

Annexure G

**Optus, Submission to Australian Competition and Consumer Commission
on ULLS Pricing Principles and Indicative Prices**

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1. Introduction

- 1.1 In April 2008 the ACCC released a draft determination on Pricing Principles and Indicative Prices for the unconditioned local loop service (ULLS). The draft determination amends the ACCC's recent determination on ULLS Pricing Principles dated 21 November 2007 by providing indicative prices for the period ending 31 July 2009 for:
- ULLS monthly charges for Bands 1, 2 and 3;
 - ULLS Single Connection Charges;
 - ULLS Managed Network Migration (MNM) Connection Charges; and
 - ULLS Call Diversion Charges.
- 1.2 Optus supports the ACCC's decision to publish pricing principles and indicative prices for the ULLS at this time. This move provides access seekers with some degree of pricing certainty as they continue to make the investments required to compete in providing voice and broadband services to end users.
- 1.3 Optus also supports the use of the PIE II model to set indicative prices, provided the model is appropriately amended and parameterised. The ACCC is correct to reject the use of the untested TEA model at this stage. Telstra has shown complete disdain for the independent regulator and appeals bodies. Its claims cannot be trusted and should accordingly be ignored.
- 1.4 While the PIE II has its flaws, the ACCC's approach remains the best currently available method for setting ULLS access prices in the absence of a properly configured and tested cost model. The PIE II model (as amended and parameterised by the ACCC) is now producing prices much closer to the level of efficient cost than has previously been the case.
- 1.5 However, Optus notes with concern the ACCC's decision to take a "conservative position" to the estimation of some aspects of network costs that would tend to result in a higher estimate of costs than would otherwise be the case.¹ This approach raises the risk that the hard won recent advances in ULLS pricing may be compromised.
- 1.6 Optus notes that the indicative prices for ULLS monthly charges in Band 2 appear to be increasing rapidly. The difference between the indicative price for 2005/06 (\$12.30) and that for 2008/09 (\$15.20) is almost \$3 – an increase of almost 25% over only 3 years. This rate of growth – and the magnitude of the increase – is troubling. If this were petrol or grocery prices, the Government would be calling for a special ACCC inquiry.

¹ ACCC, 2008, Draft Determination, p.12

- 1.7 This is no time for complacency. Broadband is a significant commodity service and any price increase should be very well justified given their likely impact on consumers. It is imperative that Telstra's inflated cost estimates be reined in to prevent the erosion of competitive gains. The ACCC must continue to be vigilant in its scrutiny of Telstra's cost submissions. Optus urges the ACCC to take a firm stance on all assumptions made in order to determine ULLS access prices.
- 1.8 The second section of this paper contains Optus' submissions on particular issues relevant to ULLS monthly charges, including the role of TSLRIC, the appropriate cost model to apply, allocation of specific costs, a number of network costs issues and the structure of monthly charges.
- 1.9 The third section sets out submissions on other charges including Single Connection Charges, MNM Connection Charges; and Call Diversion Charges.

2. ULLS Monthly Charges

Role of TSLRIC

- 2.1 Optus encourages the ACCC to consider whether its TSLRIC+ pricing methodology may result in prices for access to the fixed line telecommunications network that are above the price that would be in the long term interests of end users, particularly in the context of the imminent National Broadband Network (NBN) rollout.
- 2.2 In applying its TSLRIC+ methodology, the ACCC seeks to create appropriate price signals to encourage an efficient build-buy decision on the part of access seekers. This requires a price based on the efficient cost of rebuilding the CAN afresh in each regulatory period. A price set below TSLRIC would encourage more efficient levels of utilisation of the network, and better promote competition (at least in the short term), compared to a TSLRIC-based price. However a lower price could also risk discouraging access seekers from investing in access networks themselves where such investment would be efficient. Further, cost recovery is in the access provider's legitimate business interests – and if its investment costs were not recovered, a lower price could discourage future investment.
- 2.3 Nevertheless, in setting these familiar objectives the ACCC must take into account changing circumstances – including the imminent NBN rollout. The NBN arguably reduces the need to encourage an efficient build-buy decision on the part of fixed line access seekers. The new network will be built as an overlay network on the copper CAN. It is intended to be an open access monopoly network, serving the bulk of end users. In this new telecommunications landscape, it is not expected that access seekers will build competing fixed line access networks. It is not appropriate, therefore, to base access prices on a forward looking analysis of the cost of building a network. (This is particularly the case where Telstra is seeking to recover costs it did not itself incur, such as trenching which requires boring through concrete driveways and returfing.)
- 2.4 While cost recovery is in the access provider's legitimate business interests, arguably Telstra's costs of constructing the copper CAN have been recouped many times over.
- 2.5 Given the need for regulatory certainty and the limited period over which the determination is to apply, Optus considers that it is still likely to be appropriate for the Commission to apply TSLRIC+ pricing at this stage. However this is an area that will require further consideration in future reviews.
- 2.6 Further, the ACCC should take account of the reduced role of build-buy signalling in assessing Telstra's cost submissions. In particular, it implies there is no need for the ACCC to give the "benefit of the doubt" to any arguments that an issue may lead to a price that is below

