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Submission by the
Service Providers Industry Association (SPAN)
to the
Australian Competition & Consumers Commission
in respect of the
Mobile Services Review
Mobile Terminating Access Service
Draft Decision

June 2, 2004



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1. About SPAN

- The Service Providers Industry Association Incorporated (SPAN) is an industry body formed to represent the interests of service providers operating in the Australian telecommunications marketplace. Its membership consists of Australia's leading carriers, carriage service providers, content providers and their support organisations including equipment and technology suppliers, legal and professional service providers and industry consultants.
- SPAN's mission, as agreed by its membership, is to:
 - Foster open, effective and ethical competition in Australian telecommunications markets.
 - Ensure all service providers obtain access to networks and facilities in a manner suitable for the provision of sustainable competition in services to end users.
 - Ensure that members are committed to delivering the highest standards in customer service, innovative products and services and prices which represent excellent value.
- SPAN's objectives, again as agreed by its membership, are to:
 - Provide an effective forum for all industry participants, including access providers and access seekers, to work co-operatively together to develop the overall market to their mutual benefit.
 - Contribute constructively to the ongoing development of industry and regulatory policy.
 - Promote the highest standards of business ethics and behaviour.
 - Provide information and other services valued by the membership.



2. Introduction

- This submission is made to the ACCC in response to the Commission's request for written submissions which contribute to its draft decision in respect of Mobile Terminating Access (MTA) Service. In making this submission, SPAN acknowledges that it has failed to adhere to the Commission's published timetable for such submissions. SPAN respectfully requests the Commission's forbearance in this regard.
- This submission has been prepared by SPAN in consultation with its members. Notwithstanding their united support for SPAN's mission and objectives, the Commission will understand that SPAN's members are also active competitors in the marketplace. As a consequence of their differing competitive interests, SPAN's members do not always agree on how best to achieve the mission and objectives to which they all subscribe. Such is the case in this submission. In particular, Optus has informed SPAN that it is fundamentally opposed to the arguments put forth in this paper.
- Notwithstanding that its members are not universally supportive of this paper, SPAN believes that there is value in submitting the majority view of its membership as an input to the Commission's deliberations.
- SPAN has no objection to the Commission's planned posting of its submission in full on the ACCC website.

3. Overall Comment on the Draft Decision

- SPAN, reflecting the views of the majority of its members, supports the Draft Decision.
- SPAN notes the Commission's principal findings that the expiry date for the MTA declaration should be extended from 30 June 2004 and that the mobile termination service description should be varied to include termination of voice services on 2.5G and 3G networks. The Commission's Draft Decision contains extensive consideration of various viewpoints submitted to it in respect of these matters and reasoned argument in support of its findings. SPAN supports the Commission's findings in these areas without reservation and does not believe there is any utility in offering further comment on these matters.
- SPAN also notes the Commission's conclusion that its July 2001 pricing principles should be varied. The Commission's Draft Decision proposes that the retail benchmarking approach previously adopted by the Commission be discontinued in favour of an interim price setting mechanism applying through to 1 January 2007 and that this, in turn, be discontinued in favour of TSLRIC-based regime applying thereafter. SPAN supports these aspects of the Draft Decision albeit with some reservation. SPAN welcomes the opportunity to comment on the following matters which it believes should be subject to further attention by the Commission prior to releasing its Final Decision:
 1. Proposed Interim Prices
 2. Proposed TSLRIC-based Pricing Regime
 3. Pass Through of FTM Rate Reductions to End-Users



4. SPAN's Comments on the Proposed Interim Prices

- SPAN understands and supports the Commission's desire to "take action" on MTA prices in a timely fashion.
- A majority of SPAN's members support the Commission's proposal to prescribe specific MTA prices over the period from 1 July 2004 to 1 January 2007. These members agree with the Commission's view that current MTA prices are substantially in excess of cost; argue that the over-charging is extreme and that there has been little MTA price movement during the period of the Commission's deliberations; and contend that rapid prescriptive adjustments are justified to rectify the damage of prevailing arrangements to themselves and the LTIE. Some of these members acknowledge the Commission's concern that moving too quickly towards a cost-based price could cause disruptive "rate shock" to the MNOs while others argue that this concern is ill-placed and that the MNOs are simply playing a delaying game to maximise their own profits. Irrespective of their position on the "rate shock" question, these members are united in their desire to achieve the Commission-proposed price decreases as early as possible and certainly no later than 1 January 2007.
- Other SPAN members argue that the Commission's proposed interim prices lack adequate justification. They point to the fact that the international cost benchmarking cited in the Draft Decision is selective; that it has been provided to the Commission by parties who have a commercial interest in the outcome of the proceedings; and that the data has not been systematically validated. They argue that the data has not been analysed for applicability to the Australian market environment. They point to a lack of procedural fairness in the Commission's use of data drawn from the Telstra regulatory accounting framework and the Commission's assumption that such data is representative of all Australian MNOs. They believe that the Commission has adopted an extremely aggressive glide path for its pricing transition over the 1 July 2004 to 1 January 2007 period and that this is highly inconsistent with the Commission's philosophy of pricing transition in earlier disputes, notably the PSTN access pricing decision.
- On balance, SPAN believes that the Commission is correct in its proposal to implement an interim pricing regime underpinned by the various cost surrogates outlined in its Draft Decision. However, SPAN believes that the Commission's use of cost surrogates should be restricted to the shortest practical period. Consequently, SPAN recommends that the Commission commit to the development of a TSLRIC-based cost model as a parallel process to the implementation of the interim pricing regime. Further, SPAN believes that the Commission's Final Decision should contain an explicit undertaking to discontinue the use of cost surrogates in favour of a more rigorous TSLRIC-based regime and recommends that the Commission should target the availability of an acceptable TSLRIC-based regime ideally by 30 June 2006 and certainly no later than 1 January 2007.



