee, officer, member or consultant of [] is not a person approved by Telstra and may not be given that part of the Telstra confidential information described in Appendix 2

However, notwithstanding the above, I acknowledge that:

- (A) my client and/or its employees, agents, officers, members, consultants or representatives has been or may be provided with a redacted version of the TEA Model, excluding the information described in Attachment 2: and
- (B) I will not disclose the information described in Attachment 2 to my client or any of its employees, agents, consultants, representatives, officers or members - except that I may disclose the formulae contained within the

files identified in paragraph 2 of Attachment 2 to my client for any of the purposes identified in paragraph 4(a) above.

I will not disclose the specific numeric result generated by any of those formulae to my client and/or its employees, agents, officers, members, consultants or representatives or any other person other than another external adviser retained by my client who has signed a confidentiality undertaking in substantially the same terms as this undertaking, in which case I may disclose the information only for the purposes identified at paragraph 4(a) above.

7 I may disclose:

- (a) the assumptions or variables used by me in the TEA Model; and
- (b) the resultant outputs produced by the TEA Model,

to any person. However, I acknowledge that nothing in this clause permits me to do so in a way that discloses or identifies any Telstra confidential information.

8 I will establish and maintain security measures to safeguard the Telstra confidential information from unauthorised access, use, copying, reproduction or disclosure and will protect the Telstra confidential information using the same degree of care as a prudent person would use to protect that person's confidential information.

9 Except as required by law and subject to paragraph 12 below, within 14 days after whichever of the following first occurs:

- (a) if there is no Access Undertaking before the ACCC or the Tribunal for decision, the Access Dispute is resolved; or
- (b) if there is no Access Dispute before the ACCC for arbitration, a decision is made to accept or reject the Access Undertaking; or
- (c) my ceasing to be employed by, retained by, an officer, a member or a representative of []; or
- (d) my ceasing to work for or represent [] in respect of the Approved Purposes; or
- (e) my commencing employment with any telecommunications carrier or service provider,

I will destroy or deliver to Telstra the Telstra confidential information and any documents or things (or parts of documents or things), constituting, recording or containing any of the Telstra confidential information in my possession, custody, power or control.

Note: For the purpose of paragraph 9(a) above, an Access Dispute is resolved where:

- (i) the ACCC makes a final determination in respect of it pursuant to section 152CP of the TPA; or
- or
- (ii) it is withdrawn pursuant to section 152CN of the TPA; or
- (iii) it is otherwise terminated.

For the purpose of paragraph 9(b) above, a decision is made to accept or reject an Access Undertaking where:

- (i) the Access Undertaking is withdrawn;
- (ii) 21 days have expired after a decision has been made by the ACCC or the Tribunal to accept or reject the Access Undertaking and there are no outstanding applications, appeals or other legal proceedings in relation to the Access Undertaking or the decision; or
- (iii) a decision is made by the Tribunal to accept or reject the Access Undertaking pursuant to section 152CF of the *Trade Practices Act 1974 (Cth)*.

10 Nothing in this Undertaking shall impose an obligation upon me in respect of information:

- (a) that is in the public domain; or
- (b) that has been obtained by me otherwise than from:
 - (i) Telstra;
 - (ii) another person who has signed a confidentiality undertaking; or
 - (iii) another person who has an obligation of confidence in relation to the Telstra confidential information (or any part of it), an Access Dispute or an Access Undertaking;

provided that the information is not in the public domain and/or has not been obtained by me by reason of, or in circumstances involving, any breach of a confidentiality undertaking or a breach of any other obligation of confidence in favour of Telstra or by any other unlawful means.

11 I acknowledge that damages are not a sufficient remedy for any breach of this Undertaking and that Telstra is entitled to specific performance or injunctive relief (as

appropriate) as a remedy for any breach or threatened breach of this Undertaking, in addition to any other remedies available to Telstra at law or in equity.

12 The obligations of confidentiality imposed by this Undertaking survive the destruction or delivery to Telstra of the Telstra confidential information pursuant to paragraph 9 above.

13 I acknowledge and agree that:

(a) when Telstra provides a revised version of the TEA Model, that version of the model supercedes all previous versions and I will refer to each version of the model by its proper version name; and

(b) I will bring any suggested changes to the TEA Model to Telstra's attention in a timely manner so that they can be considered, in the course of any process relating to an Access Dispute or an Access Undertaking or otherwise, for future versions of the TEA Model.

14 I acknowledge that this Undertaking is governed by the law in force in the State of Victoria and I agree to submit to the non-exclusive jurisdiction of the court of that place.

15 In this Undertaking:

“**Access Dispute**” means an access dispute of the kind described in paragraph 3(a)(i) of this Undertaking;

“**Access Undertaking**” means an ordinary access undertaking of the kind described in paragraph 3(a)(ii) of this Undertaking; and

“**TEA Model**” has the meaning assigned to it in Attachment 1.

Signed: _____

Dated: _____

ATTACHMENT 1

- 1 The following information of Telstra:
 - (a) the network dimensioning and costing model called the Telstra Efficient Access Model, including any revised versions of that model which are subsequently made available to you (“**the TEA Model**”), including (but not limited to) the software code, data queries, table structures, report definitions and user interfaces used in the TEA Model; and
 - (b) all information contained in the TEA Model, including (but not limited to):
 - (i) all information contained in the data tables;
 - (ii) all assumptions and variables used in the TEA Model;
 - (iii) the information contained in the worksheets titled “Inputs Cost and Rules”, “Cost Calculator Main”, “Cost Calculator Distribution”, “Results Main Costs”, and “Results Distribution Costs” contained in the file Telstra/Telstra Cost Model/Model/Calc-Engine.xls (including the same or similar information included in any re-named worksheet(s) in subsequent versions of the TEA Model);
 - (iv) the file titled Telstra/Telstra Cost Model/Data/XML/Costing/Default_Main.xml (including the same or similar information included in any re-named worksheet(s) in subsequent versions of the TEA Model); and
 - (v) the base data file.

