



29 September 2011

Michael Cosgrave
Group General Manager
Communications Group
Australian Competition and Consumer Commission

Submission in Relation to the Removal of Broadband Traffic from Telstra HFC Network

Dear Michael,

The Competitive Carriers' Coalition represents the interests of competitive carriers in the fixed line and mobile broadband, voice, internet services, corporate, government and residential markets.

CCC member companies have pioneered ADSL2+, 3G mobile services, investment in local loop-based technologies, and competitive transmission networks.

As such, the CCC membership has strong insights into the issues that have handicapped the relative competitiveness of Australian communications markets for the past two decades. The CCC has long advocated the structural separation of the underlying network from retail markets as the only fully effective long term policy to address the impediments to the development of sustainable competition.

For this reason, the CCC has supported the Government policy to maintain the National Broadband Network as a fully separate, wholesale-only entity.

The CCC is aware that the Commission is considering the appropriateness of the proposal by Telstra and NBNco to transfer Telstra's broadband traffic off the Telstra HFC network as part of the approval process for the definitive agreement between those parties and the Structural Separation Undertaking from Telstra, and separately, the authorisation lodged for the proposed staged closure of the Optus HFC cable and the progressive migration of customers from that network to the NBN.

The CCC submits that there would be no detriment to the present competitive environment from these proposed arrangements. Many of the concerns about the proposals that have been raised about the competitive risks they pose have been based on observations about the intermodal competition experienced between HFC and telecommunications networks in other countries. However, the CCC submits this has never been the Australian experience. Indeed, in Australia, the opposite has been true, despite the fact that in parts of Australia two HFC cables and the copper

telecommunications access network operated side by side. The HFC networks have been used to restrain competition, not enhance it.

This is because of the vertical integration of the ownership of these cables with the incumbent telecommunications companies. Telstra, in particular has effectively bundled Pay TV and telecommunications services using its HFC and copper customer access network to create retail services offerings that competitors are unable to replicate. There has never been any unbundling or wholesale access to allow competitors to access customers via either of the HFC cables. Pricing from broadband services delivered by the HFC cables mirrored that delivered via copper access services, in contrast to the experience in countries that have benefited from intermodal competition.

In the Australian context, allowing Telstra to continue to use the HFC network in competition with the NBN would likely have a detrimental effect on the competitive arrangements being put in place under the Government's NBN and associated competition policy reforms. This is because Telstra would continue to be a vertically integrated monopoly in those locations where it continued to operate the HFC cable. Similarly, the continued operation of the Optus HFC in metropolitan locations would allow for cherry picking by Optus, and put pressure on the ability of NBNco to provide national pricing and competitive neutrality for downstream retailers.

The CCC can see no policy initiative or regulatory development that would suggest that wholesale access to the HFC networks would become available, or that the incumbents would be required to vertically separate retail services delivered via these networks.

For these reasons, the CCC believes that the long term interest of end users is, on balance, better served by the ACCC authorising the arrangements proposed in the definitive agreement and the undertaking than they would be by the continued operation of a vertically integrated HFC networks in the hope that the intermodal competition that has always been absent in the Australian market would develop sometime in the future.

Yours Sincerely,

David Forman

On Behalf of the CCC Inc