



Australian
Competition &
Consumer
Commission

Building Block Model RKR

ACCC Final Decision

August 2012



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Contents

| | |
|---|-----------|
| Glossary | 4 |
| 1 Executive summary | 6 |
| 2 Operating expenditure, capital expenditure and demand | 6 |
| 2.1 ACCC's preliminary view | 6 |
| 2.2 Submissions | 8 |
| 2.3 ACCC's final view | 9 |
| 3 Depreciation and historic cost data | 9 |
| 3.1 Submissions | 9 |
| 3.2 ACCC's final view | 10 |
| 4 Regulatory impost and details of the proposed RKR | 10 |
| 4.1 Duration | 10 |
| 4.2 National Broadband Network | 11 |
| 4.3 Record-keeping declaration | 12 |
| 4.4 Data collected by the RKR | 13 |
| 4.5 Disclosure direction | 13 |
| Appendix A: FLSM Asset Classes | 15 |
| Appendix B: Record-Keeping Declaration – Statement by CEO or CFO | 16 |

Glossary

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| ACCC | Australian Competition and Consumer Commission |
| Access Seeker | Has the same meaning as in section 152AG of the CCA |
| ASIC | Australian Securities and Investments Commission |
| BBM | Building block model |
| BBM RKR | Building block model record keeping and reporting rule |
| CAN | Customer access network |
| CCA | <i>Competition and Consumer Act 2010</i> |
| DSL | Digital subscriber line |
| DSLAM | Digital subscriber line access multiplexer |
| FAD | Final access determination |
| Fixed Line Services | Each of the fixed line services declared under Part XIC of the CCA. These are the ULLS, LCS, LSS, PSTN OTA and WLR services |
| FLSM | Fixed line services model |
| FLSM Asset Class | A class of asset, as listed in Appendix A, which appears in the FLSM and forms part of the CAN or Core network. |
| LCS | Local carriage service |
| LSS | Line sharing service |
| LTIE | Long-term interests of end-users |
| NBN | National broadband network |
| Pricing Review | The process by which the ACCC will set regulated prices to apply to the Fixed Line Services in a subsequent Regulatory Period. |
| PSTN | Public switched telephone network |
| PSTN OTA | PSTN originating and terminating access |
| RAB | Regulatory asset base |

| | |
|-------------------|--|
| Regulatory Period | The period during which the FADs for the Fixed Line Services are in force. |
| RKR | Record keeping and reporting rule |
| SIOs | Services in operation |
| WLR | Wholesale line rental |
| ULLS | Unconditioned local loop service |

1 Executive summary

In July 2011 the ACCC made Final Access Determinations (FADs) for the declared Fixed Line Services which expire on 30 June 2014.¹ The ACCC used a Building Block Model (BBM), the Fixed Line Services Model (FLSM), to determine the prices in the FADs. In the final report accompanying the FADs, the ACCC noted that it would use a BBM approach to determine prices for the declared Fixed Line Services in future regulatory periods.²

To effectively implement the FLSM, the ACCC requires forecast and actual data from Telstra relating to operating expenditure, capital expenditure, depreciation and demand. In the final report the ACCC proposed a formal record keeping and reporting rule (RKR) to obtain expenditure and demand forecasts for future regulatory periods.³ The ACCC noted that the BBM RKR would clearly specify the information required, the nature of the supporting information required, the format for presenting the information and the timeframes required. The ACCC noted that it would consult with industry on making a BBM RKR to obtain this data.⁴

On 23 March 2012, the ACCC commenced a six week consultation process with the release of a position paper outlining the ACCC's preliminary views on a draft BBM RKR. The ACCC received three submissions in response to the position paper: from Telstra, Optus, and Macquarie Telecom. Public versions of all submissions are available on the ACCC's website.

A number of issues were raised in the course of this inquiry, including issues of appropriate information items, the appropriate timing of a rule review, the need for Telstra to provide a form of certification regarding the quality of information it provides and how and what information should be disclosed publicly.

2 Operating expenditure, capital expenditure and demand

2.1 ACCC's preliminary view

2.1.1 March 2012 draft RKR

The ACCC proposed that operating expenditure and capital expenditure should be forecast for each FLSM Asset Class for each financial year of the regulatory period. The ACCC considered it necessary for Telstra to supply expenditure forecasts for each FLSM Asset Class to ensure that the data could be input directly into the FLSM if the ACCC determined that the forecasts represented an efficient level of expenditure.