ATTACHMENT 2

Redacted Information

- 1 The base data file
- 2 The information from the base data file contained in the Engineering Distribution Model and the Engineering Main Model (including the same or similar information included in any re-named worksheet(s) or models in subsequent versions of the TEA Model)
- 3 The prices for network cables, plant and equipment and construction and installation work

Appendix A2: TEA model undertaking for access seekers' employees with a full or partly commercial role

TEA MODEL ACCESS UNDERTAKING

**CONFIDENTIALITY UNDERTAKING
BY ACCESS SEEKER EMPLOYEES**

IN FAVOUR OF

TELSTRA CORPORATION LIMITED

I, _____, of _____ (“[]”) undertake to Telstra Corporation Limited (“**Telstra**”) that:

- 1 Subject to the terms of this Undertaking, I will keep confidential at all times the information listed in Attachment 1 to this Undertaking (“**the Telstra confidential information**”).
- 2 I acknowledge that:
 - (a) this Undertaking is given by me to Telstra in consideration for Telstra making the Telstra confidential information available to me for the Approved Purposes (as defined below);
 - (b) all intellectual property in (or in any part of) the Telstra confidential information is and will remain owned by Telstra; and
 - (c) by reason of this Undertaking, no licence or right is granted to me, or any other employee, agent, representative, officer or member of [] in relation to the Telstra confidential information, except as expressly provided in this Undertaking.
- 3 I will:
 - (a) only use the Telstra confidential information for:
 - (i) the purposes of making submissions to the Australian Competition and Consumer Commission (“**ACCC**”) in the course of the conduct of an access dispute, to which [] is a party, notified to the ACCC in

accordance with Division 8 of Part XIC of the *Trade Practices Act 1974* (Cth) (“**TPA**”) and in which Telstra relies on the TEA Model and/or an unredacted version of it; or

- (ii) the purposes of making submissions to the ACCC during the course of the ACCC’s consideration of an ordinary access undertaking given to the ACCC by Telstra in accordance with Division 5 of Part XIC of the TPA where Telstra relies on the TEA Model and/or an unredacted version of it; or
- (iii) the purposes of any application made to the Australian Competition Tribunal (“**the Tribunal**”) under section 152CE of the TPA for review of a decision made by the ACCC in respect of an Access Undertaking; or
- (iv) any other purpose approved by Telstra in writing,

(“**the Approved Purposes**”), and, to the extent that any submission or other document is submitted to the ACCC, the Tribunal or given to any person by me or [_____] as permitted by this Undertaking and which contains any Telstra confidential information, that submission or document will be clearly marked as a confidential submission or confidential document containing Telstra confidential information that is subject to this Undertaking;

- (b) comply with any reasonable request or direction from Telstra regarding the Telstra confidential information;
- (c) without limiting the generality of paragraph (b), I acknowledge that:
 - (i) I may review the code, worksheets, data files, user interfaces and structure of the TEA Model, and vary the assumptions or variables used in the TEA Model in order to obtain various outputs from the TEA Model, provided in each case that this is done solely for the Approved Purposes; and
 - (ii) to the extent that any changes are made to the TEA Model itself, or the inputs to the model, by anyone other than Telstra, when referring to the model in that altered form or the outputs from the model in that altered form for the Approved Purposes, I must acknowledge that the model has been altered and not represent explicitly or implicitly that the model in that altered form is the version of the model created by Telstra, or that the

outputs from the model in that altered form are outputs from the version of the model created by Telstra.

- 4 Subject to paragraph 5 below, I will not disclose any of the Telstra confidential information to any other person without the prior written consent of Telstra.
- 5 I acknowledge that I may disclose the Telstra confidential information to which I have access to:
- (a) ACCC employees for the Approved Purposes;
 - (b) any member of the Tribunal and their administrative assistants if the ACCC makes a decision to accept or reject an Access Undertaking and that decision is challenged in the Tribunal; and
 - (c) any person for the Approved Purposes provided that:
 - (i) the person to whom disclosure is proposed to be made (“**the person**”) has been identified to Telstra in writing and Telstra has approved the person as a person who may receive the Telstra confidential information;
 - (ii) the person has signed a confidentiality undertaking in the form of this Undertaking or another form acceptable to Telstra; and
 - (iii) the signed confidentiality undertaking of the person has been served on Telstra.
- 6 I may disclose:
- (a) the assumptions or variables used by me in the TEA Model ; and
 - (b) the resultant outputs produced by the TEA Model,
- to any person. However, I acknowledge that nothing in this clause permits me to do so in a way that discloses or identifies any Telstra confidential information.
- 7 I will establish and maintain security measures to safeguard the Telstra confidential information from unauthorised access, use, copying, reproduction or disclosure and will protect the Telstra confidential information using the same degree of care as a prudent person would use to protect that person’s confidential information.

8 Except as required by law and subject to paragraph 11 below, within 14 days after whichever of the following first occurs:

- (a) if there is no Access Undertaking before the ACCC or the Tribunal for decision, the Access Dispute is resolved; or
- (b) if there is no Access Dispute before the ACCC for arbitration, a decision is made to accept or reject the Access Undertaking; or
- (c) my ceasing to be employed by, retained by, an officer, a member or a representative of []; or
- (d) my ceasing to work for or represent [] in respect of the Approved Purposes; or
- (e) my commencing employment with any other telecommunications carrier or service provider,

I will destroy or deliver to Telstra the Telstra confidential information and any documents or things (or parts of documents or things), constituting, recording or containing any of the Telstra confidential information in my possession, custody, power or control.

Note: For the purpose of paragraph 8(a) above, an Access Dispute is resolved where:

- (i) the ACCC makes a final determination in respect of it pursuant to section 152CP of the TPA; or
- (ii) it is withdrawn pursuant to section 152CN of the TPA; or
- (iii) it is otherwise terminated.

