Australian Competition & Consumer Commission (ACCC) Mobile Services Review

Draft Decision on Mobile Terminating Access Service
March 2004

Submission by PowerTel Limited

Introduction

PowerTel has taken this opportunity to provide comments on the Commission's "*Draft Decision* on whether or not the Commission should extend, vary or revoke its existing declaration of the mobile terminating access service" as part of the "Mobile Services Review".

Consistent with our previous submissions to the Commission, PowerTel considers that continued declaration of the Mobile Terminating Access Service (MTAS) to be most critical for a sustainable, competitive telephony market. Consequently PowerTel applauds Commission's decision for the continuation of regulation.

PowerTel remains of the view that a total service long-run incremental cost (TSLRIC) model is the most appropriate pricing methodology for the Commission to adopt for MTAS. However, PowerTel understands the Commission's concerns regarding the timing to produce a TSLRIC cost model and therefore lends its support to the continuation of the glide path for lower termination rates with the following adjustments:

i. the starting point of 18cpm should be brought forward by six months (the rate of 18cpm should be applicable by 1 July 04);
ii. the period to arrive at 12cpm should be substantially reduced; and
iii. in conjunction the Commission should conduct a TSLRIC cost based model of the mobile network as PowerTel believes this will return a MTAS rate well below 12cpm.

PowerTel notes that the Commission's approach in this draft decision mirrors the views of PowerTel and many non-integrated fixed network operators alike. Although this is to be commended, the timing and starting point for reduction as the Commission has proposed in the rating for the MTAS ignores the excessive profits enjoyed by the mobile network operators which in turn is 'likely to generate significant and potentially harmful disruption to the operations and planning of a number of telecommunications carriers', in this case, non-mobile network operators and ultimately significant harm to consumers.

The current mobile termination pricing structure does not promote competition nor has it encouraged the efficient use of the mobile networks. This incumbent inefficient pricing regime should not be allowed to continue.

Market power

PowerTel notes that the Commission finds that all mobile operators have market power[1] with regard to terminating calls on their network, irrespective of the size of the mobile operator.

[1] *ACCC, Mobile Services Review - Mobile Terminating Access Service– Draft Decision,* March 2004, p.vi.

As outlined in PowerTel's previous submissions, fixed network providers, like PowerTel are captured by the 'Bottleneck' nature of termination. Even if Fixed-line Network Operators (**FNOs**) were to utilise the mobile terminating transit services of a 3rd party provider, all calls to a particular mobile subscriber will eventually be terminated by the mobile subscriber's network operator.

For fixed to mobile (**FTM**) calls, the party that initiates the call must pay for the call, but does not choose the carrier that terminates the call. The mobile subscriber makes this choice.

Excessive price above underlying cost

PowerTel notes that the Commission finds that the price of FTM calls appears to be at least double their underlying cost of production[2]. PowerTel would go further to say that this estimate is conservative. As outlined in the Commission's draft decision, one implication of the current pricing structure is that above-cost prices for MTAS increases the costs of an essential input for providers of FTM calls. Fixed-line only operators are forced to pay above-cost prices to terminate all FTM calls whereas vertically-integrated carriers only pay those prices for those calls, which terminate on other mobile networks. This has the effect of artificially and inappropriately rewarding the MNOs at the harm of FNOs and consumers.

PowerTel notes the Commission refers to the average retail price for FTM calls to be around 38.5 cents per minute. Whilst wholesale mobile termination pricing is allowed to remain at current levels, the MTAS pricing will remain the dominant pricing element for FTM calls.

Pass-through benefits to consumers

PowerTel agrees with the Commission's view that increased competition in the FTM market would create pressure on all providers of this service to pass-through reductions in prices of mobile termination to consumers.

"PowerTel reiterates that through the adoption of a TSLRIC model for wholesale mobile termination/origination the operation of market forces will inter alia result in more competitive offerings, and appropriate reduction in cost to the residential customer."[3]

Therefore, while MTAS pricing remains excessively high and the dominant cost element for FTM costs for service providers, there is little room for to offer retail discounts to end users.

However, the introduction of the newly proposed glide path model together with the adjustments PowerTel has suggested will increase competition in the FTM market which in turn will lead to pass-through reductions in retail pricing for consumers. In conjunction, the development and eventual adoption of a TSLRIC model on mobile termination (with encouragement by the Commission) by industry will continue the promotion of competition, deliver benefits to consumers and is in the LTIEs.

Appropriate pricing principles

It would appear that the Commission believes that a cost based pricing principle for the MTAS will deliver significant consumer benefits, particularly in the retail reduction for the provision of FTM calls. However, PowerTel notes the Commission is reluctant to adopt a TSLRIC pricing principle citing it would be time consuming, costly to implement and would generate 'rate shock' into the mobile industry.

