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Chris Ratchford
Communications Group
Australian Competition &
Consumer Commission
Email: chris.ratchford@accc.gov.au
5 October 2008

Dear Chris

**Re: Draft pricing principles and indicative prices for
LCS, WLR, PSTN OTA, ULLS, LSS
August 2009**

ATUG is pleased to offer the following comments on the Draft Pricing Principles and Indicative Prices.

The Australian Competition and Consumer Commission (ACCC) has recently extended the declarations for six declared services and now proposes to set indicative prices for wholesale access to these services until 2012.

The ACCC has indicated for some time that a move to cost-based pricing for all six fixed services would occur.

ATUG: supports the move to consistent application of cost-based pricing for all 6 declared services. However, the 2009 Telco Reform Package Bill outlines a very significant policy change in regard to Structural Separation – now to be considered by Telstra. If Telstra chooses structural separation there may be a number of issues that will require re-consideration by the ACCC in regard to fixed network costs and prices.

ATUG: supports the move to more robust data priced pricing models for services where reflecting a geographic component is necessary for cost based pricing. At the same time ATUG would make the point that some groups of customers require access in more than one geographic zone such as corporate businesses with branch structures, government service delivery organisations with dispersed client facing operations and community sector service deliverers. For these customers a National Market analysis is relevant for determining the existence of effective competitive choice.

The ACCC commissioned Analysys cost model has now been developed and subjected to a rigorous assessment and review process.

Furthermore, the ACCC has compared these cost estimates against other available cost estimates both internationally and locally and the comparisons suggest they are reasonable.

ATUG: supports the use of international benchmarks. One of the interests of end users is to ensure telecommunications costs in Australia do not reduce competitiveness. Benchmarks have to be “robustly relevant” to be of use. The benchmark numbers indicated in the ACCC report seem to provide this level of confidence. Prices for telecommunications services around international benchmarks would be a good outcome for end users.

ATUG notes this result is achieved in part by excluding Zone B services. This reflects the demography/geography problem in Australia which has to be solved by a combination of Government subsidy and commercial funds or by Government subsidy alone where there is no business case. In ATUG’s view explicit subsidy, rather than hidden cross-subsidy, is a preferable approach.

Consideration of pricing principles and indicative prices for the fixed services has occurred in the context of the Government’s National Broadband Network (NBN).

ATUG: the deployment of the NBN provides a structurally separate, wholesale only, open access solution which enables strong competition at retail levels. The impact of the NBN will depend on the outcomes of discussions over coming months on the role and relationship of existing telco companies in regard to NBN Co.

Furthermore, the ACCC also notes the government is currently considering a range of options for reforming the telecommunications competition and consumer framework, particularly in the transition to the National Broadband Network, and is considering submissions already received on its discussion paper, *Regulatory Reform for 21st Century Broadband*

ATUG: Once the next step in telco sector reform is clear (after Telstra’s decisions) ATUG would prefer a “set and forget” approach to the copper network. This will provide certainty for end users, as well as industry players, over the relevant timeframe.

Overall, the cost based price structure results in clear incentives to invest in alternative DSLAM infrastructure by taking the ULLS. The pricing structure is such that consumers are still more cost effectively served through a ULLS based service than through a combined line rental and LSS combination (the LSS is a product that is only provided to customers who are already paying voice line rental).

ATUG: notes that the ACCC position on the enduring bottleneck characteristics of the fixed network. The ACCC still favours facilities based competition (albeit at

a different level) over services competition. In this case, from ATUG's perspective, the ACCC will need to take action to ensure that such competition is effective in practice. Beyond pricing principles and the prices derived from them, it is clear that non-price terms and conditions play an important role in securing actual choice for end users. Access to exchanges, time frames for connection, fault repair processes also require the ACCC's attention under Part XIB. The introduction of a Telecoms Adjudicator foreshadowed in the Telco Reform Package is a response to these issues and an appropriate addition even with streamlined Part XIB provisions.

The cost to end users of ineffective competition in the telecommunications market for broadband has led the Government to develop and fund the National Broadband Network. In the transition to this network end users should have much more effective choice of broadband service providers over the existing fixed network.

