

6 November 2007

Mr Robert Wright
General Manager
Compliance and Regulatory Operations Communications Group
ACCC
GPO Box 520
Melbourne VIC 3001

CC: Michael Eady, Compliance and Regulatory Operations Communications Group

Dear Mr Wright,

**Response to Fixed services review
(Further consultation on draft ULLS pricing principles)**

Thank you for the opportunity to provide further comment on the ACCC's draft pricing principle determination for Unconditioned Local Loop Service (ULLS).

AUSTAR supports the ACCC's current position outlined in the *Declaration inquiry for the ULLS, PSTN OTA and CLLS – final decision* (July 2006, ACCC). AUSTAR believes that the draft pricing principles will ensure that there are appropriate incentives in place to protect the long term interests of end users by encouraging the development of alternative telecommunications infrastructure. As we stated in our earlier submission to the ACCC on March 2006 (*Response to ACCC Discussion Paper – Telstra's Undertakings for the Unconditioned Local Loop Service*), AUSTAR firmly believes that the de-averaged approach to ULLS pricing is more directly cost reflective. It will be a more appropriate basis for build or buy decisions by prospective competitors than a fully averaged price.

In this regard, AUSTAR continues to support the ACCC's views that averaged ULLS charges are not in the long term interests of end users.

In regional Australia, AUSTAR continues to explore the delivery of licensed wireless broadband. This efficient delivery mechanism has the potential to reach many more prospective customers than ULLS, due to the constraints on DSL in regional Australia. In finalising its decision on the ULLS pricing principles, AUSTAR encourages the ACCC to maintain its geographically de-averaged approach to ULLS pricing. Averaged pricing could result in a range of negative outcomes, such as making wholesale access more expensive for access seekers in metropolitan areas and discouraging future network investment in regional areas.

The Government's decision to award OPEL the funding under Broadband Connect Infrastructure Program (BCIP) is another key event which reinforces the need to ensure the environment is suitable for the development of viable, longer term alternative infrastructure in regional areas. AUSTAR believed the BCIP was a one-off opportunity to make a real and lasting difference to the Australian broadband landscape. Through a tender process which lacked engagement with the Department, regional Australia's broadband future has now been primarily placed in the hands of the incumbent, Telstra, and OPEL (a joint venture between Optus and Elders), which proposes to roll out a fixed WiMAX service using 802.16d, an outdated technology. As the sole winning tender for BCIP, OPEL has effectively been granted funds for a network Optus had plans to build already.

Fully averaged prices would make it impossible for alternative infrastructure-based providers to effectively compete with the dominant players, Optus and Telstra. AUSTAR continues to support the ACCC's views that a de-averaged approach to ULLS pricing will be in the best long-term interests of end users, especially in regional Australia.

For your convenience, I have attached AUSTAR's response to the ACCC Discussion Paper in regards to *Telstra's Undertakings for the Unconditioned Local Loop Service* (March 2006). The response outlines AUSTAR's views in detail on Telstra's price averaging proposal.

We would welcome the opportunity to discuss our views with you further.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Deanne Weir".

Deanne Weir
Group Director, Corporate Development and Legal Affairs

Att



Response to ACCC Discussion Paper

Telstra's Undertakings for the Unconditioned Local Loop Service

March 2006

AUSTAR UNITED COMMUNICATIONS LIMITED

Response to ACCC Discussion Paper: Telstra's Undertakings for the Unconditioned Local Loop Service

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1. INTRODUCTION AND OVERVIEW

AUSTAR welcomes the opportunity to respond to the ACCC's January 2006 Discussion Paper "*Telstra's Undertakings for the Unconditioned Local Loop Service*" (public version).

AUSTAR is a subscription television provider to regional and rural Australians, and has more than 533,000 (predominantly residential) subscribers.

AUSTAR Broadband

AUSTAR recently announced plans to invest up to A\$50m to rollout a wireless broadband network into 25 regional communities by the end of 2007. An alliance with metropolitan based wireless broadband provider, Unwired, means the AUSTAR and Unwired networks will be interoperable, for roaming across regional and metropolitan Australia. Unlike fixed network broadband alternatives like cable and DSL, which can only be used at a particular location, an AUSTAR broadband customer will be able to use their broadband account where ever there is AUSTAR or Unwired network coverage across Australia.