For the purpose of paragraph 8(b) above, a decision is made to accept or reject an Access Undertaking where:

- (i) the Access Undertaking is withdrawn;
- (ii) 21 days have expired after a decision has been made by the ACCC or the Tribunal to accept or reject the Access Undertaking and there are no outstanding applications, appeals or other legal proceedings in relation to the Access Undertaking or the decision; or
- (iii) a decision is made by the Tribunal to accept or reject the Access Undertaking pursuant to section 152CF of the *Trade Practices Act 1974 (Cth)*.

- 9 Nothing in this Undertaking shall impose an obligation upon me in respect of information:
- (a) that is in the public domain; or
 - (b) that has been obtained by me otherwise than from
 - (i) Telstra;
 - (ii) another person who has signed a confidentiality undertaking; or
 - (iii) another person who has an obligation of confidence in relation to the Telstra confidential information (or any part of it), an Access Dispute or an Access Undertaking;

provided that the information is not in the public domain and/or has not been obtained by me by reason of, or in circumstances involving, any breach of a confidentiality undertaking or a breach of any other obligation of confidence in favour of Telstra or by any other unlawful means.

- 10 I acknowledge that damages are not a sufficient remedy for any breach of this Undertaking and that Telstra is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach of this Undertaking, in addition to any other remedies available to Telstra at law or in equity.
- 11 The obligations of confidentiality imposed by this Undertaking survive the destruction or delivery to Telstra of the Telstra confidential information pursuant to paragraph 8 above.
- 12 I acknowledge and agree that:
- (a) when Telstra provides a revised version of the TEA Model, that version of the model supercedes all previous versions and I will refer to each version of the model by its proper version name; and
 - (b) I will bring any suggested changes to the TEA Model to Telstra's attention in a timely manner so that they can be considered, in the course of any process relating to an Access Dispute or an Access Undertaking or otherwise, for future versions of the TEA Model.
- 13 I acknowledge that this Undertaking is governed by the law in force in the State of Victoria and I agree to submit to the non-exclusive jurisdiction of the court of that place.

14 In this Undertaking:

“**Access Dispute**” means an access dispute of the kind described in paragraph 3(a)(i) of this Undertaking;

“**Access Undertaking**” means an ordinary access undertaking of the kind described in paragraph 3(a)(ii) of this Undertaking; and

“**TEA Model**” has the meaning assigned to it in Attachment 1.

Signed: _____

Dated: _____

ATTACHMENT 1

The following information of Telstra:

- (a) the redacted version of the network dimensioning and costing model called the Telstra Efficient Access Model, including any revised versions of that model which are subsequently made available to you (“**the TEA Model**”), including (but not limited to) the software code, data queries, table structures, report definitions and user interfaces used in the TEA Model; and
- (b) all information contained in the TEA Model, including (but not limited to) all information contained in the data tables, and all assumptions and variables used in the TEA Model;

Appendix B1: Confidential material undertaking for access seekers' external consultants, legal advisors and employees with a non-commercial role

TELSTRA ULLS CONFIDENTIAL MATERIAL

**CONFIDENTIALITY UNDERTAKING
BY EXTERNAL ADVISOR OR CONSULTANT**

IN FAVOUR OF

TELSTRA CORPORATION LIMITED

I, _____, of _____ (“[]”) undertake to Telstra Corporation Limited (“**Telstra**”) that:

- 1 I have been engaged by [**name of access seeker**] (“**my client**”) for an Approved Purpose (as defined below).
- 2 Subject to the terms of this Undertaking, I will keep confidential at all times the information listed in Attachment 1 to this Undertaking (“**the Telstra Category 1 confidential information**”) and in Attachment 2 to this Undertaking (“**the Telstra Category 2 confidential information**”) and, together with the Telstra Category 1 confidential information, the “**Telstra confidential information**”).
- 3 I acknowledge that:
 - (a) this Undertaking is given by me to Telstra in consideration for Telstra making the Telstra confidential information available to me for the Approved Purposes (as defined below);
 - (b) all intellectual property in (or in any part of) the Telstra confidential information is and will remain owned by Telstra; and
 - (c) by reason of this Undertaking, no licence or right is granted to me, or any other employee, agent, representative, officer or member of my client or of [] in relation to the Telstra confidential information, except as expressly provided in this Undertaking.

4 I will:

- (a) only use the Telstra confidential information for:
- (i) the purposes of making submissions to the Australian Competition and Consumer Commission (“**ACCC**”) in the course of the conduct of an access dispute, to which my client is a party, notified to the ACCC in accordance with Division 8 of Part XIC of the *Trade Practices Act 1974* (Cth) (“**TPA**”) (or any other proceedings or appeals related to the access dispute) and in which Telstra relies on the TEA Model and/or a redacted version of it; or
 - (ii) the purposes of making submissions to the ACCC during the course of the ACCC’s consideration of an ordinary access undertaking given to the ACCC by Telstra in accordance with Division 5 of Part XIC of the TPA where Telstra relies on the TEA Model and/or a redacted version of it; or
 - (iii) the purposes of any application made to the Australian Competition Tribunal (“**the Tribunal**”) under section 152CE of the TPA for review of a decision made by the ACCC in respect of an Access Undertaking; or
 - (iv) any other purpose approved by Telstra in writing,
- (“**the Approved Purposes**”), and, to the extent that any submission or other document is submitted to the ACCC, the Tribunal or given to any person by me or my client as permitted by this Undertaking and which contains any Telstra confidential information:
- (A) that submission or document will be clearly marked as a confidential submission or confidential document containing Telstra confidential information and that is subject to this or a like Undertaking;
 - (B) the Telstra confidential information will be clearly identified within the submission or document;
- (b) comply with any reasonable request or direction from Telstra regarding the Telstra confidential information.