The ACCC proposed that Telstra should provide its operating expenditure and capital expenditure forecasts in nominal terms, accompanied with Telstra's inflation assumptions for each financial year in the regulatory period.

¹ ACCC, *Inquiry to make final access determinations for the declared fixed line services – final report*, July 2011.

² *ibid.*, p. 130.

³ *ibid.*, p. 58.

⁴ *ibid.*, p. 30.

The ACCC proposed that Telstra should provide demand forecasts for each financial year of the regulatory period for the following services: ULLS SIOs; WLR SIOs; total SIOs⁵; PSTN OTA minutes; LCS minutes; LCS average call duration; and LSS SIOs. The ACCC requested forecasts of demand for ULLS and WLR, as well as total SIOs, by geographic band. Forecasts for other services were requested on a national basis to minimise the regulatory burden on Telstra.

To assist with the ACCC's assessment of Telstra's forecasts, the March 2012 draft BBM RKR required that Telstra provide an explanatory statement containing:

- the method used to determine the forecasts
- the assumptions used to determine the forecasts
- the basis for the assumptions, and
- for capital expenditure, any internal guidelines used by Telstra to assess the prudence of forecast capital expenditure or to tender or contract out capital expenditure projects.

2.1.2 March 2012 position paper

To ensure that the requirements above are adequately addressed, in the March 2012 position paper the ACCC proposed that the explanatory statement provided by Telstra should include a report comparing forecasts for the previous regulatory period with actual data for that period, and an explanation of any differences, trends and drivers. For operating expenditure, the ACCC proposed that Telstra's explanatory statement should also include:

- the cost drivers used for each expenditure class, and
- the cost allocations with respect to any common or joint costs related to shared facilities or network elements.

For capital expenditure, the ACCC proposed that Telstra's explanatory statement should also include:

- an explanation of the investment program detailing:
 - how non-discretionary projects relate to the drivers of investment, such as population growth and replacement of assets nearing the end of their asset lives
 - for discretionary projects, a broad description of the type of investments being undertaken and the drivers of those investments

⁵ Total Services in Operation (SIOs) are calculated as the sum of the three types of SIOs specified in subsection 5.6 of the CAN RKR. These three types of SIOs are:

- a) the number of voice-only SIOs being the total number of Telstra retail and wholesale Voice SIOs where the End User takes only voice provided by a Telstra PSTN switch and no DSL Service is provided on that line by any carrier.
- b) The number of DSL-only Services in Operation being the total number of Telstra retail and wholesale digital subscriber line SIOs where the End User only takes DSL provided by a Telstra DSLAM and no Voice Service is provided on that line by any carrier.
- c) The number of voice and DSL bundle SIOs being the total number of Telstra retail and wholesale DSL and Voice Services provided as part of the same SIOs where the End User takes both voice provided by a Telstra PSTN switch and DSL provided by a Telstra DSLAM.

- for discretionary projects, an explanation of any major differences in the types of investment undertaken compared to the forecasts, and
- evidence that a review of capital expenditure projects was undertaken in accordance with the investment guidelines.

For demand, the ACCC proposed that Telstra's explanatory statement should also include:

- key demand drivers taken into account, and
- the data sources used.

2.2 Submissions

Macquarie Telecom submitted that the data requested in March 2012 draft BBM RKR, and the proposed reporting frequencies, are reasonable. However, Macquarie Telecom submitted that the March 2012 draft BBM RKR did not require the provision of all the information outlined under the heading of explanatory statement in the position paper, and described in section 2.1.2 above. Macquarie submitted that, given this deficiency, the ACCC may not have sufficient information for it to adequately assess the validity of Telstra's forecasts.

Telstra submitted that the ACCC's request for, and assessment of, forecast cost and demand data is an important part of the BBM approach.⁶ Telstra submitted that, although its current detailed operating and capital expenditure planning occurs over a one-year horizon and is not disaggregated by FLSM Asset Class, it is feasible for it to extrapolate its forecasts for additional years and map them to the FLSM Asset Classes to fulfil the requirements in the March 2012 draft BBM RKR. Telstra stated that it currently forecasts demand for each of the services specified in the March 2012 draft BBM RKR on a national basis for a two-year horizon. However, Telstra submitted that it is able to disaggregate the forecasts by geographic bands and extend the forecasts for an additional year.⁷ Telstra submitted that it is able to provide the actual demand data requested in the March 2012 draft BBM RKR.