The AUSTAR network will initially offer a broadband internet service, delivering true broadband speeds to regional consumers - many of whom cannot currently access internet speeds in excess of 256kbps. AUSTAR also expects to offer voice services to consumers (utilising VoIP technology) at a later date. The establishment of a broadband access network with wide national coverage would provide Australians with an alternative to Telstra, for both broadband and voice services, and the associated benefits of competition.

Beyond these commercial rollout plans, the breadth of national coverage AUSTAR and Unwired ultimately deliver depends upon the availability of funding from the Federal Government's Connect Australia scheme for this purpose. AUSTAR believes it is crucial that funds under that scheme are used to facilitate genuine infrastructure competitors to Telstra - in areas and to customers - where network build is not commercially viable.

Relevance of Telstra's ULL service to AUSTAR Broadband

Telstra's ULL service allows alternative service providers to deliver services, such as DSL based broadband, over Telstra's copper local access network. AUSTAR's wireless broadband network will be an alternative infrastructure to that local access network. As a result, AUSTAR is unlikely to be a customer for Telstra's ULL service, and the scope of AUSTAR's interest in the ULL service and Telstra's ULL pricing is limited.

However, AUSTAR has views on Telstra's new price averaging proposal, and comments accordingly in relation to "Section 4.2 – Averaging" in the Discussion Paper below.

2. RESPONSES TO “SECTION 4.2 – AVERAGING”

Overview

The averaging vs de-averaging argument is complex for many reasons, including the potential for confusion in terminology. For example, banded rates may either be described as averaged or de-averaged, depending upon the degree of granularity of the bands.

For the reasons outlined below, AUSTAR’s view is that broad banding – for example, banding by urban, fringe urban, town, and rural (related to population densities) – is an appropriate mechanism for development of cost reflective ULL service prices.

Specific Responses to Section 4.2 Questions

Question 1.	Having regard to regulatory criteria under s152AH of the Act is an average ULLS price appropriate?
<p>No. Fully averaged prices are not cost-reflective and do not provide the appropriate incentives to promote the long term interests of end users through development of alternative telecommunications infrastructure.</p> <p>As a prospective competitor to Telstra and to broadband service providers that use ULL services, AUSTAR believes Telstra’s prices for ULLS should be fair and reasonable.</p> <p>AUSTAR has limited information regarding the basis for Telstra’s pricing for its ULL service, and therefore cannot comment as to whether the level of the proposed price - \$30 per month - is fair and reasonable as an averaged price.</p> <p>However, in AUSTAR’s view fair prices for wholesale services provided by a supplier that is not constrained by competition should recover the reasonable cost of provision of the service (generally measured by TSLRIC) and a reasonable margin. It follows that fair prices for wholesale services should be cost-reflective to the extent commercially practicable.</p> <p>AUSTAR does not have a view as to an appropriate margin for Telstra to derive from provision of wholesale services. However, de-averaged prices (to the extent that de-averaged pricing is commercially practicable) are more directly cost-reflective and will therefore be a more appropriate basis for build or buy decisions by prospective competitors than a fully averaged price.</p>	

Question 2

What are the advantages and drawbacks of averaged ULLS charges in terms of promoting competition and efficient investment outcomes?

Artificially (through averaging) low charges for ULL services in regional areas may stimulate provision of some DSL based services, prompting localised services based DSL competition in some areas, but potentially at the expense of development of viable, longer term alternative infrastructure in those and other regional areas.

Artificially (through averaging) high charges for ULL services in urban areas is likely to retard competition in urban areas that might otherwise be stimulated by the comparatively lower ULL prices in those urban areas that could be expected if de-averaged pricing was used.

Regardless of whether ULL pricing is de-averaged or averaged, DSL based competition is most likely to continue to develop principally in urban areas, rather than in regional Australia, for a number of reasons. These include:

- Lower costs incurred by competitors to deployment of DSLAMs in exchanges and in truck-roll in urban areas;
- Economies of scale in advertising and marketing expenditure;
- Higher average disposable income of urban customers; and
- Barriers to entry presented by Telstra's Countrywide presence in regional Australia.

For many customers in regional Australia that are beyond the reach of broadband services provided by DSLAMs installed in Telstra local exchanges, AUSTAR will be unique in its capability of providing higher broadband speeds at affordable rates on a scale network.

