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Dear Mr Cosgrave

### Fixed Services Review – WLR and LCS Exemptions in CBD areas

Telstra wishes to respond to the second supplementary submission from Macquarie Telecom, which was published on the ACCC website on 26 November 2013<sup>1</sup> and clarify the approach that it believes the Commission should take in considering the WLR and LCS exemptions in the CBD Exchange Service Areas (**ESAs**).

In summary, there is overwhelming evidence that CBD areas are effectively competitive with respect to the market for fixed line voice services. This has been the case for more than a decade, and today more than ever. End users in CBD areas are able to choose from the widest range of competitive voice (and other) fixed line services; including services supplied using WLR, ULLS and other Telstra network services, as well as services supplied on numerous stand-alone competitive fibre networks. As a result voice resale services constitute just one of many inputs into the competitive market for voice services, and clearly do not constitute an enduring bottleneck.

### Extensive infrastructure-based competition

As set out in Telstra's previous submissions,<sup>2</sup> there is overwhelming evidence of the infrastructure-based competition within CBD areas and its impact on competition:

- as noted in Telstra's September submission, access seekers have installed more interconnect pairs than there are active SIOs in the CBD ESAs and there is an average of [c-i-c begins] [c-i-c ends] DSLAM-based competitors in CBD ESAs, compared to an average of [c-i-c begins] [c-i-c ends] DSLAM-based competitors in the Band 2 ESAs; and

<sup>1</sup> Frontier Economics, *Reply on WLR and LCS exemptions in CBD areas, A note prepared for Macquarie Telecom*, November 2013.

<sup>2</sup> See: Telstra Corporation Limited, *Fixed Services Review: Response to the Commission's Discussion Paper on the Declaration Inquiry*, September 2013; and, Telstra Corporation Limited, *Fixed Services Review: Response to other parties' submissions to the Commission's Discussion Paper on the Declaration Inquiry and Response to the Commission's request for market information on 9 October 2013*, October 2013.

- fibre investment has intensified and the Commission's own data shows that there is an average of over 8 fibre owners in each CBD ESA<sup>3</sup>, and the number of fibre owners in the CBD ESAs has increased between September 2011 and September 2013 – the average has gone up from 6.6 to 8.4.

This continuing growth in the availability of competitive infrastructure has been promoted since 2002 by the absence of regulation. The Commission granted exemptions in the CBD ESAs for the LCS in 2002 and WLR has never been regulated in those ESAs (WLR was first declared in 2006). In its 2002 decision, the Commission explicitly recognised that “...if the market works effectively without regulation, then regulation will impose unnecessary costs to the economy” and “...if it is likely that the market would function efficiently without regulation, granting the exemption should promote the LTIE.”<sup>4</sup> Further, the Commission noted the Explanatory Memorandum for the *Trade Practices Amendment (Telecommunications) Bill 1996*, which states:

*It is not intended that the access regime embodied in this Part impose regulated access where existing market conditions already provide for the competitive supply of services. In considering whether a thing will promote competition, consideration will need to be given to the existing levels of competition in the markets to which the thing relates.*

The Commission interpreted this to mean “...the extent to which an exemption promotes competition should be examined **from the end-users' perspective**; that is, to have regard to the likely results from increased competition in terms of price, quality and service diversity.”<sup>5</sup> [emphasis added]

Further, the Commission concluded that “there is sufficient alternative infrastructure (such as fibre loops) and declared services (local PSTN originating access and ULLS) for originating local calls in CBD areas either being used or can readily be used by alternative carriers and carriage service providers.”<sup>6</sup>

The assessment framework for considering exemptions set out above remains appropriate and demonstrably promotes the LTIE. These principles have been applied since 2002 in subsequent re-declaration reviews in 2006 and 2009 to confirm that CBD areas should not be regulated in relation to LCS and WLR services. In 2013, the strong evidence of infrastructure competition in CBDs is even more compelling - and has undoubtedly led to greater choice in products, customer experience and price for end users.

