



Appendices

to the Optus Submission

in response to the ACCC's discussion paper

Public Inquiry to make Final Access Determinations for the
Declared Fixed Line Services

June 2011

Public version

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Appendix A: Calculation of ULLS price using alternative weighting methods

The ACCC's rationale for shifting to a two-tiered ULLS pricing structure

- A.1 The ACCC has noted the following in arriving at its motivation for the shift towards a two-tiered pricing structure for ULLS:
- (a) Firstly, Bands 1 to 3 share similar characteristics and aggregation across these bands and geographic regions *"will not have a significant distortionary impact on investment or competition."*¹ To support this, the ACCC has also considered that there has been a significant narrowing of the price differential between Bands 2 and 3, which based on the cost relativities gap has narrowed from 57% (in PIE II) to 48.8% (in Analysys).²
 - (b) Second, the averaging of Band 1 to 3 simplifies the ULLS price structure and may reduce administrative costs, while maintaining a separate Band 4 price would ensure that the higher costs of delivering services into rural areas is reflected in the price.³
 - (c) Third, the ACCC has recognised that while the decision to average Band 1 to 3 will result in a significant price increase in Band 1, and to a smaller extent Band 2, it considers that the resulting price reduction in Band 3 (and other declared fixed line services) to access seekers *"may promote further investments in those ESAs"*⁴ which will more than offset the price increases in Bands 1 and 2.

Cost recovery in the FLSM

- A.2 To examine the issue of cost recovery, the FLSM can be used to compare the level of costs that will be recovered over the course of the modelled years and as such, inferences can be made regarding the level of costs the Access Provider is able to recover. In theory, the level of costs recovered through access prices should be equivalent to the total revenue requirement, as derived on a service-by-service basis.
- A.3 The two key figures that underpin this analysis include:
- (a) The revenue requirement (including tax) allocated by the FLSM to be recovered through the relevant service; and
 - (b) The revenue forecast allocated by the FLSM to be recovered through the relevant service, which also takes into account the model's forecast demand and the proposed demand-weighted price as set out in the FAD.

¹ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.143

² ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.141

³ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.143

⁴ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.143

- A.4 Once the total revenue requirement has been calculated for all asset classes, it is apportioned by service using the defined cost allocation factors then aggregated to arrive at an annual service-specific total revenue requirement for cost recovery.
- A.5 In the case of ULLS, the total ULLS-specific revenue requirement is essentially apportioned on a geographic basis using a set of identified cost relativities and the demand-weightings for each band. This results in the following individual band prices for ULLS. **CiC**
- A.6 These prices are then demand-weighted across total SIOs in the CAN to arrive at an averaged Band 1 to 3 ULLS price, for each period, then subsequently averaged across the five years to arrive at the final price proposed in the ACCC's FAD, as summarised below. **CiC**
- A.7 It follows that the five year averaged FAD price becomes \$16.75 for Band 1 to 3 and \$50.10 for Band 4. Using these prices, the following table sets out the level of over-recovery calculated using the FLSM over the five year regulatory period, leading Telstra to earn a windfall gain of \$135.2 million.

Annual revenue requirement allocated to ULLS

	2011/2012	2012/2013	2013/2014	2014/2015	2015/2016
Total ULLS Revenue Requirement (nominal, \$m)	188	202	217	215	218

TOTAL level of over-recovery

	2011/2012	2012/2013	2013/2014	2014/2015	2015/2016
Required Cost Recovery (nominal, \$m)	188	202	217	215	218

FORECAST recovery using ACCC's SIO-weighted pricing approach

220	231	242	242	242
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Level of over recovery
(nominal, \$m)

31.5	28.5	24.9	26.6	23.7
17%	14%	11%	12%	11%

Price stability

- A.8 As such, Optus does not accept the ACCC's reasons for choosing to weight band prices by the share of total SIOs, instead of the alternative (that is, using ULLS-specific demand weights). The ACCC considered:

Using demand weights could result in significant changes over time in the averaged price if the pattern of demand across bands were to change significantly (even if the estimated underlying price remained constant).⁵

- A.9 In order for this scenario to hold true, Optus considers that there will need to be either an unrealistically large take up in Band 3 ULLS or a rapid migration of existing ULLS SIOs from

⁵ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.144

Bands 1 and 2, to have any impact on the proportional distribution of ULLS SIOs within Bands 1 to 3. Neither scenario is likely.

