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22 July 2008

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Dear Dr Warren

### **Telstra's ULLS Undertaking and Telstra Efficient Access (TEA) Model**

I refer to previous correspondence and, in particular, to your letter of 15 July 2008.

The ACCC is surprised at Telstra's response to this matter, which exhibits both an apparent misunderstanding of conventional regulatory practice and a lack of appreciation of the considerable historical context in relation to issues of accuracy and transparency, both in relation to the Telstra Efficient Access (TEA) model and its predecessor.

Telstra made continuous representations during TEA model development and contemporaneously with the public release of the TEA model, that the TEA model would be a new, accurate and more transparent approach to modelling, and represent a clear shift away from the lack of transparency issues that bedevilled its previous cost model. Telstra conceded that it did not have 'clean hands' on the issue of cost model transparency with its previous model, but asserted that TEA model would be designed to be more transparent to allow for the ACCC and industry to understand and have confidence in the model.

Given Telstra's commitment to transparency, the ACCC was surprised by Telstra's reaction to the disclosure by the ACCC of errors in the TEA model in its letter of 8 July 2008. The TEA model and ULLS undertaking itself were submitted suddenly by Telstra on 21 December 2007, coinciding with communication by the ACCC of a

final arbitration determination for a ULLS matter on 20 December 2007. Shortly after the lodgement of the TEA model, the ACCC sent an information request to Telstra, which was also published on the ACCC website, notifying industry of a malfunction in the first submitted version of the TEA model. Telstra subsequently submitted another version of the TEA model along with lodgement of a new ULLS undertaking.

However, it is now apparent that Telstra has not been fully transparent about TEA model developments and issues in the current process. In particular, Telstra states that it has adopted a practice over some months of accumulating a list of issues with the TEA model until it deems that the issues have reached a level of materiality to warrant the release of a new version of the TEA model. It has only been in response to the ACCC alerting Telstra of errors found in the TEA model, and requesting Telstra to confirm that it was not aware of further errors, that Telstra has chosen to disclose further errors within the TEA model.

Telstra's thus far unilateral assessment of the materiality of the errors in the TEA model may or may not ultimately be accurate. This is beside the point. The issue here is that after repeated claims of increased transparency, Telstra has reserved to itself the ability to release information at a time of its own choosing. That does little to inspire confidence in Telstra's commitment to a transparent process.

The ACCC does not accept that a process existed between the ACCC and Telstra to deal with modifications to Telstra's modelling after the lodgement of its undertaking, although it accepts that this episode demonstrates the need to develop one. The ACCC welcomed the bilateral dialogue with Telstra in late 2007 about TEA model development and alternative pricing approaches, such as those that apply in other regulated sectors. Telstra then decided to lodge the current ULLS Undertaking, which is supported by a LRIC model. Dialogue with any party prior to lodgement of an undertaking is consistent with the ACCC's long standing process to assist parties in the formulation of an undertaking, given the accept/reject nature of the ACCC's decision.

The ACCC did indicate that it would attempt to advise Telstra of errors it identifies in the TEA model, where practicably possible. That is precisely what the ACCC has done in this instance. However, it has also fulfilled its obligations to reasonably and contemporaneously inform industry of errors in the TEA model, given multi-lateral consultation is an integral part of the regulatory undertaking assessment process.

The ACCC is well aware of the difficulties inherent in cost modelling exercises. It appreciates that any cost model will need to be refined and adjusted to ensure that the model is robust. It understands that it may not be practical for Telstra to release a new version of the TEA model contemporaneously every time a refinement or adjustment to the TEA model is required.

However, as Telstra is aware, the ACCC adopts a public and transparent process when assessing undertakings, which includes inviting parties to express their views on material submitted as part of an undertaking. The ACCC notes that interested parties will be limited in their ability to make well-informed comments if Telstra's supporting submissions have errors and/or parties are not informed of any changes to such material. The drafting of the TEA model confidentiality undertakings place an

obligation on users of the TEA model to notify Telstra about any errors in the TEA model. However, it is not apparent that Telstra places a similar obligation on itself with respect to users. The ACCC reminds Telstra that, as it has submitted the TEA model in support of its ULLS Undertaking, a duty to disclose any errors and required changes in the model to the ACCC and industry, also rests with Telstra. The ACCC considers that there is a clear discord with the manner in which TEA model errors and changes are disclosed. This needs to be remedied. The ACCC will work to develop a process in which errors and subsequent adjustments are publicly disclosed, such as by publishing a list of all new and existing errors and how these have been rectified, on the ACCC website for the benefit of all users of the model.

Whilst the ACCC accepts that the development of its own model has taken longer than it would have preferred, Telstra would, of course, appreciate the complexity of the task. The uses to which the ACCC will place on the model it is developing will be largely dependent upon Telstra. The ACCC has no particular enthusiasm for entering a world of 'duelling models'. If Telstra is able to satisfy the ACCC as to the robustness of its own model and, in particular, the transparency of its process, it may be that the ACCC's model would be used as a high level check and balance of Telstra's model.

Finally, I note the much repeated assertion in your letter that the ACCC prices the ULLS below cost. As Telstra would be aware, the ACCC is bound by legislation to ensure prices recover direct costs. The ACCC has, and will continue, to rely upon sound, factually based and verified costing information which Telstra and other parties place before it in fulfilling its regulatory pricing functions. This is precisely the process the ACCC is currently undertaking in relation to the TEA model.

The ACCC requests that Telstra advise the ACCC when the new version of the TEA model, with currently known errors rectified, will become available to the ACCC and industry. The ACCC would prefer that this not disrupt the current consultation process for the ULLS Undertaking. If Telstra can release its new version of the TEA model in the near future, the timeframes for the current consultation process may still prove adequate.

The ACCC also requests that Telstra provide it with the two TEA model documents referred to in clause 11 of the *Telecommunications (National Broadband Network - Designated Information) Determination 2008 (No.1)*, namely 'TEA model Schematic dated May 2008' and 'TEA model Data Dictionary dated May 2008'. These documents clearly relate to model utilisation, but were not submitted with the TEA model as part of Telstra's ULLS Undertaking.

The ACCC will publish this letter and your letter of 15 July 2008 on its website.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michael Cosgrave', with a small flourish at the end.

Michael Cosgrave  
Group General Manager  
Communication Group