



TELSTRA CORPORATION LIMITED

Submission in response to the ACCC's Position Paper:

"Unconditioned Local Loop Service - ACCC inquiry into possible variation of the service declaration for the unconditioned local loop service"

22 February 2008

Overview

This is Telstra's submission in response to the Australian Competition and Consumer Commission's (the **Commission**) position paper (**Position Paper**) on the possible variation of the service description for the unconditioned local loop service (**ULLS**).

In its Position Paper, the Commission states that:

- it is the Commission's view that there is no need at this point in time to vary the current ULLS declaration for the purposes of access at the sub-loop level (including for the deployment of a fibre to the node (**FTTN**) network either by Telstra or a third party); but
- regardless of FTTN developments, the ULLS declaration may need to be varied to ensure technical and functional neutrality in the event of IP core upgrades.

Accordingly, the Commission has proposed a number of amendments to the ULLS service description on the basis that these are necessary for technical and functional neutrality, on which it now seeks comments.

In accordance with Part XIC of the *Trade Practices Act 1974* (Cth), the Commission must be satisfied that any variation to the ULLS service declaration will promote the long term interests of end-users (**LTIE**) before it can proceed with its proposed variation. However, the Commission's proposal to vary the ULLS service declaration will not promote the LTIE on two levels.

First, the Commission's proposal to vary the service description at this stage is premature given that:

- the variation is unnecessary to support the rollout of a FTTN network either by Telstra or a third party, as acknowledged by the Commission;
- the variation is also unnecessary to address the replacement of PSTN based services with VOIP based services because any such replacement is currently theoretical;
- there is no evidence of any real demand for access at the sub-loop level or that the current service description has led to any problems for access seekers obtaining such access; and
- the variation is inappropriate because the current ULLS declaration expires in July 2009 and the Commission has already said that it will commence a further review of declared fixed services by mid-2008.

Second, the proposed variation goes further than what is required to make the description technologically and functionally neutral. It introduces significant uncertainty with no real benefit to end-users. A number of the Commission's proposed amendments also suffer from the same technical issues previously identified by Telstra in its submission on the Commission's initial Discussion Paper resulting in significant detriment to consumers and to Telstra.

Each of these issues is outlined below in this submission. Further detail is available in Telstra's submission in response to the Commission's initial Discussion Paper.

For these reasons, Telstra believes the proposed variation in its current form is highly detrimental to Telstra and consumers while providing no real benefit to access seekers and would not promote the LTIE. Accordingly, the Commission should not proceed with its current proposal.

Telstra believes that if any variations to the ULLS service description are to be made they should be limited to the minimum changes required to make the description technologically and functionally

neutral. Telstra has developed a set of proposed amendments to the Commission's variation that achieve this objective of parsimonious change only.

Telstra also maintains its position that Part XIC is constitutionally invalid in so far as it relates to the ULLS or that, if Part XIC is constitutionally valid, the ULLS is not validly declared by virtue of the operation of the Legislative Instruments Act 2003. Nothing in this submission derogates from this position.

1. The proposed variation is premature

Continuing the Commission's inquiry at the present time will not promote the LTIE.

In particular, the Commission's proposal to vary the ULLS service description is premature given that:

- the proposed variation is unnecessary to support the rollout of a FTTN network by either Telstra or a third party;
- the proposed variation is also unnecessary to address the issue of the replacement of PSTN based services with VOIP based services because any such replacement is currently theoretical;
- there is no evidence of any real demand for access at the sub-loop level or that the current service description has led to any problems for access seekers obtaining such access; and
- the proposed variation is inappropriate because the current ULLS description expires in July 2009 and the Commission has already said that it will commence a further review of declared fixed services by mid-2008.

Accordingly, given the lack of demand (both in Australia and internationally) for access to ULLS at the sub-loop level and the fact that the Commission has received no evidence to suggest that the current ULLS service description has led to access seekers not being able to receive such access, it would not promote the LTIE to continue with the proposed variation and, in fact, the Commission should suspend the current inquiry until there is greater certainty around the requirements for a FTTN network deployment by either Telstra or a third party.

The variation is not required to facilitate a FTTN rollout

The Commission's proposal is premature in light of the current uncertainty surrounding the rollout of a FTTN network, either by Telstra or a third party, and the apparent intention of the G9 to withdraw its SAU.