Optus stated that the collection of actual data was important because it would allow the ACCC to conduct an ex-ante review of the quality of information included in the FLSM.⁸ Optus submitted that it supports the ACCC's request for forecast expenditure data disaggregated by FLSM Asset Class for each financial year, as well as the ACCC's request for further information through the explanatory statement. Optus submitted that, in assessing Telstra's forecasts, the ACCC should have regard to the expected decline in capital and operating expenditure as Telstra decommissions its copper network.⁹ Optus stated that it supports the proposed actual and forecast demand data requested by the March 2012 draft BBM RKR. However, Optus submitted that Telstra should be required to provide a revised set of forecast data to the ACCC if 'there is any change of circumstance that may impact on the forecast data provided by Telstra' during a pricing review.¹⁰

⁶ Telstra, *Submission on the BBM RKR Position Paper*, May 2012, p. 3.

⁷ Telstra, *Submission on the BBM RKR Position Paper*, May 2012, p. 6.

⁸ Optus, *Submission on the BBM RKR Position Paper*, May 2012, p. 3.

⁹ Optus, *Submission on the BBM RKR Position Paper*, May 2012, p. 5.

¹⁰ Optus, *Submission on the BBM RKR Position Paper*, May 2012, p. 6.

2.3 ACCC's final view

The ACCC has retained the same actual usage data, forecasts, formats of forecasts, and reporting frequency as it proposed in the March 2012 draft BBM RKR. In addition, having regard to Macquarie Telecom's submission, the ACCC has altered the BBM RKR to clarify that the explanatory statement accompanying Telstra's forecasts should include all the information defined in the March 2012 position paper—including the information items relating to forecast demand, operating expenditure and capital expenditure described in section 2.1.2. Further, in relation to information regarding cost allocations and common costs, the BBM RKR requires Telstra to provide information explaining the basis on which such allocations are made. The ACCC considers that this information will assist it in assessing the forecasts provided by Telstra.

The ACCC has had regard to Optus' submission that the BBM RKR should request revised forecast data from Telstra if there is any change of circumstance. However, the ACCC considers that the proposed provision is unnecessary as the likelihood of a material change warranting such a request is low and it is available to the ACCC to issue an information request to Telstra at the time if the need arises.

3 Depreciation and historic cost data

In its March 2012 position paper, the ACCC proposed that, in order to calculate straight line depreciation using the FLSM, it would require the following data:

- total asset lives for forecast capital expenditure for each FLSM Asset Class
- historic cost by vintage for each FLSM Asset Class, and
- written down values by vintage for each FLSM Asset Class.

3.1 Submissions

Telstra submitted that 'the specified historic cost data is not necessary as the initial value of the regulatory asset base (RAB) is a fixed principle which cannot be changed.'¹¹ Telstra also submitted that provision of this data may be misleading. It noted that in the future, Telstra's record of its historic cost of assets by vintage and its written down values may be recorded in a way that is inconsistent with the ACCC's forecast of capital expenditure by asset class for the previous regulatory period. Telstra stated that it would face a 'considerable burden' in identifying and addressing any discrepancies between Telstra's accounting practices under the Australian Accounting Standards and the ACCC's forecasts in previous regulatory periods.¹² Telstra submitted that 'this burden would serve no real purpose in supporting the objectives of Part XIC.'¹³

Optus submitted that, although the data requested by the March 2012 draft BBM RKR is appropriate, Telstra should be required to provide the ACCC with the assumptions it used to derive the values it submitted.¹⁴ Optus submitted that the FLSM Asset Class

¹¹ Telstra, *Submission on the BBM RKR Position Paper*, May 2012, p. 5.

¹² Telstra, *Submission on the BBM RKR Position Paper*, May 2012, p. 5.

¹³ Telstra, *Submission on the BBM RKR Position Paper*, May 2012, p. 5.

¹⁴ Optus, *Submission on the BBM RKR Position Paper*, May 2012, p. 5.

‘network land’ should not be included in the FLSM’s RAB, and if it is, it should not receive differential treatment relative to other asset classes.¹⁵

3.2 ACCC’s final view

The ACCC confirms that the historic cost and written down values data from Telstra will not be used for the purpose of revaluing the RAB. The ACCC intends to use this data to calculate remaining asset lives for each asset class in the FLSM. The remaining asset lives will be used for the purposes of calculating depreciation during the next regulatory period.

