



RESPONSE TO THE ACCC MOBILE SERVICES REVIEW – DRAFT DECISION ON MOBILE TERMINATING ACCESS SERVICE REGULATION

In response to the Australian Competition and Consumer Commission's ('the Commission') Draft Decision dated March 2004 in relation to the review of mobile services (the Draft Decision), please find the following submission on behalf of the Competitive Carriers Coalition (the CCC). For the purposes of this response, the CCC is constituted by:

- PowerTel
- Comindico
- Primus
- Macquarie Corporate Telecommunications

OVERVIEW

At the outset, the CCC wishes to commend the Commission on its detailed and comprehensive analysis and conclusions as to the key draft findings on:

- Existence of market power.
- Need for regulation to address market power and promote the Long Term Interests of End Users (LTIE)
- Recommendation to abandon existing (ineffectual) "light handed" pricing principles.

The Commission is also to be commended in rejecting many of the now tired and discredited arguments espoused by the dominant Mobile Network Operators (MNOs). As the Commission's Draft makes abundantly clear, the interests of both competition and end users are best served by ensuring pricing principles for regulating MTA remove the ability and incentive of MNO's to raise the price of this service above the underlying cost of production.

As the CCC sets out in its original submission to the inquiry, given a lack of effective regulation and given the bottle neck nature of the service, Australian fixed line operators and their customers have provided MNO's with economic profits that are entirely unjustified and anathema to the promotion of a competitive Australian telecommunications sector.

KEY ISSUE - PROPOSED "GLIDE PATH" MOVING TOWARD COST ORIENTATED MTA

We believe the Commission's approach of implementing a "glide path" is appropriate because the need to address over-pricing of this service is so urgent. The greater the margin above reasonable costs enjoyed by access providers the greater the damage to the market (i.e. skews the investment incentives artificially in favor of MNO's) and the LTIE. In this case, the over-charging is clearly at the extreme end.

Year	Rate Differential	Cost Impact (\$)
2003	\$0.09	\$552,019,354.84
2004	\$0.09	\$574,100,129.03
2005	\$0.06	\$398,042,756.13
2006	\$0.03	\$206,982,233.19
Total		\$1,731,144,473.19

Table 1: Cost Impact of F2M Glide Path

Note:

1. The starting rate is \$0.21/min.
2. The industry traffic volumes are based on 2003 industry volumes (6.1B mins) with 4% pa growth.
3. 2003 is included because rates have not changed since the start of the ACCC investigation.
4. Numbers are approximate only.

The CCC is strongly of the view that there is no justification for delaying rate reductions on a count of a lack of a “true” cost model that identifies the appropriate access price. There is sufficient benchmark data available (and indeed detailed in the Draft report) to confirm that current MTA rates are excessively above cost. Accordingly, any delay in implementing a glide path to address this situation only preserves market failure to the benefit of the dominant MNOs. A glide path must be implemented immediately and reflect a more rapid drop in the MTA.

As such, the MTA services costs range identified by the Commission of 6 –12 cents is a reasonable, conservative range to apply to the introduction of the glide path. Further, the CCC considers that the Commission’s proposed 12 cents MTA rate is a reasonable starting point compromise given the significant comparative data available.

However, there are two important qualifications to this position.

PROPOSED “GLIDE PATH” STARTING PRICE OF 21 CENTS

Whilst the reasoning and analysis undertaken through the review and set out in the Draft aligns with the CCC’s position, we nevertheless have strong concerns regarding the proposed pricing principles. Put simply, the CCC can not accept that given the conduct engaged in (and continuing to be engaged in) by the dominant MNOs that the Commission recommends locking in current MTA rates for a further 8 months.

The proposed pricing principles for the service will lock in current rates to 2005. Given present and historical rates are acknowledged as significantly above cost by the Commission’s own analysis, there appear little if any justification for perpetuating this market distortion.

Accordingly, the movement toward a cost orientated MTA as proposed in the Draft is excessively slow. Delaying regulatory action will have the effect of further entrenching economic profits at the expense of the LTIE. It will also exacerbate the anti-competitive effect of predatory pricing and wholesale/retail price squeeze that characterizes retail F2M price structures. Again, given that the Commission identified these



abuses of market power, the CCC is of the view that measures must be taken to move toward the “top end” of the 6 – 12 cent range immediately.