In its Position Paper, the Commission acknowledges that there is no need at this point in time to amend the current ULLS service description to allow for access to ULLS at the sub-loop level to facilitate the rollout of a FTTN network. The ULLS service description already enables such access, were Telstra to deploy a FTTN network. The Commission acknowledges that the right of access under the existing ULLS declaration is not limited to the exchange. The Commission also clearly acknowledges that any amendment that may be necessary in order to allow for access to ULLS at the sub-loop level in the event of a FTTN network deployment by G9 or another third party should follow any legislative amendment that would be necessary to allow for 100% cutover at the sub-loop level or "pillar migration".

While Telstra acknowledges that (depending on the nature of the legislative change) the ULLS service description may need to be amended in the event that such pillar migration was to be permitted via legislative change, it would not promote the LTIE to do so at this point and the Commission instead should make all the necessary amendments to the service description at the same time.

The problem is theoretical

It appears from the Position Paper that part of the Commission's rationale for the amendments to the ULLS service description is to address the issue raised by G9 that any cessation of use of "CAMS", such as in the case of a transition to an IP core network, would mean that Telstra is no longer obliged to provide access to communications wires in the customer access network.

The perceived need to vary the service description to address the replacement of PSTN based services with VOIP based services, and therefore any benefits arising from varying the service description at this time, is currently theoretical.

To date, the current service description has not prevented any parties from accessing the ULLS. In its initial Discussion Paper, the Commission sought information from interested parties in relation to difficulties accessing RIMs or other remote access points. Telstra notes that none of the submissions received by the Commission in response to its Discussion Paper identified any problems accessing ULLS at the sub-loop level that were attributable to the current service description. The Position Paper does not provide any evidence or suggestion that the current service description has prevented such access.

The Commission comments in its Position Paper that it is mindful that the ULLS declaration may need to be varied to ensure technical and functional neutrality in the event of IP core upgrades. However, there is currently no certainty around when, or even if, this will occur. The Commission itself has acknowledged the theoretical nature of the problem in its Position Paper. The rollout of IP core upgrades by Telstra does not necessarily mean that PSTN based services will be replaced. Even when an IP core network is deployed, it is unlikely to completely replace Telstra's existing PSTN based services. As noted in the Position Paper, while Telstra began deploying its IP core network in April 2007, it is not currently in a position to migrate any of its customers off PSTN switches.

Separately, the Commission needs to be careful not to confuse the IP core upgrade and soft switching, with the service as experienced by the end-user. PSTN emulation, delivered via an MSAN, is capable of providing traditional analogue phone service between the end-user and the CAM, but interfaces with the core network using IP/MPLS. The Commission should note that to date Telstra has not announced any plans to change the way that end-users access voice services; in particular, no announcement has been made to the effect that end-users will be migrated to a VOIP interface.

The effective time period is likely to be limited

Even when PSTN based services are replaced with VOIP based services, the period of time in which the ULLS service description may be required to be technologically and functionally neutral will be limited.

The current ULLS service declaration is due to expire on 31 July 2009, less than 18 months from now. Given the above-mentioned uncertainty around when IP core upgrades will be deployed, and the questionable relationship between this and any changes in the nature of the service delivered to end-users from the CAM, the service declaration may well expire before the proposed variation can be of any real benefit.

In addition, Telstra is aware of the Commission's intention to undertake a further review of declared fixed services by mid-2008. Given the theoretical nature of the problems the current variation is aimed at addressing, it is completely inappropriate for the Commission to be considering this variation outside of the proposed fixed services review given that mid-2008 is only months away.

Similarly, it is possible that the Government's FTTN proposals may have progressed before any change in the service description can be of any benefit. As noted above, the Commission itself recognises in its Position Paper that the proposed variation to the service description is of limited benefit in a FTTN environment.

Accordingly, any potential benefit that may arise from the proposed variation is likely to be very limited and continuing the inquiry at the present time will not promote the LTIE. If, however, the Commission remains of the view that variation of the service description is necessary, it would be more appropriate to defer considering the proposed variation until the Commission conducts its fixed line services review.

2. Proposed variation itself is not in LTIE

The Commission cannot proceed to implement the proposed variation to the service description unless it is satisfied that doing so will promote the LTIE. In doing so, the Commission must balance the benefits and costs likely to flow to end-users from the regulation.

The proposed variation contained in Appendix C of the Commission's Position Paper will not promote the LTIE for the following reasons:

- it goes further than what is required to make the ULLS service description technologically and functionally neutral; and
- it raises similar issues to those previously raised by Telstra in its submission in response to the Commission's initial Discussion Paper.

For all the reasons set out below (and as set out in more detail in Telstra's response to that Discussion Paper), the variation currently proposed by the Commission would not promote the LTIE.