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[2] *ACCC, Mobile Services Review - Mobile Terminating Access Service– Draft Decision,* March 2004, p.viii.
[3] PowerTel submission, *ACCC Mobile Services Review,* April 2003

PowerTel considers that there are significant merits of adopting a TSLRIC pricing principle to justify the time and cost committed. PowerTel also believes that due to the nature of mobile networks that it would be far simpler to develop a TSLRIC model for a mobile network than a PSTN network.

However, PowerTel recognises that some time will be taken to develop a TSLRIC model of the mobile network and therefore makes the recommendation that this exercise begin immediately in conjunction with a more appropriate downward glide path of the wholesale MTAS price.

Cost to industry

PowerTel notes the Commission has indicated that '12 cents per minute as a conservative price target for the mobile termination service'[4]. Under the current proposal by the Commission this rate will not be introduced until 1 January 2007. PowerTel has subsequently calculated that the cost to industry, which is passed on to consumers as a result of excess mobile termination prices, is in the order of $1.7b for the period from the January 2003 until the new rate is effective.

This is tabled below.

Year	Rate differential	Cost Impact ($m)
2003	9.00cpm	$552.019
2004	9.00cpm	$574.100
2005	6.00cpm	$398.042
2006	3.00cpm	$206.982
TOTAL		**$1,731.144**

Table 1-0: Rate differential between ACCC vs conservative rate for MTAS (12cpm)

Note:

1. The starting rate is 21cpm;
2. The industry traffic volumes are based on 2003 volume of 6.1b assuming a 4% growth rate pa;
3. 2003 is included because rates have not changed since the start of the ACCC investigation; and
4. Numbers are approximate only.

This additional cost to consumers and industry is unacceptable. Therefore PowerTel suggests that the Commission give consideration to introducing the consumer benefits earlier by bringing forward the rate of 18cpm by six months and dropping the rate by 3cpm each year. The following table would then apply:

Carrier	ACCC proposal	PowerTel recommendation
1 July 2004	21.00cpm	18.00cpm
1 January 2005	18.00cpm	15.00cpm
1 January 2006	15.00cpm	12.00cpm
1 January 2007	12.00cpm	TSLRIC (sub 5-6cpm)

Table 1-1: Comparison of ACCC proposal vs PowerTel recommendation for wholesale MTAS pricing

[4] *ACCC, Mobile Services Review - Mobile Terminating Access Service– Draft Decision,* March 2004, p. 167

Cost of mobile termination

PowerTel's analysis of retail mobile-to-mobile pricing has led to the conclusion that MNOs could still earn a tidy profit by selling MTAS at 5-6cpm. Interestingly, the Commission has noted that other service providers have indicated similar levels[5]. In addition, the information the Commission has gathered through Regulatory Accounting Framework (RAF) has indicated that the underlying cost of mobile termination service may fall in between 5 to 12cpm range[6].

PowerTel would be pleased to provide assistance to the Commission in the development of an appropriate cost model for mobile termination.

Summary

PowerTel believes through the Mobile Services Review, the Commission has drawn many conclusions highlighting the need for continued regulation of the mobile market.

The Commission has acknowledged:

- The market power the mobile network operators wield;
- The excessive pricing levied for FTM calls where the bulk of the call charge is paid to the mobile network operator;
- That competitive pressure will provide pass-through benefits to consumers; and
- The need to adopt appropriate pricing principles.

Yet despite all the above, it would appear that the Commission is more concerned about 'rate shock'. By setting the start point for wholesale MTAS prices at 21cpm and then a glide path over 30 months to 12cpm, the Commission is leaving an inefficient pricing regime in place longer than absolutely necessary. This would indicate that the Commission considers the profitability of MNOs is more important than the following needs:

i. to ensure an efficient and competitive pricing regime for mobile termination;
ii. to provide consumers with reductions in retail FTM prices;
iii. to enable MTAS seekers access to cost based and reasonable wholesale prices.

PowerTel recommends that the Commission should bring forward the glide path and implement the 18cpm for mobile termination by 1 July 2004. The period to arrive at 12cpm should be reduced from 30 months to 18 months.

In conjunction the Commission should commence an investigation into the development of a TSLRIC model for mobile termination. This should be completed by mid 2005 leaving the Commission time to implement the new cost based rate (PowerTel estimates this to be around 5cpm) by 1 January 2006. Certainly a TSLRIC cost based rate for mobile termination should apply no later than 1 January 2007.

This will be consistent with the Commission's views on PSTN and ULLS access services and will provide for a more competitive mobile services market, which will be in the LTIE.

[5] *ACCC, Mobile Services Review - Mobile Terminating Access Service– Draft Decision,* March 2004, p. 58
[6] *ACCC, Mobile Services Review - Mobile Terminating Access Service– Draft Decision,* March 2004, p. 86