- 5 Subject to paragraph 6 below, I will not disclose any of the Telstra confidential information to any other person without the prior written consent of Telstra.
- 6 I acknowledge that I may disclose the Telstra confidential information to which I have access to:
- (a) ACCC employees for the Approved Purposes;
 - (b) any member of the Tribunal and their administrative assistants if the ACCC makes a decision to accept or reject an Access Undertaking and that decision is challenged in the Tribunal;
 - (c) in respect of the Telstra Category 1 confidential information - any employee of my client or any external legal adviser or independent expert engaged by my client for the Approved Purposes provided that:
 - (i) the person to whom disclosure is proposed to be made (“**the person**”) has been identified to Telstra in writing and Telstra has approved the person as a person who may receive the Telstra Category 1 confidential information;
 - (ii) the person has signed a confidentiality undertaking in the form of this Undertaking or another form acceptable to Telstra; and
 - (iii) the signed confidentiality undertaking of the person has been served on Telstra;
 - (d) in respect of the Telstra Category 2 confidential information -any external legal adviser or independent expert engaged by my client for the Approved Purposes provided that:
 - (i) the person to whom disclosure is proposed to be made (“**the person**”) has been identified to Telstra in writing and Telstra has approved the person as a person who may receive the Telstra Category 2 confidential information;
 - (ii) the person has signed a confidentiality undertaking in the form of this Undertaking or another form acceptable to Telstra; and

- (iii) the signed confidentiality undertaking of the person has been served on Telstra;
- (e) to any secretarial, administrative and support staff who perform purely administrative tasks and who assist me or any person referred to in paragraph 6(c) or paragraph 6(d) for the Approved Purposes; and
- (f) to other persons, if required to do so by law, but then only:
 - (i) if I notify Telstra of that request as soon as practicable;
 - (ii) to the person(s) to whom I am obliged to provide the Telstra confidential information;
 - (iii) to the extent necessary to comply with the legal requirement; and
 - (iv) if I notify the recipient of the Telstra confidential information that the information is confidential to Telstra.

7 I will establish and maintain security measures to safeguard the Telstra confidential information that is in my possession from unauthorised access, use, copying, reproduction or disclosure and will protect the Telstra confidential information using the same degree of care as a prudent person in my position would use to protect that person's confidential information.

8 Except as required by law and subject to paragraph 11 below, within a reasonable time after whichever of the following first occurs:

- (a) if there is no Access Undertaking before the ACCC or the Tribunal for decision, the Access Dispute is resolved; or
- (b) if there is no Access Dispute before the ACCC for arbitration, a decision is made to accept or reject the Access Undertaking; or
- (c) my ceasing to be employed or retained by [] as an agent, representative, officer or member (provided that I continue to have access to the Telstra confidential information at that time); or
- (d) my ceasing to work for or represent my client in respect of the Approved Purposes; or

- (e) my commencing employment with any telecommunications carrier or service provider,

I will destroy or deliver, or cause to be destroyed or delivered, to Telstra the Telstra confidential information and any documents or things (or parts of documents or things), constituting, recording or containing any of the Telstra confidential information in my possession, custody, power or control.

Note: For the purpose of paragraph 8(a) above, an Access Dispute is resolved where:

- (i) the ACCC makes a final determination in respect of it pursuant to section 152CP of the TPA; or
- (ii) it is withdrawn pursuant to section 152CN of the TPA; or
- (iii) it is otherwise terminated.

For the purpose of paragraph 8(b) above, a decision is made to accept or reject an Access Undertaking where:

- (i) the Access Undertaking is withdrawn;
- (ii) 21 days have expired after a decision has been made by the ACCC or the Tribunal to accept or reject the Access Undertaking and there are no outstanding applications, appeals or other legal proceedings in relation to the Access Undertaking or the decision; or
- (iii) a decision is made by the Tribunal to accept or reject the Access Undertaking pursuant to section 152CF of the *Trade Practices Act 1974 (Cth)*.

9 Nothing in this Undertaking shall impose an obligation upon me in respect of information:

- (a) that is in the public domain; or
- (b) that has been obtained by me otherwise than from:
 - (i) Telstra;
 - (ii) the ACCC;
 - (iii) another person who has signed a confidentiality undertaking; or
 - (iv) another person who has an obligation of confidence in relation to the Telstra confidential information (or any part of it) or in relation to an Access Dispute or an Access Undertaking;

provided that the information is not in the public domain and/or has not been obtained by me by reason of, or in circumstances involving, any breach of a confidentiality

undertaking or a breach of any other obligation of confidence in favour of Telstra or by any other unlawful means.

10 I acknowledge that damages may not be a sufficient remedy for any breach of this Undertaking and that Telstra may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach of this Undertaking, in addition to any other remedies available to Telstra at law or in equity.

11 The obligations of confidentiality imposed by this Undertaking survive the destruction or delivery to Telstra of the Telstra confidential information pursuant to paragraph 8 above.

12 I acknowledge that this Undertaking is governed by the law in force in the State of Victoria and I agree to submit to the non-exclusive jurisdiction of the court of that place.

13 In this Undertaking:

“**Access Dispute**” means an access dispute of the kind described in paragraph 4(a)(i) of this Undertaking;

“**Access Undertaking**” means an ordinary access undertaking of the kind described in paragraph 4(a)(ii) of this Undertaking; and

Signed: _____

Dated: _____

ATTACHMENT 1

- 1 Any document or information (whether or not within a document) provided to me which Telstra nominates as Telstra Category 1 confidential information for the purposes of this or like Undertaking.

Note: the intention is that the information nominated as Telstra Category 1 confidential information will equate to information the subject of confidentiality undertakings executed by access seeker employees.

ATTACHMENT 2

- 1 The following information and documents of Telstra:
 - (a) Operations and Maintenance Factor Study;
 - (b) the related Factor Calculation Excel spreadsheet; and
 - (c) the redacted version of Access Network Costing Information.
- 2 Any document or information (whether or not within a document) provided to me which Telstra nominates as Telstra Category 2 confidential information for the purposes of this or like Undertaking.

