**ACCESS DISPUTE BETWEEN**

**REQUEST BROADBAND PTY LTD (ACCESS SEEKER)**
**AND**
**TELSTRA CORPORATION LIMITED (ACCESS PROVIDER)**

## LINE SHARING SERVICE (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 Request, 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 or Single Connections)**

*Except where the parties subsequently agree otherwise, the connection charges payable by Request to Telstra for the LSS are as set out in Table 1:*

***Table 1: Connection charges for the LSS***

| ***Type of connection*** | ***Charge*** |
|---|---|
| *The connection of a LSS **outside** of a MNM where the service is to be connected on a line that Telstra **is not** using to supply an ULLS* | *$63 (per connection)* |
| *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***<br><br>*– For a MNM involving up to 50 connections*<br>*-----------------------------------------------*<br>*– For a MNM involving more than 50 connections* | <br><br><br>*$1,500 (per MNM)*<br>*----------------------*<br>*$1,500 (per MNM)*<br>*+ $30 (per connection above 50)* |

*Whether a particular service is to be connected as part of a MNM, or outside of a MNM, is to be a matter at the discretion of Request to be notified to Telstra when the order is made.*

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

*Except where the parties subsequently agree otherwise, the following charges are payable by Request to Telstra for the disconnection of a LSS:*

*(i)* *for a disconnection that is requested in circumstances where the LSS is not being migrated to an ULLS to be supplied to Request or an order is not placed by an end user or service provider for a new service(s) to be provided on that same copper pair/line within 30 calendar days of the disconnection request being made, $58 per service; or*

*(ii)* *for all other disconnections, no charge is applicable.*

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

12. *In the context of a MNM, subject to clauses 13 and 14, no charges are payable on cancellation of an order for a LSS.*

13. *Where Request cancels an order for a LSS migration scheduled for an exchange within 20 business days of the prospective date of the MNM, Request must pay to Telstra:*

    *(i)* *a $0.50 'standard cancellation' charge per relevant cancelled service;*

    *(ii)* *if applicable, a further 'pre-jumpering cancellation' charge of $18 per relevant cancelled service where the cancellation has followed 'pre-jumpering'*[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.*

14. *Where, for migrations that were forecast to involve more than 50 services, Request 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, Request must pay to Telstra:*

    *(i)* *a $0.50 'standard cancellation' charge per relevant cancelled service;*

    *(ii)* *if applicable, a further 'pre-jumpering cancellation' charge of $18 per relevant cancelled service where the cancellation has followed 'pre-jumpering' 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:

[1] 'Pre-jumpering' work involves, inter alia, locating relevant copper pairs and preparing the jumpers that are needed to effect an ULLS/LSS connection prior to the actual connection or 'cutover'.

(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 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 an ID and associated statement of reasons dealing with LSS annual charges made in a similar access dispute.[2] This earlier publication sets out the background to that dispute and, in addition to discussing the basis of the 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**

**. . .**

## 3. HOW HAVE THE CONNECTION AND DISCONNECTION CHARGES BEEN DERIVED?

*Introduction*

The basis upon which the specified prices have been derived is relevant to considering whether the Commission should be satisfied that it holds sufficient information to make an ID and whether, in all the circumstances, it is appropriate to make the ID.

First, whether sufficient information is held will depend upon how the specified prices were derived and the nature of the calculations that are thereby required.

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

*Pricing Principles*

The charges in the ID 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]

---

[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

*Source materials*

In deriving the ID charges, the Commission has relied upon the source documents listed in Attachment A to these reasons. These are the same documents that were listed in the Issues Paper provided to the parties. The Commission has also relied on the parties' submissions made in the course of consulting on the making of the ID.

As noted in the Issues Paper, the Commission has had regard to information provided in connection with Telstra's LSS access undertaking[5] 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 also had regard to reports prepared by Consultel, an independent expert telecommunications consulting firm retained by the Commission.[6]

Confidential information that has been used to derive the ID charges has been recorded in confidential Attachment B (and provided to Telstra only).

## Connection charges

### *Connection types considered*

The Commission consulted the parties on the charges for a range of connection types and scenarios. While there is a range of possible connection types and scenarios, the connection charges that are specified in the ID apply only to either:

- the connection of an LSS **outside** of an Managed Network Migration (MNM)[1] where the service is to be connected on a line that Telstra **is not** using to supply a ULLS
- 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**

The Commission consulted the parties on whether or not it should also specify connection charges to apply where a LSS is being connected on a line that was being used to supply an ULLS (either as part of a MNM or outside of a MNM).

The Commission has decided not to address this connection type in the ID as neither party supported it and the information currently available to the Commission suggests that there would be little, if any demand, for this type of connection in the period for which the ID is to operate. In this regard, Telstra submitted that Request had not sought nor disputed charges for such scenarios[7] and Request indicated that it was not seeking charges to cover such scenarios.[8]

Telstra also submitted that should the Commission proceed to address LSS connection charges payable for this connection type in a determination, it would also have to deal with the matters associated with the underlying PSTN service. In support of this proposition, Telstra noted that it would not be obliged to supply a LSS unless an underlying voiceband PSTN service is operating on the line.[9]

---

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

[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] Telstra submission dated 27 September 2006, p. 3.