The ACCC acknowledges Telstra’s submission that the provision of this data will place some additional burden on Telstra. Having regard to the factors in section 151BU(4)(d) of the CCA, the ACCC considers that the records will contain information that is relevant for the purposes of the FLSM, and therefore supports the objectives of Part XIC of the CCA. Accordingly, the ACCC has retained the request for data on historic cost, written down values by vintage, and total asset lives for forecast capital expenditure in the rule.

Telstra has previously described the methodology it uses to derive its historic cost and written down values to the ACCC; accordingly, the ACCC does not consider that it is necessary to request this information through the BBM RKR. However, the ACCC has modified the rule to request that Telstra describes the methodology and assumptions it uses to derive total asset lives for forecast capital expenditure. The ACCC notes that it has previously addressed Optus’ submissions regarding the treatment of the ‘Network Land’ asset class in its final decision for the fixed line services FAD.¹⁶

4 Regulatory impost and details of the proposed RKR

4.1 Duration

In its March 2012 position paper, the ACCC proposed that the BBM RKR would commence on 1 July 2012 and continue in its current form until 30 June 2021 at which time the ACCC would conduct a limited review. The ACCC also proposed that the review would be limited to the forecast data components of the BBM RKR and that actual usage data requirements would remain in place irrespective of the outcome of the review.

Further, the ACCC proposed that the review would include industry consultation and consider whether the BBM RKR has successfully facilitated the implementation of the BBM. The proposed review was to also consider whether the BBM was expected to continue to apply to Telstra’s Fixed Line Services.

4.1.1 Submissions

Macquarie Telecom submitted that ‘the review date seems too far away given the significant policy and regulatory changes which Australia’s telecommunications

¹⁵ Optus, *Submission on the BBM RKR Position Paper*, May 2012, p. 5.

¹⁶ ACCC, *Inquiry to make final access determinations for the declared fixed line services – final report*, July 2011, pp. 45–46.

sector is presently undergoing.’¹⁷ It further submitted that the following approach should be adopted:

- ‘the ACCC undertake a review of the BBM RKR within three months following 30 June 2016, i.e., four years after the commencement of the BBM RKR’¹⁸; and
- ‘the scope of the BBM RKR review be open-end, which would include both forecast data components and usage data components and the possible extension of the date of effect of the BBM RKR.’¹⁹

Optus submitted that ‘Since the start of the next regulatory period is 1 July 2014, it would be sensible to conduct a review on the implementation of the BBM in 2016’²⁰ as a review in 2016 ‘would provide the ACCC sufficient time and information to assess if the BBM RKR has successfully facilitated the implementation of the BBM.’²¹

4.1.2 ACCC’s final view

The ACCC acknowledges submitters’ views with respect to an earlier review date. The ACCC has the capacity to review and (if the need arises) vary a rule at any time during a rule’s effect. Accordingly, the ACCC does not consider it necessary to implement a scheduled rule review within the period the BBM RKR has effect.

4.2 National Broadband Network

In the March 2012 position paper, the ACCC noted that there remained a degree of uncertainty about the impact of the National Broadband Network (NBN) roll-out on fixed line demand, expenditures and asset disposals. The ACCC also noted that accounting for the impacts of the NBN may require adjustment of the FLSM in future regulatory periods.

It was proposed that for the next regulatory period, the ACCC may need to ensure that appropriate adjustments are made to the RAB to reflect the following impacts of the NBN:

- **Decommissioning of assets:** Telstra has agreed to decommission its copper network in areas where the NBN will provide fibre services to customers. The agreement provides for a per customer migration payment from NBN Co to Telstra as customers are disconnected from the copper network.
- **Ownership transfer:** NBN Co will purchase from Telstra the conduits that connect a house to the network at street level. Telstra will subsequently be allowed to access the conduits for free (for example to provide pay television services).
- **Leased assets:** Telstra will lease some assets (such as ducts and pipes) to NBN Co. These assets are currently included in the RAB. The leased assets may be fully or partly used by the NBN.

¹⁷ Macquarie Telecom, *Submission on the BBM RKR Position Paper*, May 2012, p. 5.

¹⁸ Macquarie Telecom, *Submission on the BBM RKR Position Paper*, May 2012, p. 6.