Appendix B2: Confidentiality material undertaking for access seekers' employees with a full or partly commercial role

TELSTRA ULLS CONFIDENTIAL MATERIAL

**CONFIDENTIALITY UNDERTAKING
BY ACCESS SEEKER EMPLOYEES**

IN FAVOUR OF

TELSTRA CORPORATION LIMITED

I, _____, of [*Access Seeker*] (“[**Access Seeker**]”) undertake to Telstra Corporation Limited (“**Telstra**”) that:

- 1 Subject to the terms of this Undertaking, I will keep confidential at all times the information listed in Attachment 1 to this Undertaking (“**the Telstra confidential information**” or “**the Telstra Category 1 confidential information**”).
- 2 I acknowledge that:
 - (a) this Undertaking is given by me to Telstra in consideration for Telstra making the Telstra confidential information available to me for the Approved Purposes (as defined below);
 - (b) all intellectual property in (or in any part of) the Telstra confidential information is and will remain owned by Telstra; and
 - (c) by reason of this Undertaking, no licence or right is granted to me, or any other employee, agent, representative, officer or member of [] in relation to the Telstra confidential information, except as expressly provided in this Undertaking.
- 3 I will:
 - (a) only use the Telstra confidential information for:
 - (i) the purposes of making submissions to the Australian Competition and Consumer Commission (“**ACCC**”) in the course of the conduct of an access dispute, to which [*Access Seeker*] is a party, notified to the ACCC

in accordance with Division 8 of Part XIC of the *Trade Practices Act 1974* (Cth) (“**TPA**”) (or any other proceedings or appeals related to the access dispute) and in which Telstra relies on the TEA Model and/or an unredacted version of it; or

- (ii) the purposes of making submissions to the ACCC during the course of the ACCC’s consideration of an ordinary access undertaking given to the ACCC by Telstra in accordance with Division 5 of Part XIC of the TPA where Telstra relies on the TEA Model and/or an unredacted version of it; or
- (iii) the purposes of any application made to the Australian Competition Tribunal (“**the Tribunal**”) under section 152CE of the TPA for review of a decision made by the ACCC in respect of an Access Undertaking; or
- (iv) any other purpose approved by Telstra in writing,

(“**the Approved Purposes**”), and, to the extent that any submission or other document is submitted to the ACCC, the Tribunal or given to any person by me or [*Access Seeker*] as permitted by this Undertaking and which contains any Telstra confidential information:

- (A) that submission or document will be clearly marked as a confidential submission or confidential document containing Telstra confidential information that is subject to this Undertaking;
 - (B) the Telstra confidential information will be clearly identified within the submission or document;
- (b) comply with any reasonable request or direction from Telstra regarding the Telstra confidential information.

4 Subject to paragraph 5 below, I will not disclose any of the Telstra confidential information to any other person without the prior written consent of Telstra.

5 I acknowledge that I may disclose the Telstra confidential information to which I have access to:

- (a) ACCC employees for the Approved Purposes;
- (b) any member of the Tribunal and their administrative assistants if the ACCC makes a decision to accept or reject an Access Undertaking and that decision is challenged in the Tribunal;
- (c) any employee, external legal adviser or independent expert of [*Access Seeker*] for the Approved Purposes provided that:
 - (i) the person to whom disclosure is proposed to be made (“**the person**”) has been identified to Telstra in writing and Telstra has approved the person as a person who may receive the Telstra confidential information;
 - (ii) the person has signed a confidentiality undertaking in the form of this Undertaking or another form acceptable to Telstra; and
 - (iii) the signed confidentiality undertaking of the person has been served on Telstra;
- (d) to any secretarial, administrative and support staff who perform purely administrative tasks and who assist me or any person referred to in paragraph 6(c) for the Approved Purposes; and
- (e) to other persons, if required to do so by law, but then only:
 - (i) if I notify Telstra of that request as soon as practicable;
 - (ii) to the person(s) to whom I am obliged to provide the Telstra confidential information;
 - (iii) to the extent necessary to comply with the legal requirement; and
 - (iv) if I notify the recipient of the Telstra confidential information that the information is confidential to Telstra.

6 I will establish and maintain security measures to safeguard the Telstra confidential information that is in my possession from unauthorised access, use, copying, reproduction or disclosure and will protect the Telstra confidential information using the same degree of care as a prudent person in my position would use to protect that person’s confidential information.

7 Except as required by law and subject to paragraph 10 below, within a reasonable time after whichever of the following first occurs:

- (a) if there is no Access Undertaking before the ACCC or the Tribunal for decision, the Access Dispute is resolved; or
- (b) if there is no Access Dispute before the ACCC for arbitration, a decision is made to accept or reject the Access Undertaking; or
- (c) my ceasing to be employed by, retained by, an officer, a member or a representative of [*Access Seeker*] (provided that I continue to have access to the Telstra confidential information at that time) ; or
- (d) my ceasing to work for or represent [*Access Seeker*] in respect of the Approved Purposes; or
- (e) my commencing employment with any other telecommunications carrier or service provider,

I will destroy or deliver, or cause to be destroyed or delivered, to Telstra the Telstra confidential information and any documents or things (or parts of documents or things), constituting, recording or containing any of the Telstra confidential information in my possession, custody, power or control.

Note: For the purpose of paragraph 7(a) above, an Access Dispute is resolved where:

- (i) the ACCC makes a final determination in respect of it pursuant to section 152CP of the TPA; or
- (ii) it is withdrawn pursuant to section 152CN of the TPA; or
- (iii) it is otherwise terminated.

For the purpose of paragraph 7(b) above, a decision is made to accept or reject an Access Undertaking where:

- (i) the Access Undertaking is withdrawn;
- (ii) 21 days have expired after a decision has been made by the ACCC or the Tribunal to accept or reject the Access Undertaking and there are no outstanding applications, appeals or other legal proceedings in relation to the Access Undertaking or the decision; or
- (iii) a decision is made by the Tribunal to accept or reject the Access Undertaking pursuant to section 152CF of the *Trade Practices Act 1974 (Cth)*.