CCC members believe the Commission was right to describe 12 cents as being a mobile terminating access service (MTA) rate at the “upper end” of the range of prices that approximate a move toward cost. On the information available to the Commission, MTA costs are in a range of 6-12 cents. This is above the rates identified by CCC members in their submission. However, the range though broad, is generally supported by other jurisdictions of which the Commission is aware and track with prices currently charged in relevant comparable markets.

The appropriateness of this price in the Australian context is validated by the position of one of the MNOs themselves, Hutchison, who nominate a rate within this range as a reasonable starting price.

Accordingly, there is no justification in delaying the introduction of a move toward 12cents until 1 January 2005. Given the largest operator in the market, Telstra, has had MTA rates of 21 cents since 2002, it is incorrect to characterize the Commission’s movement to “lowest rate in the market” of 21 cents by 1 July 2004 as anything other than locking in existing excessive rates. From any practical perspective, the glide path, as set out in the Draft, does not commence until 2005.

TIMING OF THE PRICE PATH

The ACCC decision to stage the price path until 2007 was, as the CCC understands, informed by a desire to avoid “regulatory shock” to the MNOs.

The CCC regards this as ill conceived for several reasons, chiefly including;

- Against the threat of regulatory shock, the ACCC should consider the fact that the industry has experienced a “regulatory freeze” effect on prices for the past 18 months while the Commission undertook the inquiry. The 21 cent price that the ACCC nominates as its first stage price point reflects a price at or near what most in the industry have been paying for some time, and extends this freeze effect. It is crucial that the fixed line carriers and consumers receive immediate relief to compensate for the period over which MNOs have sustained excessive termination charges and reduces the amount of cross-subsidization of the MNO’s by fixed line operators.
- Given the market failure identified in the Draft, the MNOs have had no intention of reducing rates of their own accord during the course of the inquiry. In the interim, they are clearly holding out until forced to do so with the obvious intention of maximizing profits. Maintaining the status quo until 2005 merely delivers MNOs with economic profits. The “lowest rate in the market” approach of 21cent MTA rewards the exercise of market power at the expense of retail competitors and consumers.

As such, the CCC believes it is appropriate for the Commission to advance its price path by removing the 21 cents price stage, and implement an initial 18 cents price point in its stead. Each price step should then be advanced to the previous step down implementation date with the result that the 12 cents end point is reached in January 2006.



WHERE TO FROM HERE?

The present inquiry has been a drawn out process, which has consumed substantial resources and has imposed very real costs to both fixed line carriers and consumers alike in terms of its price freeze impact.

If the above change to price points is implemented, however, the CCC would regard the outcome as being consistent with best international practice as a first step to regulating this wholesale market.

The question that then arises is what the Commission does in January 2006.

The CCC believes that it is important that the ACCC next moves to make its regulation of prices in this market consistent with its regulation of other prices. This would involve a process of establishing TSLRIC prices for F2M.

If such a process was initiated in January 2006, there is every reason to believe that the same “regulatory freeze” effect would be felt on prices at that time; prices that the ACCC concedes are at the upper bound of acceptability today and which would likely be well above cost in 2006.

The CCC believes that an appropriate course of action would be for the ACCC to commence a process of developing a TSLRIC cost model for F2M while prices are being staged down to 12 cents in 2006.

This would have the following effects:

1. It would avoid a regulatory price freeze in 2006 because a “stage two” price reduction would be developed well in advance of implementation.
2. It would establish a price setting basis that was consistent with other network elements and therefore beyond challenge.
3. It would provide sufficient time for the Commission to conduct a thorough public inquiry and to reach a fully informed decision around the most appropriate cost model.
4. It would make abundantly clear to the MNOs the Commission’s processes in adopting a TSLRIC model pricing construct, and remove any case for them to claim that further price reductions should be also delayed to avoid “regulatory shock”. If those companies chose not to incorporate this developing thinking into their business plans, they could hardly claim later that they qualified for sympathetic treatment.

Yours sincerely,

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On behalf of the Competitive Carrier Coalition (CCC)