efficient cost. It also implies there is no justification for the ACCC to take a conservative approach to assessing Telstra's cost submissions because the risk of "regulatory error" has been substantially eliminated.

Appropriate cost model to apply

- 2.7 Optus submits that the ACCC should not place any weight on the Telstra Efficient Access (TEA) model in determining the 2008-09 ULLS indicative prices.
- 2.8 Optus agrees with the ACCC's view that the TEA model is as yet untested and has not been the subject of adequate review by parties external to Telstra. In this regard, Optus notes that whilst the model was first released on 21 December 2007, it received copies of the TEA model on 23 May 2008, but has not yet had adequate opportunity to review the model. A thorough review of the model is likely to take considerable time – the process undertaken in regard of the PIE II model has taken a number of years. For the ACCC to undertake such a review before making the ULLS indicative prices would result in significant delay.
- 2.9 Optus encourages the ACCC to release its new fixed-line network cost model without delay, in order that the new model may be used to set prices for 2008-09. Optus would be happy to provide the ACCC with any assistance it may require in design or parameterisation of this model.
- 2.10 Optus submits that, in the interim before the ACCC has consulted and settled upon its own fixed network cost model, it would be appropriate to use the PIE II model in determining the 2008-09 ULLS indicative prices, provided that model has been appropriately modified and parameterised by the ACCC.
- 2.11 The PIE II model (as amended and parameterised by the ACCC) is now producing prices much closer to the level of efficient cost than has previously been the case. This follows two years of detailed industry input on significant modelling and price assumptions. In recent decisions some of the most egregious examples of unreasonable price inflating practises in ULLS price setting (such as the averaging of monthly charges) have rightly been eliminated. Optus commends the ACCC for its determination in pursuing and securing these advances, which have significantly reduced monopoly profits in fixed line telecommunications and driven substantial growth in DSLAM investment and in competition in downstream markets. This in turn is creating improved prices and choice for end users of voice and broadband services across Australia.
- 2.12 However, Optus urges the ACCC to take a firm stance on parameters that are entered into the PIE II model and on all other assumptions made in order to determine ULLS access prices. Telstra's cost submissions relating to PIE II have been rejected by the Tribunal as incapable of producing an accurate estimate of the efficient forward-

looking costs of the CAN.² Accordingly, the ACCC must continue to be vigilant in its scrutiny of Telstra's cost submissions, which should not be accepted without stringent analysis.

Specific costs

- 2.13 The ACCC has proposed that that 'ULLS-specific costs' should be combined with 'LSS-specific costs' and 'Telstra's internal equivalent costs when providing internal line-sharing', and then allocated across the active number of ULLS, LSS and ADSL lines.
- 2.14 Optus supports the ACCC's principle that that 'ULLS specific costs' should not be recovered from ULLS lines alone.
- 2.15 However, Optus considers that ULLS specific costs should be allocated across all CAN lines, in which case (adapting the Tribunal's finding in the ULLS decision) a level playing field is achieved in respect of the costs which are specific to the ordering and provisioning of competing products such as services provided through access to the ULLS and services provided through access to Telstra's voice and data services.³
- 2.16 If this approach is not adopted, as a second best alternative Optus would support the ACCC's broad recovery base approach, which allocates across the active number of ULLS, LSS and ADSL lines.