The proposed variation goes too far

The Commission's stated purpose for the proposed variation of the service description is to make the current ULLS service description more technically and functionally neutral.

For all the reasons set out in section 1 above, it is important for any variation of the service description (were it to proceed) to be limited to the minimum variations required to make the service description technologically and functionally neutral. However, the variation proposed by the Commission goes further than what is required to meet this objective and provides no real benefit for end-users or to access seekers.

In addition to the changes made to the definition of a "CAM", the proposed variation introduces the concept of access at a "concentration point". Although it is not entirely clear why the Commission has chosen to introduce this concept (given that its inclusion does not appear to advance the cause of ensuring technical and functional neutrality), it appears that the Commission has done so purely on the basis that certain overseas jurisdictions incorporate similar concepts.

The inclusion of this concept in the current context is unnecessary given:

- the current ULLS service description already allows for access at the sub-loop level (as acknowledged by the Commission);
- there is no evidence that the current service description is not working and the introduction of the concept of a concentration point will create unnecessary uncertainty given its meaning is untested, unclear and borrowed from another jurisdiction (as discussed further below) - meaning there would be no real benefit at all to access seekers;
- even if there was evidence of an issue with the current service description, any perceived concerns about technical and functional neutrality would be corrected with the proposed changes to the definition of a "CAM"; and
- most importantly, the concept of a "concentration point" raises a number of the technical issues raised by Telstra in response to the Commission's initial Discussion Paper.

It is also relevant to note that the concept of a "concentration point" has been taken by the Commission from the definition of the local sub-loop in the EU. The Commission's use of the EU concept is misdirected for a number of reasons. In particular, Telstra notes that:

- in the EU a “concentration point” appears to have been interpreted as relating to primary connection points. Access to ULLS at such primary connection points is already provided for in the existing ULLS service description; and
- it is inappropriate to incorporate such a concept from the EU because the complete absence of demand for sub-loop unbundling in the EU (as recognised by the Commission in its Position Paper) means that the definition is untested in either regulatory or practical terms.

The variation raises similar issues to those raised in Telstra’s previous submission

As noted above, the Commission’s proposed amendments would allow access at a “concentration point” which is defined broadly in the Commission’s proposed variation and goes further than a pillar. Accordingly, the proposed variation raises a number of the issues raised previously by Telstra in its response to the Commission’s initial Discussion Paper.

In particular, allowing access at a “concentration point” as currently defined would result in detriment to both consumers and to Telstra, for no benefit to access seekers, as further outlined below and in Telstra’s submission in response to the Commission’s initial Discussion Paper.

When the detriments of the proposed variation are compared with the lack of demand currently experienced for access at the sub-loop level (and the lack of demand likely to be experienced for it in the future), it is clear that the proposed variation would not promote the LTIE and therefore should not proceed as currently drafted.

Detriment to consumers

Allowing access at “concentration points” as currently defined is detrimental to consumers for three key reasons:

- it is likely to result in *interference* to existing consumers services;
- it has the propensity to *increase the number of faults* in the network; and
- it will *impact on the availability* of higher broadband services.

Interference

As previously advised, if an access seeker interconnects at a remote access point (such as a pillar) in a Distribution Area (DA) at the same time as services are provided to that DA from a Telstra exchange building via the Telstra main cable, or from another remote location, the interconnecting ADSL service provided from the lower point in the network may interfere with (and therefore degrade) the quality of the existing services. This will impact on both Telstra retail services and the services already provided by Telstra wholesale to access seekers - and will restrict the speeds and customer reach that can be achieved as a result of the interference issues.

Increased faults in the network

Interconnection at multiple remote access points is likely to increase the total number of faults. Opening the network and making changes to it significantly increases the risk of faults, thereby increasing the costs of maintenance and repair of the network, and potentially decreasing end-user satisfaction with Telstra’s (and access seekers’) telecommunications services. This propensity was recognised in a report commissioned by the Commission at the time of the original ULLS declaration. The proposed variation jeopardises the delivery of services to end-users. Telstra does not believe that the use of the caveats “capable of supporting sub-loop access” or “without affecting network integrity” provides appropriate protection against these issues.

Limits on the availability of higher broadband speeds

Allowing multiple access points to the network will restrict full enjoyment of bandwidth capabilities available from a single remote node network architecture using dynamic spectrum management (DSM) technology due to the need for a single feed point from a node to avoid spectrum management issues.

Detriment to Telstra

Allowing access at a “concentration point” as currently defined would also result in detriment to Telstra in terms of substantially increased costs, a reduced ability to upgrade its network and maximise efficiency, and a reduced ability to meet its current regulatory requirements.