8 Nothing in this Undertaking shall impose an obligation upon me in respect of information:

- (a) that is in the public domain; or
- (b) that has been obtained by me otherwise than from
 - (i) Telstra;
 - (ii) the ACCC;
 - (iii) another person who has signed a confidentiality undertaking; or
 - (iv) another person who has an obligation of confidence in relation to the Telstra confidential information (or any part of it), an Access Dispute or an Access Undertaking;

provided that the information is not in the public domain and/or has not been obtained by me by reason of, or in circumstances involving, any breach of a confidentiality undertaking or a breach of any other obligation of confidence in favour of Telstra or by any other unlawful means.

9 I acknowledge that damages may not be a sufficient remedy for any breach of this Undertaking and that Telstra may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach of this Undertaking, in addition to any other remedies available to Telstra at law or in equity.

10 The obligations of confidentiality imposed by this Undertaking survive the destruction or delivery to Telstra of the Telstra confidential information pursuant to paragraph 7 above.

11 I acknowledge that this Undertaking is governed by the law in force in the State of Victoria and I agree to submit to the non-exclusive jurisdiction of the court of that place.

12 In this Undertaking:

“**Access Dispute**” means an access dispute of the kind described in paragraph 3(a)(i) of this Undertaking;

“**Access Undertaking**” means an ordinary access undertaking of the kind described in paragraph 3(a)(ii) of this Undertaking; and

Signed: _____

Dated: _____

ATTACHMENT 1

- 1 Any document or information (whether or not within a document) provided to me which Telstra nominates as Telstra Category 1 confidential information for the purposes of this Undertaking.

Note: the intention is that the information nominated as Telstra Category 1 confidential information will equate to Telstra Category 1 information the subject of confidentiality undertakings executed by external advisers.

Appendix C: Legislative background

1. Long-term interests of end-users (LTIE)

The ACCC has published a guideline explaining what it understands is meant by the phrase ‘long-term interests of end-users’ in the context of its declaration responsibilities (although there have been amendments to the Act definition of the LTIE since that guide was published).⁵⁰ The ACCC’s view is that a similar interpretation is appropriate in the context of assessing an undertaking.

In a broad sense, the ACCC considers that terms and conditions in an undertaking might promote the LTIE if they are likely to contribute towards the provision of services at lower prices and/or higher quality, or contribute to a greater diversity of services being available to end-users.

More specifically, in determining whether a particular thing promotes the LTIE, subsection 152AB(2) of the Act requires the ACCC to have regard to whether the terms and conditions are likely to result in the achievement of three specific objectives. Subsection 152AB(3) limits the matters to which the ACCC may have regard to these three objectives alone when assessing whether an undertaking is in the LTIE. These objectives are:

- the objective of promoting competition in markets for carriage services and services supplied by means of carriage services
- the objective of achieving any-to-any connectivity in relation to carriage services that involve communication between end-users
- the objective of encouraging the economically efficient use of, and economically efficient investment in:
 - the infrastructure by which carriage services and services provided by means of carriage services are supplied, and⁵¹
 - any other infrastructure by which listed services are, or are likely to become, capable of being supplied.⁵²

LTIE objective one – promoting competition

In determining the extent to which an undertaking is likely to result in the achievement of promoting competition in markets for listed services the Act obliges the ACCC to have regard to the extent to which the undertaking will remove obstacles to end-users of listed services gaining access to listed services. However, the ACCC is not limited to this and may consider other matters in determining whether an undertaking will achieve the promotion of competition in markets for listed services.

LTIE objective two – achieving any-to-any connectivity

Subsection 152AB(8) of the Act specifies that the objective of any-to-any connectivity is achieved if, and only if, each end-user who is supplied with a carriage service that involves communication between end-users is able to communicate, by means of that service, with

⁵⁰ ACCC, *Telecommunications Services — Declaration Provisions: a Guide to the Declaration Provisions of Part XIC of the Trade Practices Act, July 1999.*

⁵¹ subparagraph 152AB(2)(e)(i)

⁵² subparagraph 152AB(2)(e)(ii)

each other end-user who is supplied with the same service or a similar service, whether or not the end-users are connected to the same telecommunications network.

LTIE objective three – encouraging efficient use of and investment in infrastructure

In the ACCC's view, having regard to 'the objective of encouraging the economically efficient use of, and economically efficient investment in ... infrastructure' requires an understanding of the concept of economic efficiency. This concept consists of three components:

- Productive efficiency

This is achieved where individual firms use resources such that goods and services are produced using the least cost combination of inputs;

- Allocative efficiency

This is achieved where the prices of resources reflect their underlying costs so that resources are then allocated to their highest valued uses (i.e. those that provide the greatest benefit relative to costs);

- Dynamic efficiency

This reflects the need for industries to make timely changes to technology and products in response to changes in consumer tastes and in productive opportunities.

Subsection 152AB(6) lists the matters the ACCC must have regard to in determining the extent to which the terms and conditions of an undertaking are likely to result in the achievement of the above objective. Those matters are:

- Whether it is, or is likely to become, technically feasible for the services to be supplied and charged for, having regard to:
 - 1) the technology that is in use, available or likely to become available; and
 - 2) whether the costs that would be involved in supplying, and charging for, the services are reasonable or likely to become reasonable; and
 - 3) the effects, or likely effects, that supplying, and charging for, the services would have on the operation or performance of telecommunications networks
- the legitimate commercial interests of the supplier or suppliers of the services, including the ability of the supplier or suppliers to exploit economies of scale and scope;
- the incentives for investment in:⁵³
 - 1) the infrastructure by which the services are supplied; and
 - 2) any other infrastructure by which the services are, or are likely to become, capable of being supplied.

However the ACCC is not limited to these matters in its assessment of the extent to which a particular undertaking is likely to achieve the above objective (subsection 152AB(7)).

⁵³ Subsection 152AB(7A) was inserted into the Act in September 2005. This subsection requires that the ACCC, in determining incentives for investment, must have regard to the risks involved in making the investment.

2. Legitimate business interests of the carrier, and the carrier's investment in infrastructure used to provide the service

The ACCC is of the view that the concept of legitimate business interests should be interpreted in a manner consistent with the phrase 'legitimate commercial interests' used elsewhere in Part XIC of the Act. Accordingly, it would cover the carrier's or carriage service provider's interest in earning a normal commercial return on its investment.

