

 	<p>Australian Telecommunications Users Group 2008 Regional Conference</p> <p><i>Telecommunications regulation and regional Australia</i></p> <p>Michael Cosgrave Communications Group General Manager</p> <p>20 May 2008, Canberra</p>
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Introduction

I would like to thank ATUG for providing me with the opportunity to speak at the 2008 Regional Conference.

ATUG has consistently been a strong advocate for competition advancing the interests of all end-users, including its core business constituency. Regional users are part of this constituency, so today my job is to outline the ACCC's approach to telecommunications regulation and how this affects regional and rural Australia and perhaps debunk a few myths along the way.

The ACCC's approach to regulation

When talking about the ACCC's approach to regulation, it's best to just start with some fundamentals. Access regimes exist to help markets operate efficiently where the bottleneck characteristics preclude competition doing that by itself. All consumers would likely be paying higher prices for poorer quality services and products, with less investment in technological innovation, without an access regime that encourages both competition and efficient investment.

In discharging its functions under the access regime, the ACCC's charter is to ensure the long term interests of end-users (LTIE). In doing so, the ACCC must have regard to the objectives of:

- Promoting competition in relevant markets for telecommunications services and
- Encouraging efficient investment in, and use of, current and future infrastructure.

In a pricing context the ACCC has consistently indicated that the LTIE is best served by access prices that reflect efficient costs. What providers do with their retail charges is then largely a matter for them, except for the government's retail price controls on Telstra. What we have seen in the retail space, whether in relation to services using regulated or unregulated inputs, is retailers charging uniform national prices. Cost-based access prices provide

appropriate investment signals to access seekers and influences their decisions on the best way to compete – whether that be by investing in alternative networks, such as wireless, satellite or mobile services; using their own DSLAM technology and Telstra's unbundled copper loops where it is technologically and economically plausible or by reselling Telstra's wholesale products

So when it comes to setting access prices for Telstra's copper network, which is the primary focus of access regulation, the ACCC considers these should reflect the efficient costs of providing the service. But the cost of providing the unconditioned local loop service (ULLS) varies with different network performance characteristics.

In urban areas, higher density exchanges and shorter line distances mean lower capital costs than in regional and rural areas. The ACCC believes these differences should be reflected in the access prices it sets. This is why the ACCC takes a de-averaged approach to setting ULLS access prices, and ULLS access prices end up being cheaper in urban areas than in regional and rural areas.

The ACCC considers de-averaged ULLS access prices to be in the interests of end-users, both urban and regional, because it encourages better investment decisions – this, as I mentioned, is one of the objectives the ACCC must have regard to in making its decisions. Lower, cost-based ULLS access prices in urban areas encourage access seekers to invest in DSLAMs and engage in ULLS-based competition. Cost-based access prices in regional and rural areas that are higher encourage access seekers to consider alternative, less costly ways of providing broadband services, for example, delivering broadband via wireless, satellite or mobile services.

On this point, I note, according to 2008 research conducted by Ericsson, Australia is the world leader in wireless connections; with an estimated 660,000 wireless broadband subscribers. The last 6 months have seen significant developments regarding investment in 3G mobile networks. With its NextG roll-out, Telstra claims terrestrial mobile broadband is now available to 99% of the population and has announced further investment to increase network speeds. Optus recently announced that it would embark on an investment program to expand its nationwide mobile network to reach 98 per cent by December 2009. And in December last year Vodafone announced it will roll out its HSDPA mobile broadband network to 95 per cent of the population by the end of 2008.

Some would claim that this is an example of capital flowing to largely unregulated services. I would argue that it is investment being driven by infrastructure based competition, which importantly, has been in place almost from the inception of the mobile sector in the 1990s, as a consequence of the Government's licence conditions.

In any event, it is likely averaging ULLS access prices wouldn't necessarily see greater take-up of the ULLS in regional and rural areas. For one thing, if the structure was the primary reason for lack of ULLS take-up you would expect the access price of \$2.50 for the line sharing service (LSS) to encourage substantial take up of the LSS for supplying broadband in regional

areas. But, despite the uniform LSS price, there hasn't been significant take up of the LSS in regional areas, which suggests there are other factors going into these investment decisions that are inhibiting take up of the ULLS and LSS in regional areas.