Network costs

- 2.17 The ACCC has stated that the issues which influence (to varying degrees) the measurement of ULLS network costs include:
- whether to use the updated PIE II model with the ACCC's preferred inputs;
 - the weighted average cost of capital (WACC);
 - the price trends and the use of a tilted annuity;
 - the particular model inputs—trench sharing, asset lives, network planning, network provisioning, O&M factors and network design; and
 - the possible exogenous uplifts to the PIE II model's costs.

Application of Cost Model

- 2.18 The ACCC states that it has obtained network cost estimates for 2008-09 by applying a trend line to network costs estimated by the model for previous years.

² Telstra Corporation Ltd (No 3) [2007] ACompT3 at [261].

³ Telstra Corporation Limited (No 3) [2007] ACompT 3 [404].

- 2.19 Optus notes that the indicative prices for ULLS monthly charges in Band 2 appear to be increasing rapidly. The difference between the indicative price for 2005/06 (\$12.30) and that for 2008/09 (\$15.20) is almost \$3 – an increase of almost 25% over only 3 years. Growth at this rate in the ULLS access price will impact on competition in downstream markets – and on prices paid by end users.
- 2.20 Given the magnitude of the increase, Optus encourages the ACCC to re-examine the application of a trend line to network cost estimates. The ACCC should not simply turn the handle on its model and accept the output. A 25% increase in broadband access prices is significant and warrants further attention.

WACC

- 2.21 The ACCC has used a ‘post-tax vanilla’ WACC ranging from 8.6 per cent to 9.5 per cent for each relevant year. Optus’ views on selected WACC parameters are set out below.

Risk-free rate

- 2.22 The ACCC has taken the view that the risk-free rate should be the 10 year government bond rate, averaged in the period leading up to the relevant observation date.
- 2.23 Optus believes that the ACCC should reconsider its use of a 10 year Government bond rate as the risk free rate for the purpose of estimating the cost of debt capital. Optus believes a reasonable alternative for the ACCC to consider is to match the maturity of the debt instrument with the regulatory period.
- 2.24 If longer term rates are used to match the useful life of the asset (and there is an upward sloping yield curve) then the allowed cost of debt will compensate the access provider for risks that it is not taking. For example, the yield curve may be upward sloping because either the issuer may be expecting rates to rise, or it may simply be recognising the risk over the longer period. When regulation occurs in the next period, the access provider will be able to reset prices based on the new rates. If rates do actually rise during that first period then the provider will gain. Optus therefore considers that using a bond for a period longer than the regulatory period potentially allows the access providers to be over-compensated (or under-compensate if yield curves are downward sloping).
- 2.25 Optus considers that the ACCC should therefore consider estimating the risk-free rate using the 3 year government bond rate.

Asset beta

- 2.26 The ACCC has used an asset beta of 0.5, leveraged to provide an equity beta of around 0.83. The ACCC has taken the view that the

appropriate WACC for the ULLS is one based on a business providing access to a fixed-line customer access network.

- 2.27 Optus contends that the ACCC's asset beta should be adjusted to reflect the fact that operation of a CAN is lower than that of an operator of a PSTN. The risks involved in operating the local customer access network are more in the nature of utility businesses (such as electricity and gas transmission assets) and lower than the risks faced in operating the PSTN.

Tax rate

- 2.28 The ACCC has used a corporate tax rate to calculate the applicable WACC.
- 2.29 Optus contends that there is sufficient information to estimate the effective tax rate and this should be the rate adopted by the ACCC.

Asymmetry arguments

- 2.30 Optus supports the ACCC's view that no allowance should be made to accommodate claims of asymmetric consequences of over-estimating or under-estimating the WACC.

Price trends and tilted annuities

- 2.31 Optus submits that the Commission should continue to adopt a tilted annuity approach to the return on and of capital in its costing of ULLS charges.
- 2.32 With respect to the price trends, the Commission has continued to apply values calculated using ABS index data (wages and labour) for the years 2001-02 to 2005-06. Optus submits that the ACCC should re-examine its methodology for calculating price trends.
- 2.33 Optus has undertaken some preliminary analysis based on the future price of copper. The resulting price trends for some key PIE II network elements are reproduced in table 1 below, along with the ACCC's trends for the purpose of comparison.