However, as is explained in the ACCC's guide "*Access Pricing Principles – Telecommunications*" it is unlikely the access provider's legitimate business interest would extend to achieving a higher than normal commercial return through the use of market power.⁵⁴ For example, access prices should not, in most cases, be artificially inflated by the lack of competition in the supply of infrastructure services. However, carriers should also not be precluded from earning higher than normal commercial returns where these returns are generated from, for example, innovative investments or unique cost-cutting measures rather than through the exercise of market power.

Following on from this, the access provider's legitimate business interests do not extend to receiving compensation for loss of any 'monopoly profits' that occurs as a result of increased competition. In this regard, the Explanatory Memorandum for the *Trade Practices Amendment (Telecommunications) Bill 1996* states:

... the references here to the 'legitimate' business interests of the carrier or carriage service provider ... are intended to preclude arguments that the provider should be reimbursed by the third party seeking access for consequential costs which the provider may incur as a result of increased competition in an upstream or downstream market.⁵⁵

When considering the legitimate business interests of the carrier or carriage service provider in question, the ACCC also considers what is necessary to maintain those interests. This can provide a basis for assessing whether particular terms and conditions in the undertaking are reasonable to maintain those interests.

3. Interests of persons who have rights to use the declared service

Persons who have rights to use a declared service will, in general, use that service as an input to supply carriage services, or a service supplied by means of carriage services, to end-users. In the ACCC's view, these persons have an interest in being able to compete for the custom of end-users on their relative merits. Terms and conditions that favour one or more service providers over others and thereby distort the competitive process may prevent this from occurring and consequently harm those interests.

4. Direct costs of providing access to the declared service concerned

Direct costs are those costs necessarily incurred in or caused by the provision of access. As stated in the same explanatory memorandum mentioned above:

... the references here ... the 'direct' costs of providing access are intended to preclude arguments that the provider should be reimbursed by the third party seeking access for consequential costs which the provider may incur as a result of increased competition in an upstream or downstream market.⁵⁶

⁵⁴ ACCC, *Access Pricing Principles – Telecommunications*, July 1997, p. 9

⁵⁵ *Trade Practices Amendment (Telecommunications) Bill 1996 Explanatory Memorandum*, p.46.

⁵⁶ *Trade Practices Amendment (Telecommunications) Bill 1996 Explanatory Memorandum*, p.46.

This requires that an access price should not be inflated to recover any profits the access provider (or any other party) may lose in a dependant market as a result of the provision of access.

This criterion also implies that, at a minimum, an access price should cover the direct incremental costs incurred in providing access. It also implies that the access price should not exceed the stand-alone costs of providing access.⁵⁷

5. The operational and technical requirements necessary for the safe and reliable operation of a carriage service, a telecommunications network or facility

The ACCC understands this criterion to mean that an access price should not lead to arrangements between access providers and access seekers that will encourage the unsafe or unreliable operation of a carriage service, telecommunications network or facility.⁵⁸

6. Economically efficient operation of a carriage service, telecommunications network, or a facility

In the ACCC's view, the phrase 'economically efficient operation' embodies the concept of economic efficiency set out in section 1 above. It would not appear to be limited to the operation of carriage services, networks and facilities by the carrier or carriage service provider supplying the declared service, but would seem to include those operated by others (e.g. service providers using the declared service).

To consider this matter in assessing an undertaking, the ACCC may consider whether particular terms and conditions enable a carriage service, telecommunications network or facility to be operated in an efficient manner. This may involve, for example, examining whether they allow for the carrier or carriage service provider supplying the declared service to recover the efficient costs of operating and maintaining the infrastructure used to supply the declared service under consideration.

In general, there is likely to be considerable overlap between the matters that the ACCC takes into account in considering the LTIE and its consideration of this matter.⁵⁹

⁵⁷ Stand-alone costs are the costs an access provider will incur providing a service assuming the access provider produced no other services.

⁵⁸ ACCC, *Access Pricing Principles – Telecommunications*, July 1997, p. 10.

⁵⁹ In considering whether particular terms and conditions will promote the LTIE, the ACCC must have regard to their likely impact on the economically efficient use of, and economically efficient investment in, the infrastructure by which carriage services and services provided by means of carriage services are supplied. Clearly there is overlap between the phrase 'economically efficient use of ...' in the LTIE criteria and the phrase 'economically efficient operation of ...' in this criterion.

Appendix D: List of Questions

Consistency with the standard access obligations

- Do you think Telstra's ULLS description is more limited than the ULLS Declaration to the extent that it would affect the ability of Telstra to meet its SAOs? If so, provide examples of potential situations where you consider the ULLS service as described by Telstra would not fall within the scope of the Declaration for the declared service.
- If you consider that Telstra's Undertaking should specify requirements, relating to the provision of equivalent supply, quality and fault handling of the declared service, provide example(s) of terms that are consistent with the obligation of providing equivalent supply, quality of service and fault handling performance.
- Do you think the POI and Network Boundary described in the Undertaking is consistent with the SAO to permit interconnection of facilities? If not, please explain, and propose alternative terms that you consider are consistent with the SAOs.
- Should the Undertaking contain further terms and conditions relating to the provision, timing and content of billing information? If not, please provide reasons for that view. If so, please propose alternative terms that you consider are consistent with the SAOs.

Reasonableness of terms and conditions

Ability to properly assess the TEA model

- Is the documentation provided by Telstra sufficiently comprehensive and clear for parties to understand and navigate the TEA model? If not, indicate what other information you require to be able to assess the TEA model.
- Is the TEA model sufficiently flexible to allow reasonable ranges of values for key parameters to run different scenarios at an appropriately disaggregated level? If not, provide evidence to support your reasons.
- Does the TEA model identify all relevant parameters required to assess the cost outcomes? If not, provide evidence to support your reasons.
- Do you consider the formulas underlying each individual module (and any assumptions behind the use of these formulas and modules) to be sound? If not, provide evidence to support your reasons.
- Do you consider the reactions of the model to changes in values of key inputs to be consistent based on your experience, economic intuition and financial principles? If not, provide evidence to support your reasons.
- Do you consider there are any internal inconsistencies in the model or the formulas? If so, provide evidence to support your reasons.

