TELSTRA CORPORATION LIMITED

Key Performance Indicators
for Non-Price Terms and Conditions

Telstra's submission in response to the ACCC's April 2003 Discussion Paper

16 May 2003

Introduction

1. Telstra welcomes this opportunity to respond to the Commission's *Key Performance Indicators for Non-Price Terms and Conditions* Discussion Paper (**"Discussion Paper"**) that was released for public comment on 17 April 2003.

2. Telstra also welcomes the scope that accounting separation potentially offers to demonstrate that it does not discriminate between its wholesale and retail customers in relation to either price or non-price terms and conditions, and that Telstra's offerings in the corporate market do not involve any misuse of market power.

3. Telstra considers that the Commission's Discussion Paper is generally well drafted and largely gets right the critical balance between increased transparency and regulatory burden. At the same time, Telstra has a number of concerns with the Commission's Discussion Paper that it believes need to be addressed. In particular, Telstra is concerned that inclusion of discussion in relation to model terms and conditions in the Commission's Discussion Paper has the potential to confuse other market participants when considering the issue of non-price terms and conditions (**"NPTC"**). There are also a number of other important issues which are discussed below.

4. Telstra urges the Commission, in making its record keeping rules (**"RKR"**) under the Direction, to carefully balance the resource and monetary costs associated with the various options for reporting performance against the anticipated benefits. In this regard, Telstra reminds the Commission of the Minister's intention that the accounting separation regime should avoid unreasonable regulatory burden on Telstra.[1]

Non-price terms and conditions *versus* model terms and conditions

5. While Telstra acknowledges areas of obvious overlap, Telstra considers that the inclusion of an analysis in relation to model terms and conditions in the Commission's Discussion Paper has increased the risk of confusing the debate about appropriate NPTCs under the accounting separation regime.

6. The ACCC is required, under section 152AQB of the *Trade Practices Act 1974*, to determine model terms and conditions in respect of core services. Core services are defined to include PSTN Originating and Terminating Access, Unconditioned Local Loop Service and the Local Carriage Service. The purpose of section 152AQB is to ensure "more timely access to interconnect [that is, core] services".[2]

7. In contrast, accounting separation and the requirement to compare Telstra's performance in regard to its retail and wholesale customers derives from section

[1] See: Senator the Hon Richard Alston, Minister for Communications, Information Technology and the Arts, *Media Release*, 24 September 2002; and, *Telecommunications Competition Bill 2002 - Explanatory Memorandum*, p 18.

[2] Senator the Hon Richard Alston, Minister for Communications, Information Technology and the Arts, *Media Release*, 24 September 2002.

151BUAAA of the TPA. Section 151BUAAA does not define non-price terms and conditions, but the draft Ministerial Direction[3] issued under that section defines them as "terms and conditions relating to … faults, maintenance, ordering, provisioning, availability, performance, bill or notifications …". While not settled, the only service likely to be compared for the purposes of NPTCs is, at this stage, "basic access".[4] Performance measurement in relation to core services, at least as they are defined by section 152AQB, will not occur. The purpose of section 151BUAAA, and the Direction to be issued under it, is to provide "a more transparent regulatory market". [5]

8. Therefore, model terms and conditions and NPTCs have different purposes and relate to different services. It is the form and substance of model terms and conditions that are important in assisting timely access; in regard to NPTC, the service acts as the common denominator for comparison purposes. Model terms and conditions and NPTCs are also governed by different provisions of the TPA and/or legislative instruments. The only connection between model terms and conditions and NPTCs is that both were introduced by the *Competition (Telecommunications) Act 2002* as part of a broad range of initiatives to improve competition and transparency in the telecommunications market.

9. In order to avoid confusion, Telstra recommends the Commission carefully distinguish between model terms and conditions and NPTCs in the future, and in considering any responses received in relation to its Discussion Paper on NPTC.

The relevant service for comparison purposes is "Basic Access"

10. It is critical that any service used for comparison purposes be supplied in exactly the same fashion to both retail *and* wholesale customers; if the service is not supplied in the same manner, a valid comparison cannot be made. Basic access is the only service that, at present, fits this description and therefore permits a logical and meaningful comparison. Telstra welcomes the ACCC's view that it sees merit in this approach.

[3] Issued on 19 March 2003.

[4] The current draft Direction refers to "specified wholesale services" and "specified retail services" although these are, in turn, likely to be defined to mean basic access. Performance is not, Telstra understands, to be measured in relation to "core" services as stated at several places in the Commission's Discussion Paper – see, for example, paragraphs 2 and 2.1.