Table 1: Asset price trends for PIE II network elements

Asset Category	Telstra / ACCC	Optus analysis
Distribution cable	4.13%	5.68%
Main cable	4.46%	6.24%

- 2.34 Copper price estimates for the years 2008 to 2010 were derived from contracts available in the futures markets of the London (LME) and

New York (NY Comex) exchanges.⁴ Optus used the resulting price trend and applied it to the blended (labour and materials) 5 year CAGR index for copper used in PIE II.

- 2.35 Given that the purpose of this review is only to provide indicative prices, Optus has not undertaken a comprehensive analysis of this issue. However Optus submits that moving forward the ACCC should consider applying price trends based on contemporaneous forecasts of asset prices.

Particular cost model inputs

Trench sharing

- 2.36 Optus submits that the 13 per cent figure chosen by the ACCC is likely to significantly understate historical trench sharing and that a higher trench sharing value should be used. The ACCC itself has previously accepted that that ‘the 13 per cent figure might now understate historical trench sharing’.
- 2.37 Optus has derived figures that provided a reasonable estimate of the level of trench sharing that should be included in PIE II. Firstly, Optus considered the level of trench sharing to be at least 13 per cent, as suggested by the ACCC. However, this figure was a static estimate and did not allow for future changes in the CAN.
- 2.38 Telstra has confirmed that the CAN expands each year due to new estates stating the following:
- “... CAN expands each year due to new estates. The CAN therefore grew at a rate of approximately [0.9234]%, [0.9072]% and [0.8879]% per annum in 2003/04, 2004/05 and 2005/06 respectively.”⁵*
- 2.39 Optus therefore used Telstra’s data regarding the expansion of the CAN (from the ACT decision) to adjust the ACCC’s base-line 13 per cent figure for each period accordingly. Optus re-submits Table 2 to illustrate the methodology and resulting figures for the level of trench sharing in new estates.

Table 2: Proportion of trench sharing in new estates

Variable	2002/03	2003/04	2004/05	2005/06
Proportion of SIOs in new estates	13%	13%	13%	13%
Increase in SIOs	0%	0.9234%	0.9072%	0.8879%
Total proportion of SIOs in new estates	13%	13.9234%	14.8306%	15.7185%

⁴ Optus considers that futures prices are a relatively stable anticipation of the forthcoming cash (or spot) price in commodity markets as they provide a reference for negotiating prices in the cash market and therefore a by-product of trading in futures market is price discovery.

⁵ *Telstra Corporation Ltd (No 3)* [2007] ACompT 3 at [360].

- 2.40 This analysis is only current until the period 2005/06 however Optus submits that it would be reasonable to apply this new trench sharing value (15.72%) in the following periods covered by the determination (2006 to 2008). This new value, although itself likely to underestimate the true level of trench sharing, clearly provides a more accurate measure than the conservative 13% currently adopted.

Asset lives

- 2.41 The ACCC has taken the view that the most appropriate asset lives to use are 12 years for main cable and 20 years for the distribution cable.
- 2.42 Optus submits that the ACCC have taken a very conservative stance and that an asset life of 15 years is more reasonable, as well as being consistent with international standards.
- 2.43 Optus understands that a copper asset life of 15 years is used by British Telecom in its regulatory accounts. Further, in the UK, Ofcom in its Final Statement on Valuing Copper Access noted:
- “... that BT’s current life of 15 years is likely to be **significantly shorter** than the useful life of the asset, which is likely to be nearer to the design life, and should be increased, particularly in light of the ever expanding use of the copper network for broadband services.”*⁶ [emphasis added]
- 2.44 Optus submits that the weight of international evidence supports an asset life of at least 15 years.

