

**Access Dispute Between Chime Communications Pty Ltd (Access Seeker)
and
Telstra Corporation Limited (Access Provider)**

Line Sharing Services (LSS)

**Publication of Interim Determination and associated statement of reasons
under Section 152CRA of the *Trade Practices Act 1974***

INTRODUCTION

The Line Sharing Service (LSS) has been regulated since 2002. It allows the copper wires that provide voice telephony to also be used to supply broadband internet services, by using the low frequency part of the copper line spectrum for voice and making the high frequency spectrum portion available to access seekers for supplying ADSL services. Telstra retains the ability to provide voice services and obtain line rental revenue and voice call revenue.

On 21 December 2006, the Australian Competition and Consumer Commission made an interim determination in this dispute that specified terms and conditions associated with the Telstra's supply of the LSS to Chime, including the following terms relating to the connection and disconnection of services:

Charges payable for the connection of LSS as part of a Mass Network Migration

*Except where the parties subsequently agree otherwise, the connection charges payable by Chime to Telstra for the connection of LSS as part of an MNM where the service is to be connected on a line that Telstra is using to supply a **wholesale ADSL service** are as set out in Table 1:*

Table 1: Connection charges for the LSS

<i>Type of MNM</i>	<i>Charge</i>
<i>– For an MNM involving up to 50 connections</i>	<i>\$1,500 (per MNM)</i>
<i>-----</i>	<i>-----</i>
<i>– For an MNM involving more than 50 connections</i>	<i>\$1,500 (per MNM) + \$30 (per connection above 50)</i>

Charges payable for the disconnection of LSS as part of a Mass Network Migration

No charge is payable by Chime to Telstra for the disconnection of a LSS that is done as part of a MNM where the service is being migrated to an ULLS.

Terms relating to Order Cancellations in the context of a Mass Network Migration

- 13. Subject to clauses 14 and 15, no charges are payable on cancellation of an order for an LSS that was to be connected as part of an MNM where the service is to be connected on a line that Telstra is using to supply a **wholesale ADSL service**.*

14. *Where Chime cancels an order for an MNM, involving the migration of services from the **wholesale ADSL service**, that is scheduled for an exchange within 20 business days of the prospective date of the MNM, Chime must pay to Telstra:*
- (i) *a \$0.50 'standard cancellation' charge per relevant cancelled service;*
 - (ii) *if applicable, a further 'pre-jumping cancellation' charge of \$18 per relevant cancelled service where the cancellation has followed 'pre-jumping'¹ work performed by Telstra or its agents as part of the MNM process;*
- in which case the number of relevant cancelled services is the greater of:*
- (a) *the number of services that had been forecast for migration at the relevant exchange immediately prior to 20 business days from the prospective migration date, or*
 - (b) *50.*
15. *Where an MNM, involving the migration of services from the **wholesale ADSL service**, was forecast to involve more than 50 services, and Chime revises down its forecast number of services to be connected as part of that migration within 20 business days of the prospective date of the MNM, Chime must pay to Telstra:*
- (i) *a \$0.50 'standard cancellation' charge per relevant cancelled service;*
 - (ii) *if applicable, a further 'pre-jumping cancellation' charge of \$18 per relevant cancelled service where the cancellation has followed 'pre-jumping' work performed by Telstra or its agents as part of the MNM process;*
- in which case the number of relevant cancelled services is the difference between:*
- (a) *the number of services that had been forecast for migration at the relevant exchange immediately prior to 20 business days from the prospective migration date; and,*
 - (b) *the greater of the revised number of services to be migrated, or 50.*

This interim determination took effect as and from 21 December 2006, and will remain in force until 2 November 2007, unless:

- (i) a final determination comes into effect, or
- (ii) the LSS ceases to be a declared service, or
- (iii) this interim determination is revoked or taken to be revoked under the Act

in which case this Interim Determination will cease to have effect on the day that the relevant event occurs. The Commission, however, intends to progress the dispute towards a final determination as a matter of priority.

Reasons for making an Interim Determination in this dispute specifying these terms were provided to the parties on 2 November 2006 and 21 December 2006.