### The end-users' perspective

As noted above, end-users have benefited from the existence of the WLR and LCS exemptions in the CBD ESAs since 2002. In the absence of declared voice resale services, service providers have invested in their own networks or have invested in ULLS-based competitive services. The end result is that end users in CBD areas enjoy the widest choice of service providers, the widest choice of competing service platforms and technologies and ongoing reductions in service price. With respect to price, this conclusion appears to be supported by the Frontier Economics report, which shows that the prices for retail basic

<sup>3</sup> Australian Competition & Consumer Commission, *Infrastructure RKR, ESAs with two or more fibre asset owners*, September 2013.

<sup>4</sup> Australian Competition & Consumer Commission, *Future Scope of the Local Carriage Service, Final Decision*, July 2002, p9.

<sup>5</sup> ACCC (2002), p16.

<sup>6</sup> ACCC (2002), p64.

access and PSTN services have fallen since 2004-05<sup>7</sup> and while this is national data, there is no reason to believe that the data for CBD ESAs would be significantly different.

Telstra notes that Frontier Economics argues that there “*are no currently-effective substitutes for many special services such as alarms, EFTPOS and other special services.*”<sup>8</sup> This is clearly factually incorrect; as such services can be delivered over alternative technologies – including fibre-based and wireless access networks, and in areas such as South Brisbane in which there are no copper based fixed line services.<sup>9</sup>

Telstra also disagrees that “high” prices for WLR hinder competition between Telstra and access seekers.<sup>10</sup> This is demonstrably not the case:

- Telstra’s retail market share for basic access services is [c-i-c begins] ■ [c-i-c ends] percentage points lower in CBD ESAs compared to the national average [c-i-c begins] ■ [c-i-c ends]; and
- Telstra’s data shows a reduction from [c-i-c begins] ■ [c-i-c ends] WLR SIOs in the CBD ESAs in September 2007 to around [c-i-c begins] ■ [c-i-c ends] in June 2013; a reduction of [c-i-c begins] ■ [c-i-c ends].

Competition is clearly not being hindered by the current prices for WLR and LCS in the CBD ESAs and Telstra expects that end-users are the beneficiaries of that competition.

Telstra reiterates that the list prices for WLR and LCS in the CBD ESAs have remained unchanged since December 2005, and that list prices have declined in real terms. Furthermore, the yield across the WLR/LCS bundle has fallen by [c-i-c begins] ■ [c-i-c ends], reflecting the substantial decline in demand for PSTN calling as substitutes such as VOIP and mobiles have intensified.

## Conclusion

Telstra submits that for the reasons set out above (and in its earlier submissions) it is not in the LTIE for the Commission to regulate WLR and LCS in the CBD ESAs. The benefits that have accrued to end-users have flowed from the Commission’s longstanding recognition that there is sufficient alternative infrastructure (including using fibre and also via the declared ULLS service) in CBDs which are used (or can readily be used) to supply competitive local call and basic access services to CBD end users. Since 2002 this capability has become substantially enhanced, including through new technologies such as IP and fixed to mobile substitution. Telstra urges the Commission to continue its regulatory forbearance in the CBD ESAs.

<sup>7</sup> Frontier Economics, November 2013, p4.

<sup>8</sup> Ibid, p7.

<sup>9</sup> In many cases, end users who are acquiring services such as EFTPOS, HiCAPs and back-to-base alarms are not acquiring these from a telecommunications provider. For example, in the case of EFTPOS, the service is acquired from a bank. As part of this service, the bank provides the customer with an EFTPOS terminal device that requires a communications service in order to operate correctly. Traditionally, the vendors of these devices designed them to work over the PSTN – communicating with the bank via short calls to specified phone numbers. Over time however, the device vendors and service providers (i.e. the banks) have begun to move towards supporting new technologies including IP and mobile. In some cases, devices support both, with mobile as a fail-over backup to IP.

<sup>10</sup> Ibid, p9.

Please contact Jodi Gray on 03 8649 6264 or [jodi.gray@team.telstra.com](mailto:jodi.gray@team.telstra.com) should you have any queries.

Yours sincerely,



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