¹⁹ Macquarie Telecom, *Submission on the BBM RKR Position Paper*, May 2012, p. 7.

²⁰ Optus, *Submission on the BBM RKR Position Paper*, May 2012, p. 6.

²¹ Optus, *Submission on the BBM RKR Position Paper*, May 2012, p. 6.

4.2.1 Submissions

Optus provided the following submissions:

- ‘the substantial payments Telstra will receive in relation to the NBN should be taken into account either in consideration of the RAB or in the context of ongoing regulatory depreciation.’²²
- ‘both the migration payments and the ownership transfer payments should be viewed as a ‘return of capital’ to Telstra shareholders for capital invested in the CAN. Accordingly once received Telstra should no longer earn either a return on capital or a return of capital associated with the asset for which the payment was made.’²³
- ‘the ownership transfer of Telstra’s conduits that connect a house to the network at street level is an asset disposal and as a result the payment value Telstra will receive can be deducted from the RAB.’²⁴
- ‘the migration payment can be treated as an asset disposal since Telstra will no longer be able to use the asset to provide declared services.’²⁵

Macquarie Telecom submitted that payments from NBN Co to Telstra are income streams that should be incorporated into the FLSM, and, therefore, that the BBM RKR should request this information.²⁶

4.2.2 ACCC’s final view

The ACCC acknowledges Optus’ and Macquarie Telecom’s submissions regarding the relationship between the NBN and the FLSM. However, the ACCC considers that the NBN’s implications for the FLSM are complex and require a more thorough and comprehensive consideration as part of the next FAD inquiry. Accordingly, the ACCC considers that the above adjustments should not be reflected in the BBM RKR at this time. The ACCC notes that it can vary the rule in the future should the need arise.

4.3 Record-keeping declaration

4.3.1 Submissions

In its submission to the March 2012 position paper, Macquarie Telecom noted that the March 2012 draft BBM RKR did not require any undertaking or certification by a responsible officer of Telstra that the data it had provided under the RKR is of a certain standard.²⁷ Macquarie Telecom submitted that ‘some form of management sign-off on Telstra’s forecast (and usage) data is appropriate and therefore should be incorporated into the BBM RKR.’²⁸

²² Optus, *Submission on the BBM RKR Position Paper*, May 2012, p. 3.

²³ Optus, *Submission on the BBM RKR Position Paper*, May 2012, p. 3.

²⁴ Optus, *Submission on the BBM RKR Position Paper*, May 2012, p. 3.

²⁵ Optus, *Submission on the BBM RKR Position Paper*, May 2012, p. 4.

²⁶ Macquarie Telecom, *Submission on the BBM RKR Position Paper*, May 2012, p. 6.

²⁷ Macquarie Telecom, *Submission on the BBM RKR Position Paper*, May 2012, p. 3.

²⁸ Macquarie Telecom, *Submission on the BBM RKR Position Paper*, May 2012, p. 3.

4.3.2 ACCC's final view

The ACCC has included in the BBM RKR a Record-Keeping Declaration which must be signed by the Chief Executive Officer/Chief Financial Officer (or delegated authority).

4.4 Data collected by the RKR

4.4.1 Submissions

Macquarie Telecom submitted that the March 2012 draft BBM RKR specified that the BBM RKR would have effect from 1 July 2012 and would therefore not collect actual usage data for the 2011–12 financial year.²⁹ Macquarie Telecom noted that the Fixed Line Services specified in the March 2012 draft BBM RKR did not include the wholesale ADSL service, and questioned whether the ACCC should seek information relevant to wholesale ADSL through the BBM RKR.³⁰

4.4.2 ACCC's final view

The ACCC notes that under the BBM RKR, Telstra will be required to provide actual usage data to the ACCC 'within 4 weeks of the date upon which Telstra is required to lodge its annual report with ASIC pursuant to section 319 of the *Corporations Act 2001* (Cth)'. Accordingly, Telstra will be required to provide this data to the ACCC since the BBM RKR is in effect before this date.

As noted in the July 2012 wholesale ADSL FAD issues paper, the ACCC is currently considering price terms for the wholesale ADSL FAD.³¹ Accordingly, the ACCC does not consider it appropriate to request information on wholesale ADSL at this preliminary stage of that inquiry. As noted in section 4.2.2, the ACCC can vary the rule in the future should the need arise.