In setting the LSS connection and disconnection charges, the Commission has applied its long-standing LSS pricing principles (2002). Having consulted the parties, the Commission has decided to publish extracts from its reasons that explain the basis for the terms relating to LSS connection and disconnection charges that are specified in the Interim Determination (ID). This is

¹ 'Pre-jumping' work involves, inter alia, locating relevant copper pairs and making ready the jumpers that are needed to effect a ULLS/LSS connection prior to the actual connection or 'cutover'.

to inform interested parties of the Commission's views on the appropriate terms that the Commission considers appropriate to apply on an interim basis between the parties, and how these terms were derived.

The ACCC has previously published extracts from the ID and associated statement of reasons dealing with LSS annual charges.² This earlier publication sets out the background to this dispute and, in addition to discussing the basis of LSS annual charge terms, also contains a discussion of the various matters that the ACCC considers in deciding whether or not to make an Interim Determination in an access dispute.

EXTRACT FROM REASONS FOR INTERIM DETERMINATION

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3. HOW HAS THE COMMISSION DERIVED THE CHARGES SPECIFIED IN THE INTERIM DETERMINATION?

Introduction

The basis upon which the proposed charges have been derived would appear to be relevant to considering whether the Commission should be satisfied that it holds sufficient information and that in all the circumstances it is appropriate to make an interim determination dealing with these charges.

First, whether sufficient information is held will depend upon how the proposed charges are to be derived, and the nature of the calculations that are thereby required.

Also, the basis upon which the proposed prices have been derived is relevant to deciding whether it is appropriate to make an interim determination that specifies those prices.

Pricing Principles

The proposed charges have been derived by applying the LSS pricing principles.³ In essence, these principles require that LSS prices should comprise the forward-looking efficient costs of supplying the LSS. Further, in principle, LSS prices should be geographically de-averaged, however, averaged prices can be justified where the distortionary effect of an averaged charge is not significant.⁴

Source materials

The source documents relied upon in deriving the interim determination's charges are specified in Appendix A to this interim determination.

The source materials that the Commission has had regard to includes information provided in connection with Telstra's LSS access undertaking⁵ and information arising out of the arbitration of a dispute notified by Primus against Telstra in relation to LSS connection and disconnection charges, and analysis undertaken by the Commission of that information. The Commission has

² ACCC, *Publication of Interim determination and associated statement of reasons – Access dispute between Chime Communications Pty Ltd and Telstra Corporation Ltd re the Line Sharing Service*

³ ACCC, *Line Sharing Service – Final decision on whether or not a Line Sharing Service should be declared under Part XIC of the Trade Practices Act 1974*, August 2002, Chapter 5.

⁴ ACCC, *Assessment of Telstra's LSS undertaking relating to connection and disconnection charges – final decision*, April 2006, at pp 56-57

⁵ ACCC, *Assessment of Telstra's LSS undertaking relating to connection and disconnection charges – final decision*, April 2006.

also had regard to reports prepared by Consultel, an independent expert telecommunications consultant retained by the Commission.⁶

The Commission has also had regard to the parties' submissions made in the course of consulting on the making of the ID.

Any information over which Telstra has claimed confidentiality (or derived data) has not been reproduced in this explanation and has instead been recorded in Appendix B (and provided to Telstra only).

Derivation of proposed LSS connection, disconnection and cancellation charges

Connection charges

Connection types considered

While there is a range of possible LSS connection types and scenarios, the Commission's most recent consultation with the parties concerned whether and at what level it should set charges for the connection of an LSS **as part** of an MNM where the service is to be connected on a line that Telstra is using to supply a **wholesale ADSL service**. As noted, Chime has specifically requested that this connection scenario be addressed by the Commission in an ID.

Specified charges

The following table records the specified charges for wholesale ADSL to ULLS MNMs.

Type of connection	Specified charge
The connection of LSS as part of an MNM where the service is to be connected on a line that Telstra is using to supply a wholesale ADSL service	
– For an MNM involving up to 50 connections	\$1,500 (per MNM)
– For an MNM involving more than 50 connections	\$1,500 (per MNM) + \$30 (per connection above 50)

In the second Issues Paper, the Commission explained the basis for the (then proposed) LSS connection charges. For convenience, this discussion is reproduced below.