5. SPAN's Comments on the Proposed TSLRIC-based Pricing Regime

- SPAN observes that its members are united in their support for the Commission's proposal to determine MTA costs through the application of TSLRIC-based pricing principles. This support applies irrespective of the differing member views, as reported in section four of this submission, on the Commission's interim pricing proposal.
- SPAN's members do not underestimate the difficulties involved in costing a regulated service and in substantiating the cost estimates used. However, SPAN's members recognise that the use of surrogate cost measures, such as those proposed by the Commission as the basis for its interim pricing regime, do not provide a satisfactory long term underpinning for regulatory policies related to pricing. Accordingly, as previously noted, SPAN encourages the Commission to confirm its commitment to the difficult task of establishing the needed TSLRIC-based pricing regime for MTA services by publishing its target schedule for this work as part of its Final Decision.
- In support of its recommendation made in the previous paragraph, SPAN notes that major MSOs, in particular Optus and Vodafone, advanced strong arguments that the regulation of MTA prices could detrimentally impact facilities based competition by undermining the justification for their investment decisions. In addition, as noted earlier, Optus has informed SPAN that it is fundamentally opposed to Commission's proposed dramatic reduction of MTA prices based on the use of cost surrogates arguing that such a decision could potentially undermine the economic viability of the infrastructure providers leading to a consolidation of available mobile platforms in Australia. While the majority of SPAN members support the Commission's rejection of these arguments in its Draft Decision, SPAN notes that the arguments have been presented with some considerable conviction. SPAN notes further that the loss of MSO investment confidence leading to platform consolidation would represent a consequence with significant and negative industry implications. Accordingly, SPAN recommends that the Commission acknowledge the critical importance of maintaining MSO investment confidence as a key factor underlying its determination to realise the early availability of TSLRIC-based cost model and that the Commission affirm that any MTA cost changes after 1 January 2007 will be based on the use of TSLRIC-based principles.

6. SPAN's Comments on the Pass Through of FTM Rate Reductions to End-Users

- SPAN notes the Commission's concern that MTA cost reductions be passed through to the end-users of FTM calls and, to a lesser extent, MTM calls. Notwithstanding this, SPAN observes that the Draft Decision does not signal any specific action by the Commission to deal with its concern in this area. SPAN believes that this deficiency in the Draft Decision; that it should be addressed by the Commission over the course of the coming weeks; and that it should be rectified in the Commission's upcoming Final Decision.



- In making the foregoing comment, SPAN is not proposing that the Commission adopt new prescriptive regulation in the area of FTM prices. Rather, SPAN is merely making the point that the absence of any action to ascertain that FTM prices are reacting appropriately to the Commission's new MTA pricing regime seems anomalous given the importance which the Commission has attached to FTM pricing in its Draft Decision.
- In general, SPAN is persuaded by the Commission's arguments that FTM prices should be considered in the context of a service bundle comprising FTM, national long distance and international calling services. However, SPAN believes that, as a minimum, the Commission should monitor and report on FTM pricing trends over the period from 1 July 2004 to 1 January 2007 while the proposed interim prices are in force. The action to monitor such prices, comparing them to the Commission's reasonable expectations of price changes over time, would equip with the Commission with the requisite data to determine whether its new MTA pricing results in effective commensurate pricing change at the retail level. In the event that the Commission does not observe such effective commensurate change, it could and should pursue that finding in whatever manner it might deem appropriate at the time.

7. Conclusion

- SPAN appreciates the opportunity to table its views in response to the ACCC's request for comments on its Draft Decision in respect of Mobile Terminating Access Services.
- SPAN would be pleased to expand on any aspect of its submission or to contribute to such other activities as might be of assistance to the ACCC as it works to finalise the Commission's future policy direction in this area.

SPAN Submission
June 2, 2004.