



**Submission by AAPT Limited and PowerTel Limited to the
Australian Competition and Consumer Commission in
response to the draft**

*Pricing principles and indicative prices for local carriage
service and wholesale line rental – a guide, April 2008*



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**) April 2008 draft pricing principles and indicative prices for wholesale line rental (**WLR**) and local carriage service (**LCS**) (**draft indicative prices**).
2. AAPT is dependent on the acquisition of WLR and LCS from Telstra and considers that it is ultimately very important for consumers that the Commission establish the right pricing principles and indicative prices to ensure effective competition in downstream markets.
3. However, AAPT considers that the Commission has set indicative prices for WLR and LCS at levels way above cost for many years. This is reflected across the industry with access seekers often agreeing prices for these services with Telstra which bear no resemblance to the indicative prices set by the Commission and a distinct absence of arbitrations involving WLR and LCS over the years. Why would an access seeker seek arbitration by the Commission when the indicative prices set by the Commission point to a worse outcome than those prices offered by Telstra?
4. In the absence of an independently developed cost model, AAPT has little choice but to support the Commission's decision to continue the interim approach of retail minus retail cost (**RMRC**) for the 2008-2009 period, however, AAPT urges the Commission to try and bring the development of an independent cost model to a conclusion as a matter of real urgency.

5. While AAPT accepts the use of the RMRC approach by the Commission for 2008-2009, it considers that the Commission has made two fundamental errors in its application, specifically, the Commission:
 - has pegged WLR and LCS prices to Telstra retail prices which have no relevance; and
 - appears to have used Telstra's retail prices inclusive of GST to determine indicative prices for WLR and LCS which are GST exclusive.
6. Both of these application errors lead to the incongruous result set out in the Commission's draft indicative prices, however, AAPT considers that these errors can be rectified relatively easily and urges the Commission to do so prior to finalising the indicative prices.

It is critically important that the Commission gets the indicative prices right

7. AAPT uses WLR and LCS to provide competitive services to residential, business and wholesale customers across Australia and (along with many other access seekers) is dependent on the acquisition of these services from Telstra because there are no real supply side or demand side substitutes.
8. While AAPT is actively considering its options to move away from this resale model, there are a number of significant hurdles that must be negotiated first and as a result AAPT expects to continue to be dependent on the acquisition of these services from Telstra for some time to come.

9. Consequently, AAPT considers that access to Telstra's WLR and LCS services needs to be regulated in order to ensure a level playing field and ultimately to promote the long term interests of end users (**LTIE**).
10. One of the most important elements of regulated access is the ability for an access seeker or access provider to request that the ACCC arbitrate if, for example, the parties can't agree on price. Publication of pricing principles and in particular indicative prices by the Commission constitute a critically important input into the decision by access seekers or access providers on whether to have the matter arbitrated.
11. As a result, it is very important that the Commission establish pricing principles and indicative prices that best promote the LTIE, otherwise it is the Commission itself that causes inefficient pricing outcomes at the wholesale level and therefore inefficient outcomes for consumers at the retail level.

AAPT has little choice but to agree with the Commission's continued use of RMRC as an interim approach

12. In the draft decision, the Commission states:

Without a robust cost model available to it at this time, the Commission proposes to issue draft pricing principles and indicative prices for the period 2008-2009, which is consistent with the RMRC approach enunciated in the 2006 Pricing Principles Determination. The Commission considers that the indicative prices for the LCS and WLR for 2008-2009 will be transitional in nature and will stay in place while the ACCC completes its development of the fixed network cost model.

13. An independently developed cost model is clearly urgently needed, however, in the absence of such a model, AAPT has little choice but to support the

Commission's decision to continue the so called "interim approach" (although AAPT notes that this "interim approach" has been in place now for many years) of adopting a RMRC pricing approach for the 2008-2009 period.

14. However, AAPT does urge the Commission to try and bring the development of a cost model to a conclusion as a matter of some urgency. Otherwise we may see even further extensions of this interim approach.

The Commission's application of the RMRC approach is flawed because it pegs wholesale prices to retail prices which have no relevance

15. AAPT considers that the Commission has made two fundamental errors in its application of the RMRC approach.
16. First and most importantly, the Commission has used HomeLine Part (\$33.45 pm), BusinessLine Part (\$31.77 pm) and the 20 cents stand alone local call rate as the retail price benchmarks.
17. AAPT considers that these are the wrong benchmarks to use because hardly anyone at the retail level actually buys HomeLine Part or BusinessLine Part as stand alone products or pays 20 cents for local calls. The overwhelming majority of retail customers buy line rental and local calls along with other products such as long distance and broadband services in which case the price of these products is significantly reduced.
18. This application error by the Commission means that access seekers acquiring WLR and LCS services from Telstra have the price of these products tied to retail

prices that are effectively irrelevant which means they pay more than they should and therefore can't compete at the retail level. Consumers suffer as a result.

19. In addition, Telstra is incentivised to increase the price of HomeLine Part, BusinessLine Part and the stand alone price for local calls because it knows there will be no impact at a retail level (hardly anyone buys these products) but it will lead directly to a higher price for WLR and LCS and therefore inhibit the ability of access seekers to compete. AAPT suggests that this is in fact what has happened with HomeLine Part where Telstra increased the price from \$29.05 (when the previous indicative prices were set for WLR) to \$33.45 for the subsequent round.

20. AAPT considers that this error can be easily rectified by the Commission adopting an approach which pegs the prices for WLR and LCS to Telstra's average retail price for line rental and local calls and that this should be done immediately.

AAPT considers that the Commission's application of the RMRC approach is flawed because it pegs wholesale prices to retail prices inclusive of GST

21. The second error the Commission has made in its application of the RMRC approach involves the Commission's decision to use what would appear to be the Telstra retail price which is inclusive of GST to determine the price of WLR and LCS which are exclusive of GST.

22. This is again an error the Commission can easily rectify and AAPT considers it should be done immediately.