ATUG supports the approach whereby re-sale options are available but investment where economically efficient is encouraged.

Legislative Framework

The TPA does not specify the matters the ACCC must consider in making pricing principles. However, the ACCC considers that in making pricing principles it should have regard to the object of Part XIC of the TPA, being the promotion of the long-term interests of end-users (LTIE).

ATUG: has consistently supported the objective of LTIE for all regulatory decisions in the telco sector as providing the best balance of competing interests. ATUG does not support a move to "investment" or "innovation" as the basis for regulatory decisions. These are outcomes of effective competition in a market. ATUG supports the ACCC's direction in accepting the enduring bottleneck characteristics of the fixed network and suggests this means regulatory decisions need to be focused on the efficiency of investment and not on securing investment "at any cost". Efficient investment is a key concern for end users as it flows directly into pricing.

The ACCC is particularly interested in industry participants and other stakeholders' views on:

- the adoption of TSLRIC+ for the six fixed network services
- the implementation of TSLRIC+

ATUG: supports the move to consistent application of cost-based pricing for all 6 declared services. However, the 2009 Telco Reform Package Bill outlines a very significant policy change in regard to Structural Separation – now to be considered by Telstra. If Telstra chooses structural separation there may be a number of issues that will require re-consideration by the ACCC in regard to fixed network costs and prices.

- the adoption of a glide path for those services subject to a price shock

ATUG: suggests further work is needed on the ULLS Glide Path after Telstra's decision in regard to Structural Separation is known. The ACCC focused on Price Shock for industry players. ATUG's focus is on Price Shock for end users – particularly end users in the business market. The price move for Band 1 users is the most significant with prices going from \$6.60 to \$16.90 per month in 2009-2010. According to Table 1 almost 29,000 ULLS customers will be affected by this price increase compared to only 8000 customers in Band 3 who will see a price decrease of about 50%. ATUG also notes that in Band 3 where prices have moved from \$25 to \$31.30 there are only 8000 ULLS customers. Given this history, it may be that the glide path suggested decreases demand for broadband in Zone A at a time when ubiquity of access in the customer base is becoming necessary for changes to service delivery in other sectors such as health, education and other government services.

- the adoption of two tiered pricing for ULLS and WLR

ATUG: supports this approach as reflecting the reality of Australia's telecommunications market in which delivery of services to the rural and remote areas becomes increasingly expensive with greater distances and smaller populations. ATUG notes the NBN has a 90%:10% split reflecting the Zone A 82.5%: Zone B 17.5% split. It is clear to ATUG that providing services in these more remote markets requires Government subsidy. This should be provided directly and not through commercial market cross-subsidy. Government funding for NBN roll-out reflects this approach as did the Extended Zones tender in earlier years.

ATUG: would be interested to understand the similarity or difference in approach to pricing between the telecommunications sector and other sectors facing significant costs from having to provide ubiquitous access to business and consumer end users e.g., energy and water.

- the adoption of a single national rate for PSTN OTA, LCS and LSS, and

ATUG supports this approach given market and technology developments with increased use of fibre and IP.

- other issues which parties consider relevant.

In addition to pricing decisions, ATUG suggests the ACCC take action to improve the switching process between broadband providers. The impact of customer choice on the broadband market has been stifled by poor switching processes which industry does not want to rectify. Given the timeframe of 8 years ahead of complete NBN roll-out ATUG believes it is time for industry to develop an appropriate switching process – the benchmark example is Mobile Number Portability. This process also required ACCC action by way of request to ACMA (ACA) to set timeframes for industry action to develop a process to support

choice and competition by end users.

The Telco Reform legislation provides an up-front price setting power for the ACCC and requires analysis of relevant markets. ATUG suggests this analysis includes a National Level analysis to take into account the requirements of organisations with geographically dispersed branches for whom there is little effective choice at present. ATUG has been advised by INTUG that the ERG in Europe is to undertake a specific survey of business users at national and international level, to assess the availability and competitiveness of network services.

Yours sincerely

A handwritten signature in black ink, appearing to read 'RSinclair'.

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