Network provisioning

- 2.45 The ACCC states that it has adopted a preliminary position of accepting Telstra’s approach to provisioning, O&M, network planning and network design. The ACCC states that it considers that it has taken a conservative position that would tend to result in a higher estimate of network costs than would otherwise be the case.⁷
- 2.46 Optus submits that the ACCC should not accept Telstra’s approach to provisioning, O&M, network planning and network design. It is imperative that Telstra’s inflated cost estimates be reined in to prevent the erosion of competitive gains from the setting of ULLS prices at levels reflecting efficient cost. Further, the reduced role of build-buy signalling suggests there is no need for the ACCC to give the “benefit of the doubt” to any arguments that an issue may lead to a price that is below efficient cost.
- 2.47 The ACCC has noted that it has, in the past, disagreed with Telstra on how the cost of provisioning for future demand should be recovered. The Tribunal’s ULLS Decision does not directly criticise the PIE II

⁶ Ofcom, Valuing Copper Access, Final Statement, 18 August 2005.

⁷ ACCC, 2008, Draft Determination, p.12

network cost model in relation to the network provisioning rules. However, it did conclude that:

*“Under standard forward-looking cost models, this is performed by estimating what would be the efficient cost of providing the service if the network over which it is provided were to be built in the period(s) to which the undertakings relate.”*⁸

- 2.48 Optus submits that a strict interpretation of the Tribunal’s determination is that the network cost should only be estimated for the relevant periods, and no provisioning for future demand should be included in the cost model. In addition, Optus submits that the provisioning in the PIE II network cost model is likely to be excessive.
- 2.49 Optus submits that network planning costs are recovered in operating and maintenance (O&M) allowances. Evidence from international costs modelling indicates that the allowance for O&M in the PIE II network cost model are in excess of what is allowed by overseas regulators which include an allowance for network planning costs.⁹ It is also in excess of what the ACCC allows in the regulation of mobile operators.¹⁰
- 2.50 Optus submits that the mark-up for network planning costs should be set to no more than 10% of network costs. This would need to be combined with the mark-up for other O&M costs to calculate a ‘combined mark-up’ for O&M expenditure including network planning costs. While Optus has not calculated the exact level of the combined mark-up, it is clear that it would be far in excess of the 11%.

Exogenous adjustments to PIE II’s network cost estimates

- 2.51 Optus submits that all exogenous uplifts to the PIE II model’s costs should be rejected on the basis that the model itself should calculate all efficient costs and it is inappropriate to apply such unjustified and arbitrary adjustments on an ex post basis. This approach runs the risk of double-counting cost and compensating Telstra for costs it has not and will not incur.

Trenching cost uplifts

- 2.52 Optus considers that the pricing methodology used to determine ULLS prices should not seek to recover costs that exceed the costs actually incurred by the network operator. In particular, network elements and technology choices that are protected from optimisation in the costing

⁸ Telstra Corporation Ltd (No 3) [2007] ACompT 3 at [340]

⁹ NERA (2003) *Assessment on General Inputs in PIE-II*, page 22. NERA report the FCC benchmark for direct and indirect operating costs (as a percentage of network capital costs) is 9.51%. The PIE II network cost model has operating costs (excluding network planning costs) at 5.79% and operating costs (including network planning costs) at 35.79% of network capital costs.

¹⁰ Wik-Consult (2007) *Mobile Termination Cost Model for Australia*, allow an operating expenditure mark up of 11% for most assets.

model should not be subject to forward looking costing if this leads to a higher cost than that which has been incurred historically. It follows that Telstra should not recover costs for trenching relating to concrete driveways and returfing. This issue was analysed in a consultant's report prepared for Optus in 2003 and submitted to the ACCC.¹¹

Gradient multiplier

- 2.53 Optus is concerned that Telstra has not fully detailed the methods it has used to derive the gradient uplift. Optus therefore considers that although there should be some allowance for the difference between actual and real life able lengths, it is not reasonable for the ACCC to accept Telstra's arbitrary figures when they are clearly "not transparent".¹²
- 2.54 According to Telstra, the inclusion of the uplift increases the ULLS by between \$0.15 and \$3.54 (for 2006/07 prices) depending on the band. This means that the uplift increases the ULLS price by approximately 10% (depending on the band). Optus contends that is far from immaterial and therefore requires more consideration.