[5] Senator the Hon Richard Alston, Minister for Communications, Information Technology and the Arts, *Media Release*, 24 September 2002.

11. Telstra has recommended to the Government that it adopt the following definition for basic access:

> *"**Basic Access** means connection from the Network Boundary Point at the customer or end user's premises (as relevant) to the local Telstra telephone exchange providing access to Telstra's PSTN for the purpose of providing Telstra's LCS voice telephony."*[6]

12. This definition of Basic Access has been drafted to ensure that the service described is one that is capable of forming the basis of meaningful and accurate comparisons between performance for retail and wholesale customers.

13. While the last part of the definition refers to LCS, Telstra notes that once a connection had been made for the purposes of LCS, it would of course be possible for a customer to make STD and other types of calls.

KPIs generally

14. Telstra believes it is critical that the Commission, and the industry more broadly, clearly understand the complexities and costs associated with the implementation of accounting separation, including in respect of NPTCs. Significant IT systems development work will be necessary to capture data from systems designed not for regulatory accounting but for the management of Telstra's operations. Telstra has committed significant time and resources to date, and will continue to do so, to implement the Government's accounting separation regime. However, Telstra is still to confirm that its will be able to report against all proposed key performance indicators (**"KPI"**) without bearing an undue regulatory burden.

15. If further investigation reveals that Telstra will not be able to report against all the proposed KPIs without an undue regulatory burden, Telstra will advise the ACCC of that fact and propose alternative KPIs that could be the subject of reporting without such an unintended and unwarranted imposition.

The appropriateness of the "billing" KPI

16. Of particular concern at the present time is the KPI in respect of billing. Initially, Telstra understood that the Government's prime concern here was to measure performance in respect of call charging and billing accuracy and that a procedure based on the ACIF C518 Code (**"ACIF Code"**) would be appropriate. As such, Telstra undertook a series of investigations to determine whether the ACIF procedures could be adopted for accounting separation purposes.

[6] "Network Boundary Point" would be defined to have the same meaning as section 22 of the *Telecommunications Act 1997.*

17. By way of background on the ACIF procedures, Telstra already has expended significant resources (including more than $1 million on test systems and IT development), over a period of more than a year, putting in place procedures to comply with the ACIF Code on call charging and billing accuracy. Telstra's compliance systems involve making around one million test calls per quarter to test all major parameters including call time of day/date, call duration, called number, rating, additional call and missing call. Telstra's compliance with the ACIF Code has been independently audited and ongoing results are reported on a regular basis. The charging and billing systems that are tested under the ACIF Code are used on a "colour blind" basis for both retail and wholesale customers.

18. Given the time, cost and complexity involved in establishing this compliance system, and the fact that Telstra's call charging and billing accuracy systems have already been assessed as complying with the ACIF Code, Telstra submits that it would not be productive to replicate the ACIF procedures by requiring a separate KPI for call charging and billing accuracy.

19. Of course, it would potentially be open to the ACCC to determine a billing metric that aimed to measure, for example, the period of time to deliver bills to clients, or some other measure in relation to billing. However, Telstra cautions against such an approach. The billing information Telstra provides to its retail customers, and the delivery procedures used, bear little resemblance to the billing information or delivery procedures required by its wholesale customers.

20. For example, retail billing is generally carried out on a quarterly cycle and the majority of bills are dispatched to customers in paper format. A proportion of retail customers, however, receive electronic billing on a monthly or customer-specified cycle. In contrast, wholesale billing has a highly variable cycle which depends on the requirements of individual wholesale customers; some billing information is provided daily whereas invoicing may be weekly, fortnightly or monthly. In addition, the majority of wholesale billing information is provided electronically by a variety of methods such as through LinxOnline eBill or on magnetic or optical media.

21. Hence Telstra has been unable, despite significant effort, to identify a metric that would allow us to demonstrate equivalence of treatment as between Telstra's retail arm and its wholesale customers in relation to billing.

22. It is notable that, in recognition of this fact, the relevant provision of the *Trade Practices Act 1974* (section 152AR) does *not* require equivalence in regard to billing.

23. Accordingly, the provision of billing information is simply a non-price term and condition on which there can be no relevant comparison of Telstra's performance in relation to the supply to its retail arm vis-à-vis external access seekers, and, if the final Direction from the Minister continues to refer to billing (or notifications) as "non-price

terms and conditions", Telstra submits that the Commission should exercise its discretion and not make a KPI in respect of billing.