The connection of a LSS as part of a MNM where the service is to be connected on a line that Telstra is using to supply a wholesale ADSL service

As noted in its assessment of Telstra's LSS connection/disconnection charge access undertaking, the Commission considers that the efficient costs of connecting services in a MNM process are likely to be different to those applying in a single connection process.⁷

⁶ Consultel, *Transferring Services Between ULLS and LSS –draft report for the ACCC*, 17 August 2006; Consultel, *Analysis relating to Primus-Telstra ULLS Dispute: Interim Report prepared for the ACCC*, 13 March 2006; Consultel, *Analysis relating to Primus-Telstra LSS Dispute: Interim Report prepared for the ACCC*, 24 February 2006; Consultel, *Analysis of ULLS and LSS undertakings and subsequent submissions – final report*, February 2006; Consultel, *Comments on Telstra response regarding LSS undertakings interim report*, February 2006; Consultel, *Analysis of ULLS and LSS undertakings and subsequent submissions – interim report*, November 2005.

⁷ See ACCC, *Assessment of Telstra's LSS undertaking relating to connection and disconnection charge – final decision*, April 2006, section 6.5.1.

The charges in the ID are, in part, based on estimates of efficient costs for this connection type, as per advice received from the Commission's consultant, Consultel, for a MNM process involving 50 connections.⁸ In addition, the Commission's estimate reflects third party contractor quotations for MNM work provided to Telstra, (as supplied by Telstra in submissions made by it in the course of a contemporary arbitration process⁹), for separate pre-jumpering and cutover processes involving 50 or more connections at an exchange.¹⁰

This information supports the view that the efficient cost of a MNM involving 50 services is \$1,500, or \$30 per connection. The information also indicates that a MNM will involve both a fixed cost component and a variable cost component.

While the presence of the fixed costs means that it is not possible, in the absence of further information, to derive a precise cost estimate for a MNM involving fewer (or more) than 50 connections, it is possible to derive an upper bound of the efficient costs of such MNMs by making the following assumptions:

- (a) that the total efficient cost of a MNM involving fewer than 50 connections will not exceed the total efficient cost of a MNM involving 50 connections, namely, \$1,500 per migration, and
- (b) that the average (per connection) efficient cost of a MNM involving more than 50 connections will not exceed the average (per connection) cost of a MNM involving 50 connections

These assumptions are considered conservative in the sense that they tend towards efficient cost estimates (and hence charges) that are likely to exceed those that would be derived should more extensive information be available. For the purposes of making a timely ID, the Commission considers it is appropriate to make each of the above conservative assumptions, rather than to await the availability of further information.

The Commission also intends to give further consideration to the reasonableness of the proposed pricing-construct for MNMs—where a single charge is payable for a MNM involving up to 50 services—for the purposes of a final determination. In this regard, it may be appropriate for the Commission to change the pricing approach for smaller-scale MNMs (i.e., a MNM involving up to a number of services that is less than 50).

Parties' submissions

Chime does not generally dispute the approach that the Commission has adopted in deriving the connection charges, although it expects the cost estimates used will exceed those that would be obtained upon analysis of more extensive information.¹¹

Telstra, however, raised a series of concerns, which appear to lead it to the conclusion that the specified prices are substantially below the efficient costs of connecting LSS services in the scenarios considered.¹²

Telstra considers that while the current allowance for management and other overhead costs (which is set as a mark-up of 10 per cent of the jumpering costs) may provide a sufficient

⁸ Consultel, *Analysis relating to Primus-Telstra LSS Dispute: Interim Report prepared for the ACCC*, 24 February 2006

⁹ Telstra, *Telstra-Primus Access dispute – submissions on draft interim determination*, 23 May 2006, pp. 10-11.

¹⁰ Telstra, *Telstra's submission in response to the Australian Competition and Consumer Commission's draft decision in respect of SSS undertaking relating to connection and disconnection charges dated December 2005*, February 2006, p. 20.

¹¹ Chime submission 3 November 2006, p. 1.