4.5 Disclosure direction

In the March 2012 position paper, the ACCC noted that Division 6 of Part XIB of the CCA makes provision for reports or extracts of reports prepared by a carrier or a carriage service provider in accordance with the RKR to be disclosed. It further noted that such disclosure can occur if the ACCC is satisfied that the disclosure of the reports or extracts would be likely to facilitate the operation of Part XIC.

The ACCC stated that it was considering whether disclosure, under sections 151BUA and 151BUB, of reports or extracts of reports received in accordance with the RKR would facilitate the operation of Part XIC by aiding the regulatory process.

4.5.1 Submissions

Telstra submitted that 'some of the information that would be provided by Telstra pursuant to the BBM RKR is highly commercially sensitive'³², adding, 'In particular, the disclosure of operating expenditure and capital expenditure forecasts would cause

²⁹ Macquarie Telecom, *Submission on the BBM RKR Position Paper*, May 2012, p. 7.

³⁰ Macquarie Telecom, *Submission on the BBM RKR Position Paper*, May 2012, p. 7.

³¹ ACCC, *Public inquiry to make a final access determination for the wholesale ADSL service – issues paper*, July 2012, p. 7.

³² Telstra, *Submission on the BBM RKR Position Paper*, May 2012, p. 4.

competitive harm to Telstra as rivals would be able to gain a greater insight into Telstra's expenditure patterns and areas of investment focus.³³

Telstra further submitted that 'the disclosure of forecast data may also prejudice Telstra's position in commercial negotiations with suppliers and wholesale customers.'³⁴ Telstra raised its concerns that disclosure 'could affect Telstra's performance in financial markets and its dealings with analysts, investors and shareholders.'³⁵

Telstra also questioned the necessity of disclosing this type of information, stating that it does not consider that the harm to Telstra's legitimate commercial interests from the disclosure of this information would promote competition or is otherwise justified under s151BUC of the CCA.³⁶

In light of the above concerns, Telstra submitted that in the event that the ACCC receives a disclosure request under s151BUA of the CCA, Telstra should be 'provided with the opportunity under the information disclosure process to respond to any request and to consider how commercially sensitive information can be adequately protected.'³⁷

4.5.2 ACCC's final view

Division 6 of Part XIB of the CCA allows for the disclosure of reports given to the ACCC in accordance with record-keeping rules. The ACCC considers there is merit in releasing information collected pursuant to the BBM RKR to aid future regulatory processes and further stakeholders' consideration of the state of competition in relation to the provision of fixed line services.

The ACCC proposes to require the disclosure of information under s 151BUC of the CCA. The ACCC will consult Telstra on the direction in compliance with the requirements of that section.

³³ Telstra, *Submission on the BBM RKR Position Paper*, May 2012, p. 4.

³⁴ Telstra, *Submission on the BBM RKR Position Paper*, May 2012, p. 4.

³⁵ Telstra, *Submission on the BBM RKR Position Paper*, May 2012, p. 4.

³⁶ Telstra, *Submission on the BBM RKR Position Paper*, May 2012, p. 4.

³⁷ Telstra, *Submission on the BBM RKR Position Paper*, May 2012, p. 4.

Appendix A: FLSM Asset Classes

The following lists comprise the FLSM Asset Classes for which capital expenditure and operating expenditure is to be forecast under the proposed BBM RKR.

CAN Asset Classes

- Ducts and pipes
- Copper cables
- Other cables
- Pair gain systems
- CAN radio bearer equipment
- Other CAN assets
- Other communications plant and equipment
- Network land
- Network buildings/support
- Indirect capital assets

Core Asset Classes

- Switching equipment – Local
- Switching equipment – Trunk
- Switching equipment – Other
- Inter-exchange cables
- Transmission equipment
- Core radio bearer equipment
- Other communications plant and equipment
- Network land
- Network buildings/support
- Indirect capital assets
- LSS equipment

Appendix B: Record-Keeping Declaration – Statement by CEO or CFO

(Date)
Group General Manager
Communications Group
Australian Competition and Consumer Commission

Statement by CARRIER’S or CARRIAGE SERVICE PROVIDER’S Chief Executive Officer or Chief Financial Officer

I declare that:

- (a) the reports are prepared in accordance with the requirements of the Rule;
- (b) the reports are accurate in all material respects; and
- (c) the reports are consistent with the internal reporting procedures of (Company
Name)

Dated at this day of 20

Chief Executive Officer/ Chief Financial Officer
(or delegated authority)