24. However, if that is not accepted, Telstra submits that the Commission's KPI for billing should be structured to import, without modification or addition, Telstra's most recent results under the ACIF Code.

The appropriateness of the "appointments met" KPI

25. Telstra notes the Commission's suggestion, in its Discussion Paper, of having a combined metric to measure performance in respect of appointments. Telstra believes it important to measure performance in this area. However, Telstra considers it would be more useful to have two separate KPIs in regard to appointments met – that is: (1) appointments met in relation to ordering and provisioning; and, (2) appointments met in regard to fault rectification.

26. Telstra submits that having two separate KPIs for appointments met will enable a more transparent measurement of performance. Conversely, grouping appointments met into a single metric may tend to mask any problem areas making it potentially more difficult for market participants to identify whether performance is deficient in relation to repairing faults or provisioning.

27. Therefore, Telstra recommends that the KPI for appointments met in the ACCC's Discussion Paper be omitted and the following two KPIs be inserted:

Under "Faults and Maintenance"

KPI	Customer type	Wholesale	Retail	Variance
Repair appointments met	Residential[7]			
	Business[7]			
	Total			

[7] See discussion in relation to customer grouping.

Under "Ordering and Provisioning"

KPI	Customer type	Wholesale	Retail	Variance
Customer appointments met	Residential[7]			
	Business[7]			
	Total			

28. Additionally, as Telstra has pointed out in previous meetings with Commission staff, Telstra's current computer systems do not retain data in relation to previous appointments. That is, it is only possible to report performance against the most recently made appointment. Telstra recognises that this situation is not ideal, however, it would take significant time and cost to upgrade the existing legacy systems to enable this data to be captured/retained for regulatory reporting purposes. Given that Telstra is in the process of moving to new systems that should permit a greater level of data to be captured, it would not be sensible to spend time or money upgrading current systems.

29. Therefore, Telstra submits that, with respect to the two appointments met metrics, the ACCC's RKRs allow for phased in reporting. As previously explained, Telstra will initially report in as much detail as current systems permit in relation to appointments met and, once new IT systems are in place, will report performance against all appointments.

KPIs for other metrics

30. Telstra considers the other KPIs proposed by the ACCC are suitable, subject to the qualifications outlined in this submission, and should allow meaningful and accurate comparisons of Telstra's performance in relation to the supply to its retail arm vis-à-vis external access seekers.

Customer groups should be limited to business and residential

31. Telstra notes the Commission's inclination to define customer groups as being residential customers and business customers.

32. Telstra notes that it is not possible, with Telstra's current IT systems and data capture regime, to provide greater disaggregation than a business/residential split.

CSG timeframes are the appropriate standard

33. Telstra believes that there are only two options available for defining performance targets: (1) use the existing performance targets, based on CSG timeframes, which Telstra's operations are already geared to meet; or (2) define new performance standards.

34. The creation of a new set of standards would be a complex task; and one that is not justified when adequate performance standards already exist. As such, requiring a new standard when an adequate one already exists would result in the imposition of an undue regulatory burden and would run contrary to the Minister's intent. Additionally, the introduction of a new performance standard would increase the likelihood of inappropriate and inaccurate comparisons being made between the new standard and the existing CSG framework.

35. Therefore, Telstra recommends that the Commission adopt CSG timeframes as the most appropriate target provisioning times and the only one that allows meaningful comparisons to be made between Telstra Retail and Telstra Wholesale.

There is no requirement for clause 6 non-price terms and conditions KPIs as part of the separate clause 9 corporate segment report

36. Telstra welcomes the requirement that the ACCC prepare a six-monthly report on competition in the corporate segment of the business customer group. Telstra submits that such a report will, if appropriately structured, conclusively demonstrate that the corporate segment is highly competitive and indeed should be the subject of significant regulatory relief going forward.

37. The Commission has stated that it sees the clause 9 corporate segment report as being qualitative in nature.[8] This is supported by the words of the Explanatory Statement to the draft Direction which state:[9]

> *"The ACCC will continue to undertake individual investigations on matters that come to its attention in this segment. However, to supplement this, and to provide transparency to the market, the ACCC will also be required to prepare and publish a 6 monthly report, qualitative in nature, on competition in the corporate segment …."*

38. Telstra agrees with some aspects of this proposed approach. Telstra agrees, for example, with the requirement that the Commission will continue to undertake

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[8] The Australian Competition and Consumer Commission, *Key Performance Indicators for Non-Price Terms and Conditions: An ACCC discussion paper*, April 2003, p 8.