¹² Telstra submission 4 October 2006, p. 3

contribution to certain overheads, it is not sufficient to allow it to recover other attributable overhead costs, and in particular Telstra's contract management costs.¹³

Telstra also considers that the efficient connection costs (which are based upon quotes supplied by third party contractors) do not permit Telstra to recover costs where it uses its staff rather than third party contractors. Telstra's submission implies that it faces higher costs when it uses staff labour to connect a service. Telstra contends that there is a case for these higher costs being brought to account for those connections where it cannot use third party contractors.¹⁴

Lastly, Telstra queried whether the assumptions that the Commission proposed to make (and which it has made in deriving the prices specified in the ID) are 'conservative assumptions'. That is, they tend towards higher costs being derived (and hence higher prices being specified) than would likely be the case if information was available to make the assumption unnecessary.¹⁵

Commission's views

The Commission has previously considered whether a 10 per cent mark-up on third party contractor quotations for connections work provided a sufficient contribution to attributable overheads in the context of connections performed outside of a MNM, concluding that it would be sufficient to do so.¹⁶

In reaching this view, the Commission considered each of the overhead categories that Telstra claimed, and concluded that a contribution to overheads that are efficiently incurred by Telstra was warranted. In this regard, the Commission noted that a number of overhead categories would effectively be avoided by Telstra where contractors are employed—such as vehicle, accommodation and payroll related overheads, but that it would be appropriate for a contribution to be made in LSS connection charges towards the overheads that are efficiently incurred when contract labour is used.

Turning to Telstra's assertion that the mark-up provides an insufficient contribution towards contractor relationship overheads, this will be considered further by the Commission in making a final determination. However, from the information that is currently available to the Commission, it is of the view that the 10 per cent mark-up is likely to provide a sufficient contribution towards the recovery of efficiently incurred attributable overheads. In any event, the Commission would not expect that efficiently incurred contractor relationship overheads would represent a significant component of per LSS connection costs, given:

- the limited transactions that would be involved in managing the contractor relationship
- the scale and scope of connections related work that a contractor can perform over the life of the relationship, and
- the quantum of the mark-up of [c-i-c] per cent that Telstra has claimed—in respect of all the overhead categories that it claimed in supporting its LSS connections undertaking which included a contribution to those categories of overheads that the Commission considers Telstra would effectively avoid when using contractors.

The Commission will also investigate, in the course of making a final determination, Telstra's claims that the efficient costs of making connections in areas with relatively few lines are higher than currently allowed in the ID. However, the Commission notes that, should Telstra be able to support its claims that such allowances should be included in the efficient cost measure:

¹³ Telstra submission dated 27 September 2006, p. 7.

¹⁴ Telstra submission dated 27 September, p. 7

¹⁵ Telstra submission dated 27 September, p. 8

¹⁶ ACCC, *Assessment of Telstra's LSS undertaking relating to connection and disconnection charges – final decision*, April 2006, p. 27-28.

- in the context of connections performed outside of a MNM, higher costs in these areas are already recognised through the use of third party contractor quotes that are specific to regional areas
- the impact of any further allowances that are made would not be expected to have a material impact on a weighted average basis, due to the small proportion of lines that would necessarily be involved, and
- if it were the case that a significant increase would be required for efficient connection costs in these areas, the continued use of a weighted averaged pricing construct may need to be revisited.

Further, the pricing construct for smaller-scale MNMs that has been adopted for the purposes of the ID (where an access seeker pays a flat fee aimed at recovering the efficient costs of a 50 service MNM even where fewer than 50 services are to be connected) will tend to ameliorate Telstra's concern. This is because in the areas that Telstra anticipates being unable to retain contract labour, MNMs would tend to be smaller in scale (given fewer lines in those areas). As a result, the per-connection price payable in those areas would approach that payable for connections outside a MNM. That said, as noted in the Issues Paper accompanying the draft ID, the Commission will give further consideration to the use of this pricing construct for the purposes of a final determination.