It is likely technical limitations of the copper over which the ULLS and LSS are supplied are contributing factors to why copper-based services may not be the best platform for delivering broadband in regional areas. DSL technology is unable to deliver broadband beyond five kilometres from an exchange. Other important elements of an access seeker's cost equation include the level of demand, gaining access to Telstra exchanges and how economic it is to build or purchase the necessary backhaul (on which I will say more shortly). So ULLS access prices that recognise differing costs are likely just one of many reasons that explain why DSL broadband is not yet provided everywhere.

Indeed, there remains a myth that everybody is even on the copper network over which the ULLS, LSS and their downstream broadband services are supplied. Many plain voice services simply cannot be provided using the copper technology, hence the use of satellite and microwave services for the fulfilment of some Universal Service Obligations. What this means for broadband, as the Government recognises, is that, inevitably, there is a proportion of the population who have to rely on satellite or wireless services. However, the Government's recent commitment to the Australian Broadband Guarantee should ensure the 2 per cent not covered by the proposed National Broadband Network (NBN) will still have access to the internet and the benefits it provides.

The Universal Service Obligation (USO) and ABG are examples of where Government policy steps in to address a need which may not be otherwise met by the market. Both of these policies are funded by transparent subsidy schemes. The ACCC supports policy measures to provide services to otherwise non-commercial regions, but does strongly believe that any attendant subsidies should be carefully costed and administered transparently to minimise their distortionary impact on consumers and the industry more generally.

In carrying out its regulatory work, the ACCC continues to bear in mind the interests of all end users, including those in regional areas. We recently released a significant draft decision, proposing to grant Telstra exemptions from supplying wholesale line rental and local call services in several hundred, mainly metropolitan, exchange service areas.

This attracted some industry attention, but what was little recognised was the fact that the same services remain regulated in all other areas; that is, in regional and rural areas. This is a clear case of the ACCC applying a considered, evidence-based analysis and applying regulatory protections where they are necessary – in this case, in the bush.

The ACCC is well aware there are specific issues affecting regional areas and I'd like to spend a little more time now discussing these.

The ACCC's transmission pricing model

As I've indicated in my discussion of the considerations in investing in broadband services in regional areas, one of the long talked about (including by me at this conference in previous years) impediments to investment in regional areas has been access to backhaul or transmission services. Backhaul is a critical input to the supply of broadband services to users across Australia. From time to time it's been said that the price of backhaul on routes without effective competition is a key obstacle to the roll-out of high-speed broadband into regional and rural Australia.

In the past 12 months, the ACCC has been working to develop a model to estimate the cost of providing transmission capacity services. Despite some complex issues arising in the development of the model, the ACCC now has a working model which has the flexibility to calculate the cost-based pricing for backhaul.

The model is based on Telstra's current optical fibre network architecture for the provision of transmission services. This architecture reflects current 'best-in-use' technology. Transmission networks use ring based architecture to ensure redundancy paths for signals – that is, there are different network options available to provide an alternative path should a signal be unable to get through. However, this ring-based nature of transmission network and a lack of clarity over the routes that require pricing have presented difficulties in arriving at specific cost-based prices. We understand that other suppliers of optical fibre transmission services would be likely to configure their networks in a similar manner.

The model will inform the ACCC's estimation of cost between various capital-to-regional locations in Australia. It will also provides for the estimation of submarine transmission costs between Melbourne and Hobart. The ACCC has worked hard to address this issue. We expect the benefits of the transmission cost model will become evident to access seekers in future commercial negotiations.

While the model will undoubtedly be a valuable tool in future negotiations, it should be noted that transmission has been a declared service for quite some time. Despite this, the ACCC has only been notified of a handful of access disputes relating to backhaul. All of the disputes we've been notified of have been withdrawn before any final determinations were made.

The cost of backhaul is only one of many factors that influence access seekers' investment decisions. The ACCC does not expect the model to be a silver bullet for infrastructure competition in regional and rural Australia; but it does expect that it will go some way to addressing one possible impediment to investment.

The CDMA shutdown

One particular issue that received a lot of attention in rural and regional areas over the last few months was the shutdown of Telstra's CDMA network.