[9] *Explanatory Statement* to the draft *Australian Competition and Consumer Commission (Telstra Corporation Limited) Direction (No. 1) 2003*, p 3. Also see page 4: "… the ACCC prepares and publishes a <u>qualitative</u> report, on a 6 monthly basis …" [emphasis added].

individual investigations as required. In particular, Telstra also agrees that it would be inappropriate to include NPTC KPI information in the Commission's corporate segment report. In this regard, Telstra supports the production of a qualitative report on competition in the corporate segment.

39. However, Telstra considers that the report into the corporate segment would potentially be of much greater utility, and credibility, if it were based around an objective and comprehensive competition analysis of the market segment along the lines adopted by the Productivity Commission when it undertakes industry analysis.

40. In this regard, Telstra recommends that the ACCC expressly report on the following quantitative measures: market shares and changes to market shares over the reporting period; prices for services supplied to corporate segment customers reported on a like-for-like basis; margins; and, the level of churn of corporate segment customers. Telstra also recommends that the following criteria be objectively examined in the corporate segment report: barriers to entry; the level of vertical integration of all firms participating in the market; and, the countervailing power of corporate segment customers.

41. As a final point on the corporate segment report, Telstra notes that section 151CMA, and Division 12A of Part XIB, of the *Trade Practices Act 1974* are designed to allow the Commission to monitor and report to the Minister on competition in the telecommunications *industry* (as a whole). Therefore, Telstra considers it would be appropriate for ACCC, in making its RKRs and reporting on competition in the corporate segment of the business customer group, to focus equally on *all* participants in the corporate market.

Publishing of variance is the best option – publishing actual figures is not appropriate

42. The Commission states in its Discussion Paper that "[t]o preserve commercial confidentiality, Telstra considers that only the variance information … should be published". This is <u>not</u> the reason Telstra gave in its most recent correspondence with the Commission on NPTCs.

43. Telstra is happy to provide actual figures to the Commission, but there are two related reasons why the only appropriate figure to publish is variance.

44. First, in reporting performance against KPIs, Telstra believes that the most practical and meaningful option is to report variance from a target time. As previously explained, the only workable solution is to report against a standard that is comparable between Telstra Retail and Wholesale. Reporting the actual length of time taken to complete an order or to repair a fault is likely to lead to misleading and inaccurate comparisons. For example, if a customer were to specify a date for the provision of a service that was well in excess of the normal provisioning timeframe,

this could distort the result when averaging out the number of days taken to complete an order.

45. Second, and equally as important, reporting actual timeframes is likely to lead to *inter-quarter* comparisons which, Telstra submits, are inappropriate. The only correct and meaningful comparison that can be made is an *intra-quarter* comparison between Telstra's performance in relation to the supply to its retail arm vis-à-vis external access seekers. If actual figures are published, it is highly likely that misleading comparisons will be drawn between wholesale performance in successive quarters when the real question is how did wholesale perform compared to retail in a specified quarter.

46. Inter-quarter figures are likely to be the subject of varying external factors which would render useless an inter-quarter comparison. For example, say that the actual figures for the repairs and maintenance metric were, for the **first quarter of 2003/4**:

KPI	Customer type	Wholesale	Retail	Variance
Faults repaired within target time – standard CSG timeframes	Residential	98%	97%	1%
	Business	97%	98%	-1%

But, as a result of large scale bushfire, the figures for the **second quarter of 2003/4** were:

KPI	Customer type	Wholesale	Retail	Variance
Faults repaired within target time – standard CSG timeframes	Residential	79%	80%	-1%
	Business	82%	80%	2%

47. If *actual* figures were published, it is likely that inappropriate comparisons would be made between wholesale performance in the first and second quarters. Clearly, such a comparison is misleading because, despite the significantly lower proportion of repairs carried out within target timeframes in the second quarter compared to the first, the performance of wholesale was actually better, in relation to retail, in the second quarter when an appropriate intra-quarter comparison is conducted. However, regardless of the inappropriateness of inter-quarter comparisons, such reporting is likely to occur if actual figures are published.

48. Therefore, while Telstra is happy to provide actual figures to the Commission, Telstra submits that it is only appropriate to publish the variance.

If required, Telstra would be happy to further discuss any of these issues with the Commission. Please feel free to contact Tony Warren on (02) 6208 0740 or Geoff Adams on (02) 6208 0717.