Increased costs

The proposed amendments will result in a significant increase in costs to Telstra as detailed in Telstra’s response to the initial Discussion Paper. These include costs associated with:

- having to upgrade Telstra’s systems (including IT systems) to reflect the variety of ULLS that could be ordered and provisioned, upgrading and updating internal records, establishing new technical field processes, undertaking a complete remapping and recording of the network topology and records to identify all potential break points, and developing technical solutions to overcome the inherent issues of spectral incompatibility;
- a loss of high utility/high cost duct space that would otherwise be available; and
- the increased number of truck rolls to the node for churn and activation.

Reduced ability to manage the network

The proposed amendments will hamper Telstra’s ability to upgrade its network and to improve its efficiency over time as a result of the fact the proposed variation:

- would require Telstra to provide access at a point in its network which may be inappropriate in light of Telstra’s current and future network plans. Under the current service description, ULLS is linked to a CAM. If Telstra installs a CAM at a remote point on its network, it has assessed the appropriateness of providing access at this point. Allowance needs to be made for any future network plans Telstra may have. In this respect, Telstra notes its comments in its response to the initial Discussion Paper in respect of overseas jurisdictional requirements for access at the sub-loop level; and
- (when taken with comments made by the Commission in its initial Discussion Paper) could be read as requiring Telstra to maintain copper between its exchange buildings and an end-user’s premises by requiring that a request by an access seeker at one point on a communications wire could not be satisfied by the provision of access at another point. This would be a significant constraint on Telstra’s ability to plan, manage, maintain and modernise its own network (a right that has been acknowledged by the Commission on numerous occasions).

Reduced ability to meet regulatory requirements

The likely increase in the number of faults from allowing interconnection access at numerous remote points will threaten Telstra’s ability to meet its regulatory obligations, as detailed in Telstra’s submission in response to the Commission’s initial Discussion Paper.

3. Conclusion

Telstra believes it is unnecessary and inappropriate for the Commission to make the proposed variation at this point in time.

The Commission itself has acknowledged the fact that the proposed variation is not necessary at this point for any FTTN network rollout. It has also acknowledged the uncertainty around the timing for the deployment of IP core networks and any move away from PSTN services.

It is clear that the variation proposed by the Commission goes much further than is necessary to achieve its stated objective of technical and functional neutrality. The proposed variation actually incorporates untested concepts from overseas jurisdictions where the interpretation is unclear and the lack of demand for sub-loop unbundling is acknowledged by the Commission.

Accordingly, the proposed variation (as currently drafted) would not promote the LTIE on the basis of:

- the issues raised by the proposed amendments resulting in detriment to consumers and significant detriment to Telstra;
- the lack of any real benefit to access seekers when compared with the existing ULLS service description given that access at the sub-loop level is already permitted;
- the fact that the Commission has provided no evidence of any real demand for access at the sub-loop level or any evidence to suggest that the current service description is preventing access at the sub-loop level for access seekers; and
- the clear acknowledgment from the Commission that a change is not required at this stage to allow for a FTTN network deployment by either Telstra or a third party.

SCHEDULE

Telstra amendments to proposed draft variation to the ULLS service description

The current ULLS description

The unconditioned local loop service is the use of unconditioned communications wire between the boundary of a telecommunications network at an end-user's premises and a point on a telecommunications network that is a potential point of interconnection located at or associated with:

(a) a customer access module; or

(b) a concentration point.

and located on the end-user side of the customer access module. ~~For the avoidance of doubt a request by an access seeker for access at one point of interconnection on a communications wire is not satisfied by the provision of access at another point of interconnection on that communications wire.~~

Definitions

Where words or phrases used in this declaration are defined in the *Trade Practices Act 1974* or the *Telecommunications Act 1997*, they have the meaning given in the relevant Act.

boundary of a telecommunications network is the point ascertained in accordance with section 22 of the *Telecommunications Act 1997*;

communications wire is a metallic based wire forming part of a public switched telephone network;

~~**concentration point** is a technically feasible concentration point or intermediate access point in the local access network capable of supporting sub-loop access to an operator without affecting network integrity. An example would be a pillar;~~

customer access module is a device that provides and receives signalling across metallic wire to the customers' equipment. Examples include Remote Subscriber Stages, Remote Subscriber Units, Remote Integrated Multiplexers, customer line module of a Local Access Switch, customer line module of a DSLAM, or customer line module of a MSAN;

public switched telephone network is a telephone network accessible by the public providing switching and transmission facilities utilising analogue and digital technologies.