[8] Request submission dated 27 September 2006, p. 4-5.

[9] Telstra submission dated 27 September 2006, p. 3

Given its view, the Commission is not required for present purposes to decide whether it should also address the terms of supply of an underlying voiceband PSTN service in a determination dealing with ULLS to LSS migrations (which would apply where the underlying PSTN voiceband service was to be supplied by the LSS access seeker). While the Commission has a wide discretion to specify terms and conditions in a determination, it need not specify all the terms and conditions to apply between the parties to a dispute, and that those terms and conditions not specified in a determination remain subject to negotiation between the parties.

Neither party requested the Commission to consider any other connection types or scenarios other than those identified in the Issues Paper.

***Specified charges for each connection type***

The following table records the specified charges for each connection type:

| **Type of connection** | **Specified charge** |
|---|---|
| The connection of an LSS **outside** of an MNM where the service is to be connected on a line that Telstra **is not** using to supply a ULLS | $63<br>(per connection) |
| 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<br>(per MNM) |
| – For an MNM involving more than 50 connections | $1,500<br>(per MNM)<br>+ $30<br>(per connection above 50) |

***Basis for the specified prices for each connection type***

In the Issues Paper, the Commission explained the basis for the (then proposed) prices for each connection type. For convenience, this discussion is reproduced below.

*The connection of a LSS outside of a MNM where the service is to be connected on a line that Telstra is not using to supply a ULLS*

The charge in the ID represents a rounded (to the dollar) geographically averaged estimate of the efficient costs for this connection type, as estimated by the Commission and set out in section 6.4.7 of its final decision on Telstra's LSS connection/disconnection charge undertaking.[10]

The $63 charge specified for this type of connection recognises all relevant cost categories, including jumpering, travel, vehicle, back-of-house and material costs. The charge also reflects the costs incurred by third party contractors (as discussed in the Commission's report of its final decision on Telstra's LSS connection/disconnection charge undertaking).

In order to derive a geographically averaged estimate, cost estimates for particular geographic bands were weighted according to the proportion of the total number of PSTN copper lines in each band, as provided by Telstra in support of its LSS connection/disconnection charges undertaking.

[10] ACCC, *Assessment of Telstra's LSS undertaking relating to connection and disconnection charges – final decision*, April 2006, see section 6.4.7.

*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.[11]

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.[12] 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 process[13]), for separate pre-jumpering and cutover processes involving 50 or more connections at an exchange.[14]

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*

Request does not generally dispute the approach that the Commission has adopted in deriving the specified connection charges, although it suggests a lesser connection charge for a MNM of up to 25 services.

---

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

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

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

[14] 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.

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.[15]

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 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. [16]

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.[17]

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.[18]

*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.[19]

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 laboured is used.

Turning to Telstra's criticism 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 uplift 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 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

[15] Telstra submission 4 October 2006, p. 3
[16] Telstra submission dated 27 September 2006, p. 7.
[17] Telstra submission dated 27 September, p. 7
[18] Telstra submission dated 27 September, p. 8
[19] ACCC, *Assessment of Telstra's LSS undertaking relating to connection and disconnection charges – final decision*, April 2006, p. 27-28.

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:

- 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, however, that a significant increase would be required to fully recognise 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, the Commission will give further consideration to the use of this pricing construct for the purposes of a final determination.

In regards to Telstra's concerns about the prices specified for smaller-scale (less than 50 services) migrations, it would appear that Telstra may have misinterpreted 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 response to Request's proposed charges for MNMs involving up to 25 connections, the Commission sees some merit in specifying charges that are particular to a smaller-scale MNM. However, the Commission does not consider that it has sufficient information available to enable it to estimate the efficient costs of MNMs of a reduced scale, and so has not specified such terms in the ID.

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.

**LSS disconnection charge**

The ID includes a LSS disconnection charge of $58 per service but restricts this to certain circumstances, as discussed below.

*Circumstances in which an LSS disconnection charge can be levied*

Telstra may levy a LSS disconnection charge unless:

- the LSS is being migrated to an ULLS to be supplied to the access seeker (either as part of, or outside of, a MNM); or,

- if the LSS is being disconnected after 15 November 2006, the LSS is being disconnected as a result of ‘customer churn’ of the downstream ADSL service to another service provider.

‘Customer churn’ of the downstream ADSL service to another service provider occurs where there is an external request for a LSS, ULLS or wholesale ADSL service from another service provider, or an internal request for a retail ADSL service, on the relevant line, received by Telstra within 30 calendar days of the request being made for the disconnection of the LSS.