Structure of Monthly Charges

Averaging

- 2.55 Optus submits that ULLS charges should not be geographically averaged, consistent with the findings of the Tribunal which rejected Telstra's proposal to average ULLS charges on the basis that such charges could not be considered to be reasonable.¹³

Rounding

- 2.56 The ACCC states that it has rounded up the sum of network and specific costs to the next 10 cents in order to obtain its draft indicative ULLS monthly charge.
- 2.57 Optus submits that it is not appropriate for the ACCC to round up charges in this way, since this would cause a departure from cost-reflective pricing. No justification has been given for this action.
- 2.58 Optus submits that this approach cannot be justified on the basis of conservatism. There have been significant competitive gains resulting from the setting of ULLS prices at levels that better reflect efficient costs. It is crucial that Telstra's inflated cost estimates continue to be reined in to prevent the industry from taking a backward step. Further, the reduced role of build-buy signalling suggests that there is no need

¹¹ Hird T, *Role of TSLRIC in Telecommunications Regulation: A Report for Optus*, July 2003

¹² ACCC (2008), *ULLS Access Dispute between Telstra and Optus - Statement of Reasons for Final Determination*, March 2008, p. 111.

¹³ Australian Competition Tribunal, *Telstra Corporation Ltd (No3) [2007] ACompT 3 - 291*

for the ACCC to give the “benefit of the doubt” to any arguments that an issue may lead to a price that is below efficient cost.

3. Other ULLS Charges

ULLS Single Connection Charges

- 3.1 Optus supports the ACCC's view that ULLS Single Connection Charges should be geographically de-averaged.
- 3.2 The remainder of this section examines the two main cost categories for ULLS single connections.

Back-of-House Costs

- 3.3 With regard to Back-of-House Costs, Optus submits in general that the ACCC must continue to be vigilant in its scrutiny of Telstra's cost submissions, and in particular that:
- a 1 minute per line allowance for manual SQ activities is likely to result in an over-estimate of efficient cost;
 - 7 minutes allowance for DAC cutover activities is likely to result in an over-estimate of efficient cost;
 - the ACCC's proposed \$60 to \$64 per hour wage rate for back-of-house activity is likely to over-estimate the efficient cost of supply of these services; and
 - pre-jumper/cutover activities are not relevant for the provisioning of an In-Use ULLS, which cover the majority of ULLS connections.

Jumpering, travel, vehicle, tool costs, material costs and indirect costs

- 3.4 The ACCC notes it has taken a conservative approach to assessment of the cost of ULLS connection charges in that the indicative prices will be set with reference to the third-party connection quotes for (more expensive) ULLS connections, rather than PSTN connections.¹⁴
- 3.5 Optus submits that it would be appropriate to base efficient ULLS jumpering costs on the rate for PSTN connection rather than ULLS. The ACCC's proposed conservative approach will tend to over-estimate efficient cost (as ACCC itself has noted), since it provides no incentive for Telstra to keep its contractors' rates for ULLS connection costs in check (given these costs can be passed on to access seekers). Hence it is inappropriate for a "conservative approach" to be taken.
- 3.6 Nevertheless, if the ACCC does decide to apply a cost higher than that derived from PSTN connection costs, it should examine the difference between these quoted connection costs closely. The ACCC should be

¹⁴ ACCC, 2008, Draft Determination, p.17

sceptical of any Telstra claim that ULLS connection was significantly more expensive than PSTN connection.

- 3.7 Optus supports the ACCC's view that a separate disconnection activity does not represent an efficient process.

ULLS MNM Connection Charges

- 3.8 MNM charges are a geographically averaged estimate of the efficient costs of providing these MNMs. The ACCC notes that MNM costs do not differ between geographic bands and that, while the 2007 ULLS Pricing Principles state that charges should be geographically de-averaged, the effect of averaging or de-averaging does not lead to a different charge in relation to MNMs.

- 3.9 Optus supports the ACCC's view that in principle, ULLS MNM Connection Charges should be geographically de-averaged.

- 3.10 The ACCC states that there are a number of distinct cost categories that are relevant to ULLS connections including:

- 'Back-of-house' costs;
- Jumpering, travel, vehicle, tool and materials (copper pairs) costs; and
- Indirect costs (a 10% markup for contract management costs).

- 3.11 Telstra uses third party contractors to perform the exchange-based work necessary to connect and disconnect the ULLS as part of a MNM. Telstra staff and systems perform back-of-house tasks.

