



**Submission by AAPT Limited and PowerTel Limited to the  
Australian Competition and Consumer Commission in  
response to  
*Fixed services review – Further consultation on draft ULLS  
pricing principles, October 2007***



## Introduction

1. AAPT Limited and PowerTel Limited (together **AAPT**) welcome the opportunity to comment on the Australian Competition and Consumer Commission's (the **Commission's**) draft ULLS pricing principles (**Draft ULLS Pricing Principles**) set out in Chapter 7 of *Declaration inquiry for the ULLS, PSTN OTA and CLLS – final determination*, July 2006.
2. The Commission's Draft ULLS Pricing Principles propose a total service long-run incremental cost (**TSLRIC**) approach and de-averaged pricing.
3. AAPT fully supports the Commission's proposal and urges the Commission to finalise pricing principles for ULLS which adopt a TSLRIC approach and de-averaged pricing.

## The TSLRIC approach

4. In general terms, a TSLRIC approach to access pricing involves an assessment of the incremental or additional costs that an access provider necessarily incurs in providing a service using the most efficient means available and includes operating and maintenance costs, a normal commercial return on capital and causally related common costs (sometimes referred to as TSLRIC+)<sup>1</sup>.
5. AAPT considers that access prices based on TSLRIC are consistent with those prices that would apply if the access provider faced effective competition and that such prices are generally considered to best promote the long-term interests of end-users (**LTIE**) because they:
  - a. encourage competition by promoting efficient entry and exit;

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<sup>1</sup> Access Pricing Principles – Telecommunications, a guide, July 1997, p28.

- b. encourage economically efficient investment by access providers in infrastructure by providing for a normal commercial return on efficient investments and promotes efficient ‘build or buy’ decisions on the part of access seekers;
  - c. provide for the efficient use of existing infrastructure because it signals the long-term value of the resources embodied in that service which promotes allocative efficiency in the use of infrastructure;
  - d. provide incentives for access providers to minimise the costs of providing access;
  - e. promote the legitimate business interests of the access provider by allowing efficient access providers to fully recover the costs of producing the service; and
  - f. protect the interests of access seekers by inhibiting the access provider from discriminating in favour of any one access seeker and so the ability of an access seeker to compete in downstream markets will be based on the quality and cost of its operations relative to its competitors<sup>2</sup>.
6. AAPT submits that these benefits, which have been almost universally accepted around the world, are both considerable and worth preserving.
  7. Consequently, AAPT considers that TSLRIC based pricing should be vigorously defended and that any divergence from such an approach should not be contemplated without significant justification.

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<sup>2</sup> Access Pricing Principles – Telecommunications, a guide, July 1997, pp29-30.

8. AAPT submits that there are no circumstances to justify a divergence from a TSLRIC approach in the case of the ULLS and urges the Commission to finalise pricing principles for ULLS which adopt a TSLRIC approach.

### **De-averaged pricing**

9. AAPT supports de-averaged pricing for ULLS because averaged pricing necessarily means a shift away from a TSLRIC approach and with it the abandonment of all the benefits detailed above.
10. This view is supported by the report prepared by Marsdon Jacob Associates (MJA) in the following observations:

*From a theoretical perspective, a price based on opportunity costs sends the right signal to consumers about the value of the resources the consumer/the competitor/the society is forgoing by using this service. Averaging means, that by definition, the charge will not correspond to the (opportunity) cost of ULL in areas where the ULL Service (ULLS) is purchased.*

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*To summarise, the main problem with averaging is that investment decisions are distorted. An averaged price sends a distorted signal and may encourage duplication where it is inefficient. This is particularly problematic when natural monopoly characteristics are pronounced and entry and duplication is inefficient – a situation which is most likely reflects the realities of the Australian market<sup>3</sup>.*

11. Further, AAPT supports de-averaged pricing because it considers that averaging will have serious negative impact on competition in the downstream markets for xDSL based broadband services and voice services.
12. This view is also supported by MJA in the following observations:

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<sup>3</sup> Marsden Jacob Associates, *Averaging vs. De-averaging*, 28 March 2006, pp.3-5.

*Entrants have invested large amounts in ULL based on a defined regulatory regime. A move towards averaged ULL prices will change the market dynamics to the detriment of ULL operators who could end up with stranded investments. The only beneficiary is Telstra. The move to averaged prices is anti-competitive and contrary to the intentions of regulation. In particular a significant rise in the price of ULL in urban areas is not in the long-term interests of end users and the impact on competition in markets for downstream services is likely to be detrimental<sup>4</sup>.*

13. In further support, AAPT notes that de-averaged pricing is consistent with the Australian Competition Tribunal's (the **Tribunal's**) decision to reject Telstra's proposal to average ULLS charges on the basis that such charges could not be considered to be reasonable:

*As noted earlier, we are required to determine whether averaging is in the long-term interests of end-users. In this section we have found that averaging:*

- is not likely to achieve the objective of promoting competition in urban and rural areas during the periods covered by the undertakings;*
- is not likely to achieve the objective of encouraging the economically efficient use of infrastructure;*
- is not likely to achieve the objective of encouraging economically efficient investment in infrastructure by access seekers; and*
- may, in principle, achieve the objective of encouraging economically efficient investment by Telstra, but we are not satisfied that the \$30 charge Telstra proposes will achieve this objective.*

*It follows from these findings that we are not satisfied that averaging is in the long-term interests of en-users of the ULLS<sup>5</sup>.*

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<sup>4</sup> Ibid., pp.14-15.

<sup>5</sup> Australian Competition Tribunal, Telstra Corporation Ltd (No 3) [2007] ACompT3, p88

14. Consequently, AAPT urges the Commission to finalise pricing principles for ULLS which adopt de-averaged pricing.