*Basis for the specified disconnection charge terms*

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

The charge in the ID represents a rounded or approximate (to the dollar), geographically-averaged estimate of efficient costs of disconnection, as estimated by the Commission (and set out in section 6.4.7 of the Commission’s final decision).[20]

To derive an averaged estimate, the Commission’s cost estimates for the various geographic bands were volume weighted, based on the number of copper lines utilised in those bands (as provided by Telstra in supporting its 2004 LSS connection and disconnection charges access undertaking).[21]

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 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.[22]

In its final decision on Telstra’s LSS connection/disconnection charges access undertaking (section 6.4.6),[23] the Commission identified a LSS disconnection occasioned by a customer churning the ADSL service to a new provider (including Telstra retail) as being an instance in which the LSS disconnection could be performed in conjunction with a new connection on the line.

The Commission proposes, for the purposes of the ID, that new orders which are received sufficiently proximate to the disconnection request are to be taken to be occasioned by a customer churning the ADSL service, and hence the relevant disconnection is not to be charged for. In this regard, the Commission considers that it is appropriate for a period of 30 calendar days from the date of the request for the disconnection of the LSS to be allowed.

While a period such as this is necessary to facilitate the matching of new orders with a LSS disconnection, were a new order to be received more than 30 calendar days from the date of the disconnection request then it is unlikely that the LSS would be disconnected as part of a customer churn process. A longer period would also appear to have the potential to unduly complicate the order matching process.

---

[20] ACCC, *Assessment of Telstra’s LSS undertaking relating to connection and disconnection charges – final decision*, April 2006, see section 6.4.7.

[21] Spectrum sharing connection costs, Spectrum sharing disconnection costs, cost models provided for the assessment of Telstra’s access undertakings relating to LSS connection and disconnection charges. See also Telstra, *Telstra’s submission in support of the LSS connection and disconnection charges undertaking dated 13 December 2004*, February 2005, p. 4.

[22] ACCC, *Assessment of Telstra’s LSS undertaking relating to connection and disconnection charges – final decision*, April 2006, section 6.4.6.

[23] ACCC, *Assessment of Telstra’s LSS undertaking relating to connection and disconnection charges – final decision*, April 2006, see section 6.4.6.

The Commission considers that this particular aspect of the specified LSS disconnection charge terms should only apply to LSS disconnections that are made after 15 November 2006. This is to permit any necessary systems changes to be effected by Telstra so as to coordinate disconnections and connection orders from other service providers. This date has been specified as it has been previously nominated by Telstra to the Commission as the date by when it would be reasonable for Telstra to have this functionality available.

Another instance in which a LSS disconnection could be performed in conjunction with a new connection on the line is where the LSS disconnection is performed as part of a migration from the LSS to the ULLS (either as part of or outside a MNM).

*Parties' submissions*

Request submits that around 90 per cent of LSS disconnections will be due to the churning of the end-user's ADSL service to another provider, but that Request may not be able to verify whether an order has been made to use a line within the 30 day period. As a result, it may be levied a disconnection charge in circumstances where a charge should not be levied. To address this concern, Request has submitted that disconnection charges should not be levied in any case.[24] Telstra disputes this would occur and that the possibility of erroneous billing would not justify Telstra being denied the opportunity to recover efficiently incurred costs.[25]

*Commission's views*

The Commission does not consider it should make the change to these terms that Request has suggested. This is because it is not clear that the vast majority of LSS disconnections will be due to customer churn of the ADSL service, and not the disconnection of the service, as Request suggests. However, if this could be established at the time of making a final determination, the Commission will give the matter further consideration. In terms of the opportunity for billing disputes to arise, there is always the potential for such disputes, and it is not clear that the ordinary processes for resolving billing disputes between the parties could not be relied upon here to ensure that bills raised would be accurate and any errors corrected.

Although not a matter addressed by the parties, the Commission notes that it is specifying *for the purposes of the ID* a zero disconnection charge where the LSS is being transferred to an ULLS. The Commission has relied upon Consultel's advice (in its draft report)[26] that no immediate manual intervention by a technician is required to effect 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.

**Cancellation charges in the context of a MNM**

*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-jumpering' 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,

[24] Request submission dated 27 September 2006, p. 13.
[25] Telstra submission dated 4 October 2005, p5
[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.

– 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 disconnection 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.[28]

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.[29] The 'pre-jumpering charge' would only apply in respect of work actually undertaken.

*Parties' submissions*

[28] 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

[29] 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 service[30].

*Commission's views*

The Commission considers that the standard cancellation charge reflects the efficient costs of the 'front of house' support functions (performed by the Wholesale Customer Support Group and Wholesale Product Delivery) for a MNM as estimated by Consultel. These costs were derived based upon the number of [c-i-c] minutes required to perform these functions for 100 lines[31], and Telstra's claimed hourly labour rate of [c-i-c]. The resulting 'front of house' cost estimate of [c-i-c] is rounded to give the figure of $0.50.

[30] Telstra submission dated 27 September 2006, p. 8

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