With regard to Telstra's concerns about the prices specified for smaller-scale (less than 50 services) migrations, it would appear that Telstra may have mistakenly interpreted the price terms specified in the draft ID (and now repeated in the ID) as specifying a per-connection charge at the rate that would apply to a MNM involving 50 services. As noted above, these price terms require the payment of a flat fee for the first 50 services to be connected as part of a MNM regardless of the number of services connected as part of the MNM.

In conclusion, the Commission is prepared, in the context of a final determination, to review whether the connection charges specified in the ID provide sufficient allowance to enable the recovery of efficiently incurred costs (or for that matter, whether efficient costs may be overstated). However, on the information currently available, the Commission considers that the prices specified in the ID are appropriate.

Cancellation charges in the context of a MNM

In the Issues Paper, the Commission explained its (then proposed) approach to cancellation charges as follows:

Circumstances in which a MNM cancellation charge can be levied

The ID provides for MNM cancellation charges to be levied in the form of a 'standard cancellation charge' and a 'pre-jumping cancellation charge' only where, 20 business days or less prior to the prospective migration date, the access seeker either:

- cancels the order for the LSS migration scheduled for the relevant exchange, or
- for migrations that were forecast to involve more than 50 services, revises down its forecast number of services to be connected as part of that migration.

It is intended that, except where otherwise agreed between the parties, calculations of the number of *business days* will be based upon the locality of the relevant exchange that is the subject of the forecast MNM.

The ID intends that, in all other circumstances, no cancellation charges are to be levied.

Specified MNM cancellation charges

Where cancellation charges may be levied, the ID includes two types of cancellation charges:

- a 'standard cancellation charge' of \$0.50 per 'relevant' service, and
- a 'pre-jumpering' cancellation charge of \$18 per 'relevant' service, where a cancellation is made following 'pre-jumpering' work already having been performed by Telstra, or its agents, as part of a MNM process.

The charge for a cancelled MNM that had been scheduled for an exchange is to be calculated based upon the number of services that were forecast for the migration immediately prior to 20 business days from the prospective migration date, or where this is less than 50 services, 50 services. This reflects that the specified per-service cancellation charges are based upon a larger-scale migration.

The charge for a downward revision to the number of services to be connected as part of a MNM is to be calculated based upon the difference in:

- (a) the number of services that were forecast for the migration immediately prior to 20 business days from the prospective migration date, and
- (b) where the revised down forecast given 20 days or less from the prospective migration date is for 50 or more services, that number of services, or otherwise, 50 services.

This reflects the fact that, under the price-construct that is specified for the ID, the access seeker is, in effect, paying a charge for the connection of up to 50 services and this is based upon the estimated efficient cost of connecting 50 services as part of a MNM. As such, there is no need for an access seeker to pay a cancellation charge, in addition to the charge for the connection of up to 50 services as part of a MNM, in order for Telstra to recover its costs where a revision reduces the number of actual services to be connected to less than 50 services.

Basis for the specified MNM cancellation charge terms

The 'standard cancellation charge' of \$0.50 in the ID reflects the efficient costs that Telstra would incur in respect of its project management cost components for the MNM that is cancelled, or the services that have been removed from the MNM, as the case may be.¹⁷ The charges are rounded up to \$0.50 from the cost measures that were derived by Consultel, the Commission's expert consultant.

The 'pre-jumpering cancellation charge' specified in the ID reflects the efficient costs that Telstra would incur in respect of 'pre-jumpering' work that it performs. 'Pre-jumpering' work involves, inter alia, locating relevant copper pairs and preparing the jumpers that are needed to effect a LSS connection prior to the actual connection or 'cutover'. This 'pre-jumpering cancellation' charge is based on the costs Telstra is charged by third party operators to perform LSS 'pre-jumpering' work.¹⁸ The 'pre-jumpering charge' would only apply in respect of work actually undertaken.

Parties' submissions

¹⁷ Telstra describes these cost components – Wholesale Product Delivery (WPD) costs and Wholesale Customer Service Centre (WCSC) costs – as involving the project management of service qualification, provisioning and billing type functions

¹⁸ Telstra, *Primus LSS access dispute – Telstra's submission*, 1 August 2005, *Annexure A*.

Telstra's queries the Commission's reasons for imposing a cancellation charge of only \$0.50 per service¹⁹.