Telstra's proposed ULLS monthly charge

- Do you consider the TEA model capable of producing reasonable TSLRIC cost estimates having regard to the legislative criteria set out in section 152AH?
- Do you consider the model takes account of existing and future demand? Do you consider this relevant in considering whether the cost model is capable of producing reasonable TSLRIC cost estimates?

- Should the ACCC consider the assessment of only one part of the ULLS monthly charge (that is, not specify the ULLS specific charge)?

Network design and engineering rules

- Do you consider the model applies best-practice, forward-looking engineering practices to determine plant and equipment requirements for providing ULLS? In discussing this issue, interested parties are asked to address the relevant statutory criteria in their comments.
- Is a model based on the actual existing Telstra network likely to generate cost estimates that are forward looking and efficient (and therefore in line with the section 152AH criteria)? Would these estimates differ from those of a hypothetical efficient forward-looking network?
- Do you consider Telstra has used the appropriate network assets to model an efficient forward-looking network that provides ULLS? Comment on whether the TEA model includes costs that are legitimately incurred in the efficient and forward-looking provision of the ULLS. Is there over-provisioning of elements in the network?
- Do you consider that the manner in which Telstra has optimised the distribution and main cable routes is appropriate to model an efficient and forward-looking model?

Cost valuation

- Do you consider the cost estimates reflect the 'replacement' cost of network assets, that is do they:
 - reflect the most efficient technology,
 - reflect the competitive market rates for relevant plant and equipment.
- The model does not appear to determine the forecasted network cost estimates for each year of the Undertaking. What do you consider would be appropriate price trends for these cost estimates?
- Comment on the appropriateness of the value for the loading factor for indirect overheads.

Trenching costs

- Comment on Telstra's approach of deriving trenching costs. Having regard to the reasonableness criteria under section 152AH, do you consider that trenching costs should take account of the different surfaces (and therefore different construction activities) in estimating the cost of the ULLS? If Telstra were to lay copper today, would it face trenching costs that take account of different surfaces? Provide reasons to support your submissions.
- Comment on the appropriateness of the application of input ratios that identify the percentage of instances of different types of terrain, and probable occurrence of various types of placement activities where a plant is built.
- What should the surface barrier assumption be?

Trench sharing

- If Telstra were laying the copper today, would Telstra be able to avail itself of the existing conduits laid by gas, electric or water utilities? Are there limitations that Telstra might face in its ability to share with other utilities?
- Is it appropriate to have regard to Telstra's historical trench sharing figures under a forward-looking network?
- Has Telstra taken account of all trench sharing activities in the copper network?
- Comment on the trench sharing default parameter values. Are these appropriate values?

Operations and maintenance and indirect cost factors

- The RAF does not distinguish between costs across Bands. The RAF also provides revenue and cost data for a range of Telstra's networks (fixed and mobiles). As the Undertaking is for only Band 2 and relates only to the CAN, is the approach used by Telstra to estimate costs using the total value of all the services in the RAF reasonable?
- Do you consider that the O&M costs for the distribution and main network should include only those costs associated with the copper network (that is, properly exclude provision of the service on the fibre network)?
- Comment on Telstra's approach to calculating O&M expense and indirect cost factors. In particular, provide views on Telstra's approach to using:
 - the total sum of the cost to all RAF products;
 - the total sum of all directly attributable, attributable and non-attributable costs for all these products;
 - the total sum of the cost to Internal and External Wholesale Businesses.
- Comment on whether Telstra should be using historical or current costs in factor cost estimates. Comment on whether the historical O&M and indirect costs used to calculate factor percentages reflect efficient costs. Are Telstra's historic cost estimates for the ULLS reasonable? In discussing this issue, interested parties are asked to address their comments in accordance with the relevant statutory criteria.
- Are the categories used to calculate O&M and indirect cost factors appropriate?
- Are the adjustments applied to the O&M and indirect costs appropriate? For instance, is the forward-looking adjustment for Investment Costs in Ducts and Pipes and Copper Cables appropriate?
- Do you consider that Telstra is more efficient under a TEA model design where the level of O&M expenses calculated in the TEA model is approximately 10 per cent below Telstra's actual O&M expenses allocated to ULLS in the RAF?

Cost of capital

- Having regard to the regulatory criteria in section 152AH of the Act, is Telstra's range of WACC values appropriate and should the upper value of that range be extended by more than the lower value? Are the costs of under-estimating the WACC greater than those of over-estimating the WACC (i.e. are there any asymmetric costs)? Provide evidence, where possible, to support your submission.

- How should the WACC inputs be calculated? Provide evidence, where possible, to support your submission.
- Advise whether you consider Telstra preferred WACC parameter values are appropriate. Provide evidence to support your submission.
- Are there any other issues concerning the appropriate WACC, which the ACCC should consider?

Calculating annualised and unitised ULLS costs

- Is Telstra's method of calculating annualising and unitising network costs appropriate? Provide reasoning to support your submission.
- Is assuming end of year cash flows an appropriate assumption? Provide reasoning to support your submission.

Depreciation

- Comment on the appropriateness of Telstra's default depreciation schedule. Do the values appropriately reflect the expected decline in the economic value of the underlying assets? Provide evidence where possible, with reference to the reasonableness criteria set out in section 152AH of the Act.

Reasonableness of the non-price terms and conditions

- Do you consider that these non-price terms and conditions ensure access seekers have the ability to reasonably access the ULLS? Provide reasoning to support your submission.
- Are non-price terms and conditions contained in the Undertaking consistent with the reasonableness criteria set out in section 152AH of the Act? Provide reasoning to support your submission.