Firstly, I would note the ACCC's role in this was limited to its usual role of enforcing the consumer protection provisions of the *Trade Practices Act*. This involved investigating whether misrepresentations were made regarding the performance of the Next G mobile network.

Last year the ACCC did in fact identify concerns relating to Telstra advertisements promoting Next G. The ACCC considered the advertisements run at this time had the potential to mislead consumers about the coverage and availability of the network. The ACCC was particularly concerned with representations which suggested that:

- coverage on the Next G network was always available to customers "everywhere" they needed to use their mobile telephone; and
- a customer on the Next G network would receive the same or better coverage than was available on the CDMA network.

Our way of responding to these concerns was to, initially, strongly encourage Telstra to withdraw and amend the advertisements. Encouraging businesses to alter their conduct is the way that the ACCC usually deals with these issues to start with – and we think that it's an appropriate starting point. But as you would know, this approach wasn't successful this time. That meant that the ACCC promptly instituted proceedings against Telstra to restrain it from making similar representations.

During December 2007, the Federal Court made injunctions permanently restraining Telstra from making certain representations about the Next G network.

I also want to stress that we remain vigilant in relation to misleading or deceptive advertising of broadband speeds or 'free' handsets with mobile phone plans. On this front, I'd note that we recently instituted proceedings against Crazy John's to address concerns such as these.

This court action that we have been taking reflects our strong commitment to consumers. We want to make sure that consumers are not misled about the goods or services they are purchasing. It could be said that this is especially important in relation to regional and rural telecoms consumers. The ACCC is well aware of the dependence many consumers have had on networks such as CDMA, and now Next G, in the bush. The ACCC understands that communications inputs are essential to doing business outside of the capital cities.

Earlier this month Telstra withdrew an appeal against the Federal Court's ruling on its Next G advertising. Telstra's decision to discontinue its appeal proceedings brings a welcome end to this matter. I also believe it vindicates the ACCC's strong intervention to protect consumers from misleading marketing.

National Broadband Network

Moving on, it would be remiss of me to not mention an issue that is front and centre in public discourse at the moment. The Federal Government's process

to find a company or companies to build a National Broadband Network is now in full swing.

The ACCC will fulfil its advisory role in the tender process, as outlined in the RFP documentation, with its usual rigour and independence. The ACCC has been asked to provide the expert panel with ongoing advice during the process and to also provide a written report which will assist in the final assessment of proposals. The RFP specifies that the ACCC will provide advice on issues 'such as wholesale access services and prices, access arrangements, proposed legislative or regulatory changes and the likely impact of proposals on pricing, competition and the long term interests of end users in the communications sector'.

As this conference is concerned with tackling regional telecommunications issues, I would like to focus the rest of my comments regarding the tender process on the challenges of building a fixed network which covers 98% of the population and stretches across the vast geographical area of regional and rural Australia.

What we can be certain of by reading the RFP is that the government views its requirement for an NBN to cover 98 per cent of the Australian population as a key criterion for selecting a provider or providers. Whilst the RFP is silent on this, it is likely the Government will look for retail pricing constructs on a uniform national basis. The RFP also looks for costing every percentage point beyond 85 per cent coverage. Since the release of the RFP, some initial estimates suggest that delivering fibre to the final 10 per cent of the population will cost up to 51 times more than in the five largest capital cities. Other research has suggested that fibre backhaul costs increase seven fold to move from 90 to 98 per cent coverage of the population.

In that regard, it is inevitable that the provision of universal service obligations will enter the debate at some stage. However, the ACCC notes the clear emphasis in the Government's RFP on identifying any losses arising from the extension of the NBN to 98 per cent of premises, and the obligations upon Proponents to justify their preferred funding mechanism. The ACCC encourages a transparent approach to this issue, which can hopefully ensure that the chosen network provider or providers do not pursue a strategy of internal cross-subsidisation down the track.

Conclusion

The ACCC is aware of the challenges faced by those in regional areas in relation to telecommunications services. The issues I've spoken about today are particularly important to regional users and I hope I've clarified how the ACCC sees telecommunications issues in rural and regional areas. In all its decision making the ACCC does not seek to pick winners and losers, rather the ACCC must ensure all telecommunications users' interests are furthered by the competitive process.