Commission's views

The Commission has considered Telstra's submission and remains of the view that the information before it supports the cancellation charges that were proposed in the draft ID.

The 'standard cancellation charge' of \$0.50 is based upon an estimate of the efficient costs that Telstra would incur per cancelled ULLS in respect of 'front of house' (FOH) support functions (performed by the Wholesale Customer Support Group and Wholesale Product Delivery).

This cost measure was derived by Consultel based upon the number of [c-i-c] minutes required to perform these functions for 100 lines²⁰, and Telstra's claimed hourly labour rate of [c-i-c]. The resulting FOH cost estimate of [c-i-c] is rounded to give the figure of \$0.50.

LSS disconnection charge

The ID provides that a LSS disconnection charge is not to be imposed where the LSS is being migrated to a ULLS.

Basis for the specified disconnection charge terms

In the Issues Paper, the Commission explained the basis for the (then proposed) disconnection charge terms. For convenience, this discussion is reproduced below.

The Commission considers that a charge should not be levied for LSS disconnections where the disconnection can be performed in conjunction with a connection of another service (e.g., the ULLS) on the relevant line. The Commission considers that to charge an additional amount (which the Commission understands is currently \$90) to the 'losing' disconnection service provider, on top of the connection charge levied to the 'gaining' service provider, would be an over-recovery of costs.

This is because when the disconnection is performed as part of the connection of a new service, the incremental or discrete cost of performing the disconnection is so small and incidental to the connection process that it can be deemed to be recovered in the charge for the new connection.²¹

The Commission considers, based upon expert opinion provided to it,²² that no immediate manual intervention by a technician is required to effect a coordinated LSS disconnection and ULLS connection and, reflecting this advice that such activity imposes no significant costs on Telstra, it is proposed that LSS disconnections in this context should not attract a charge. Further, as it appears that systems development is not necessary, it is proposed that such disconnections should not be charged for from the date of the ID taking effect.

Parties' submissions

Chime submits that it supports the use of the Commission's LSS pricing principles to derive the LSS disconnection charge terms to apply in this scenario and, from the information available to it, is satisfied that the terms that were proposed in the draft ID represent a reasonable application of those principles.²³ Telstra submits that the Commission should not rely upon the Consultel advice

¹⁹ Telstra submission dated 27 September 2006, p. 8

²⁰ Consultel, *Analysis relating to Primus-Telstra LSS Dispute: Interim Report prepared for the ACCC*, 24 February 2006, p. 25

²¹ ACCC, *Assessment of Telstra's LSS undertaking relating to connection and disconnection charges – final decision*, April 2006, section 6.4.6.

²² Consultel, *Transferring Services Between ULLS and LSS – draft report for the ACCC*, 17 August 2006, at sections 3.2 and 4.1.

²³ Chime, 27 September 2006, p. 1.

in determining whether or not LSS disconnection charges should be imposed in this scenario.²⁴ Telstra included in its submissions a number of concerns it has around the connection and cancellation charges that had been proposed in the draft ID, but did not discuss LSS disconnection charges in this regard.²⁵

Commission's views

The Commission considers that it should specify *for the purposes of the ID* that no LSS disconnection charge is to be levied where the LSS is being transferred to a ULLS. In reaching this view, the Commission has relied upon Consultel's advice (in its draft report).²⁶

The Commission notes that Consultel's advice is to the effect that no immediate manual intervention by a technician is required to make a coordinated LSS disconnection and ULLS connection, and as such the efficient costs of that activity would be *essentially* zero.²⁷ This is not to say that the efficient costs of performing these disconnections would, on further information received for the purposes of the final determination, be shown to be zero. For instance, it may be necessary to make a small allowance for the eventual removal of redundant jumpers.

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²⁴ Telstra, 27 September 2006, pp. 3-5.

²⁵ Telstra, 27 September 2006, p. 6.

²⁶ Consultel, *Transferring Services Between ULLS and LSS –draft report for the ACCC*, 17 August 2006

²⁷ Consultel, *Transferring Services Between ULLS and LSS –draft report for the ACCC*, 17 August 2006, at sections 3.2 and 4.1.