Even within areas within the reach of DSLAMs installed in Telstra local exchanges, experience to date suggests that few competitors are willing to risk the higher per subscriber cost of providing broadband services in regional areas.

The few competitors that emerge in regional Australia tend to have highly localised operations and ambitions. AUSTAR expects this is unlikely to change for the foreseeable future, even with improvements in the Federal Government's Connect Australia funding scheme. As a result, competitive pressure on Telstra to rollout DSL based broadband services is likely to remain limited.

Question 3

Would the Government's proposed pricing parity requirement for HomeLine Part have a detrimental effect on Telstra's legitimate business interests if ULLS charges were de-averaged?

The likelihood of this being an issue of near-term concern would appear to be remote. Telstra argues that symmetry between averaging or retail rates and wholesale rates is necessary (1) "if [Telstra] is to continue offering averaged retail prices to customers in all geographic areas", and (2) for "competitive neutrality". However, Telstra is not mandated to provide broadband access in regional areas and typically does so only where provision of broadband services makes commercial sense or where a subsidy is available through the HiBIS/Connect Australia programs.

Suggestions of lack of "competitive neutrality" or unfairness are emotive, but not really appropriate in a competitive environment where Telstra maintains effective national control of local loops. Alleged adverse effects of maintaining parity in retail pricing service but de-averaging wholesale rates should be discounted unless or until Telstra is shown to be losing significant overall retail market share as a result of de-averaged wholesale rates.

Cost-reflective wholesale rates, such as partially de-averaged banding of ULL prices, are likely to stimulate entry of DSL based providers in urban areas and ultimately may require retail parity pricing to be reviewed. Given Telstra's control of almost all of the local loops, which has remained essentially unchanged since competition was inaugurated in 1991, the likelihood of this being an issue of near-term concern would appear to be remote.

The Commission notes the "regulatory tradition" is to require uniform or average retail prices for urban and rural line rental and local calls. But this tradition of regulating retail pricing, as the Commission also notes, is driven by Government and community views of the desirability of parity or social equity – views that AUSTAR readily accepts, acknowledging the challenges of the Australian geography.

However, regulation of retail prices is not consistent with rational economic pricing for wholesale services, nor with the modern competition theory of regulating wholesale prices to create appropriate incentives for competitive entry and allowing the competitive market to determine retail prices, including the incumbent's retail prices. In any event, any "regulatory tradition" has really only developed in relation to retail pricing. Averaging of wholesale rates has not been driven by regulatory requirement. Where averaging of wholesale prices has been applied, it has generally been for commercial convenience of the wholesale provider – such as in enabling simplification of rate cards.

Question 4

What effect would an averaged ULLS charge have on access seekers' ability to compete?

As outlined in response to Question 2, the effect would be generally detrimental.

Telstra suggests that de-averaged prices will “virtually [guarantee] that residential customers residing in rural areas will never have network choices or share in the benefits of infrastructure competition”.

AUSTAR disagrees that averaged wholesale pricing promotes competitive infrastructure development in regional and rural areas - because as stated above, ULL is not a viable competitive infrastructure in many regional and rural areas.

In regional Australia, wireless broadband can potentially reach many more prospective customers than ULLS, due to the distance constraints on DSL over copper services. To the extent that artificially (through averaging) low charges for ULL services in regional areas stimulates provision of some DSL based services, some localised competition may emerge, but potentially at the expense of development of viable, longer term alternative infrastructure in those and other regional areas.

If competitive entry is to be stimulated in regional areas, targeted subsidies within programs such as Connect Australia are a more direct, cost effective method of achieving the Government's desired policy outcomes.

Question 5

If an average price is considered appropriate, what is the effect of such a departure from de-averaged pricing on appropriate pricing principles?

An averaged price is not appropriate for the reasons outlined in response to Question 1. Cost-reflective prices, implemented (for ease of Telstra's commercial administration) as banded prices, are appropriate.

Question 6

Should Telstra's ability to satisfy its price parity obligations be measured in terms of TSLRIC costs or its actual costs?

TSLRIC is generally the more appropriate measure.

Question 7

Should USO and subsidy payments be taken into account in assessing Telstra's ability to meet its price parity obligations?

Yes. The subsidies are designed to facilitate price parity.