'Back-of-house' costs

- 3.12 The ACCC will allow a recovery of costs for 2.1 hours of IDS group involvement per MNM, and 4 minutes per line connected for DAC costs. This approach results in an allowance for back-of-house costs of \$126 per MNM for the period ending 30 June 2006, indexed for later years, and a further allowance of \$4 per line connected as part of the MNM, indexed for later years.

- 3.13 As discussed in the section on single connections, Optus submits that the ACCC must be vigilant in its scrutiny of Telstra's submissions with regard to 'Back-of-house' costs.

Jumpering, travel, vehicle, tool and materials costs

- 3.14 Optus submits that the ACCC must be vigilant in its scrutiny of Telstra's submissions with regard to these cost categories. It must be particularly aware that Telstra has little or no incentive to keep its contractors' rates for ULLS connection costs in check (given these costs can be passed on to access seekers). Hence it is inappropriate for a "conservative approach" to be taken.

ULLS Call Diversion Charges

- 3.15 The ACCC's draft indicative price for the initial connection/activation of ULLS call diversion are \$9.20 for 2007-08 and \$9.30 for 2008-09. This charge is based on the appropriate hourly salary for Telstra's back-of-house activities (\$65.68 per hour) multiplied by the time taken for ULLS call diversion activities. The hourly salary for Telstra's back-of-house activities is consistent with the hourly salary used in calculating the ULLS single and MNM connection charges.
- 3.16 The ACCC's draft indicative price for the monthly charge of ULLS call diversion is pro rata \$12.50 per month per service for 2008-09. The ACCC states that this is consistent with the ongoing costs access seekers currently incur for ULLS call diversion charges as specified in Customer Relationship Agreements or access agreements between each access seeker and Telstra.
- 3.17 Optus considers that the ACCC's proposed approach to estimating draft indicative price for the initial connection/ activation of ULLS call diversion is reasonable.
- 3.18 Optus submits that Telstra should not be permitted to charge access seekers for call diversion on an ongoing basis, since the process is automated and accordingly the efficient cost of providing the service approaches zero.

Jurisdiction of the ACCC in determining the indicative prices for call diversion service

- 3.19 Optus further submits the ACCC has jurisdiction to determine the indicative prices for call diversion service. Optus considers call diversion service is an integral part of the migration process that directly affects the customer and that it is part of the declared ULLS.
- 3.20 In the residential market, the majority of ULLS transactions will take place on in-use numbers. In the absence of a call diversion service, customers would:
- suffer the inconvenience of not being able to receive calls during the cutover process; and
 - need to change their phone numbers following the cutover.
- 3.21 These two effects would have the likely impact of lessening competition in the market by creating potentially significant barriers to customer churn. Indeed, the ACCC has previously said the following in relation to the issue of number portability:

"Studies in Australia and overseas show this cost and inconvenience (of having to change phone numbers when switching providers) is a significant deterrent to consumers changing suppliers and a major barrier to competition in the telecommunication industry.

Number portability provides the scope for new telecommunication suppliers to more readily attract customers and be better rewarded

*when they provide innovative and higher quality services. This increases the pressure on telecommunication suppliers to compete more vigorously, encouraging lower prices, and a greater range and quality of services....*¹⁵

- 3.22 Optus considers Telstra's refusal to supply the call diversion service on reasonable terms would effectively equate to a refusal to supply the ULLS in a manner consistent with the intent of the service declaration. Optus notes that the ACCC has clearly indicated that it will be flexible in its approach to service descriptions and these are not intended in any way to be prescriptive nor all-inclusive. In its report "Telecommunication services –declarations provisions" of July 1999, the ACCC states that:

"However, the Commission's preference will be to describe the service in terms which are as functional as possible. In such a situation, the declaration will leave the access provider with flexibility to determine the most efficient way of supplying the service. This also provides more flexibility to the access seeker in the type of service that can be provided within the ambit of the declared service and avoid distorting technological or innovative developments".

- 3.23 Accordingly, Optus submits the ACCC has discretion to consider a much wider set of activities and components that are related to the provision of the ULLS under the terms of the existing service declaration. Optus considers "access" is clearly much broader than the specific service description, and encompasses anything necessary to be provided in order that the access seeker can provide carriage services and or content services in respect of the declared service.

¹⁵ <http://www.accc.gov.au/content/index.phtml/itemId/87044>