- A.10 If ULLS demand weights were used to set the averaged Band 1 to 3 price, this results in an averaged ULLS-specific Band 1 to 3 demand-weighted price of **CiC**

Illustrative example: Maximum plausible change

- A.11 As discussed in Section 2 of Optus' main submission, Optus has based its quantification of the plausible magnitude of any increase in the demand-weighted average ULLS price on the following assumptions.
- (a) Using the ACCC's Snapshot of Telstra's CAN as at 30 June 2010,⁶ we can derive the proportion of the CAN attributed to both ULLS SIOs and other SIOs to calculate the proportion of ULLS as a percentage of total SIOs in each geographic area. It can be calculated that there is 11.77% of ULLS SIOs as a proportion of total SIOs in Band 2 areas, and 0.59% of ULLS SIOs as a proportion of total SIOs in Band 3.
 - (b) To calculate the maximum plausible increase in the demand-weighted ULLS price, Optus has estimated ULLS uptake for Band 2 and Band 3 areas over five years. For Band 3, it is assumed that a rapid increase in demand occurs, due to the reduction in ULLS price. Optus has applied an uptake assumption of **CiC**. For Band 2, Optus has used the assumption of 7% year-on-year growth, taken to be the average of the ACCC's demand forecast growth in total ULLS SIOs over the modelled five year period, resulting in a maximum uptake assumption of **CiC** over the five year period. For simplicity Optus has assumed there will be no change in ULLS SIOs in Band 1 and Band 4 areas
 - (c) A revised table of ULLS SIOs in each geographic area is produced by summing the current ULLS SIOs with the maximum plausible growth calculated above, and new ULLS weightings calculated accordingly – resulting in a decrease in the proportion of Band 2 ULLS SIOs to 93.5% and increase in Band 3 ULLS SIOs to 4.3%.
- A.12 As a result of this change in proportions, the demand-weighted ULLS price increases from \$14.81 in the current regulatory period to a maximum of \$15.27 (ceteris paribus).

Illustrative example: Magnitude of change required to produce price above FAD proposal

- A.13 Now consider the following example based on the actual ULLS demand in 2009-10 and forecast ULLS demand for 2010-11. Using a different allocation factor for the change in ULLS SIOS in 2010-11, we can arbitrarily change the band proportions and for simplicity keep the revised proportion constant for the remainder of the regulatory period. It follows that the main two drivers of a change in the averaged Band 1 to 3 ULLS price include the demand forecast applied to total ULLS SIOs and the distribution of this increment across the geographic regions.
- A.14 In each of the following scenarios, only the demand forecast for total ULLS SIOs in 2010-11 will be varied,⁷ following which the revised band proportions will be kept constant for the remainder of the regulatory period under consideration. The following table sets out the results of this thought experiment. **CiC**

⁶ ACCC, *Snapshot of Telstra's customer access network as at 30 June 2010*, Table 1

⁷ It is assumed that the forecast change in demand will remain as per the original model assumptions.

- A.15 The outcome is that the demand for ULLS must both increase by 25% (206,833 SIOs) and 100% of this growth must occur in Band 3, in order for the resulting prices to reach a level similar to what is being proposed in the FAD.
- A.16 Optus considers this scenario is unlikely to occur for a number of commercial reasons, further complicated by the uncertainty surrounding a number of NBN issues, such as timing, migration plans and network roll-out, as discussed in the main submission.

Appendix B: DSLAM investment costs [CiC]

CiC

Appendix C: PSTN OTA international benchmarking

C.1 Optus has undertaken a desktop review of the charging structures for fixed line origination and termination for an expanded sample set of jurisdictions compared to that included in the Discussion Paper. The table below summarises the price structure characteristics of the sampled jurisdictions.

Table: Summary of Price Structure Characteristics in Selected Jurisdictions

Jurisdiction	Flagfall	Peak/ off-peak charges	Routing/ switching based charge	Local / Regional / National charging	Notes
<i>Europe</i>					
Austria		✓		✓*	*Local, regional and national rates
Belgium	✓	✓		✓*	*Local, intra-access area (origination and termination) and extra-access area (termination only)
Denmark	✓	✓			
Finland					One local per minute charge only
France	✓	✓	*		*Ovum data currently only displaying values for local, however older material also shows single tandem rate
Germany		✓	✓		
Greece		✓	✓		
Ireland	✓	✓	✓		OA and TA not symmetric
Italy		✓	✓		
Netherlands		✓		✓*	*Local, regional and national rates.
Norway	✓	✓	✓		
Portugal	✓	✓	✓		
Spain			✓*	*	*Local, single and double, as well as a 'metro' rate, which is higher than the local rate and slightly lower than the single tandem rate
Switzerland	✓	✓		✓*	*Regional and national rates.

Jurisdiction	Flagfall	Peak/ off-peak charges	Routing/ switching based charge	Local / Regional / National charging	Notes
					OA and TA not symmetric
Sweden	✓	✓	✓		
UK		✓	✓		OA and TA not symmetric
North America					
Canada					Bill and keep arrangements, unless material traffic imbalance wherein fixed charges (per trunk) apply based on the size of the imbalance
Mexico					Single local usage charge only with surcharge for unsuccessful calls
US			✓		
Asia-Pacific					
Japan	✓		✓		
New Zealand	✓*				*Choice of a flagfall and per minute charge or usage with a minimum call duration
South Korea		✓			

Sources: Ovum, *Europe & Americas interconnect charge data: Q1 2011*; Ovum, *Asia-Pacific interconnection charge data: Q4 2010*; Analysys, *BT Wholesale Interconnect Tariff benchmarking*, 22 February 2005; New Zealand Commerce Commission, *Determination on the Telstra Clear Application for Determination for Designated Access Services*, 5 November 2002; Bell Canada, *Access Services Tariffs for Interconnection with Carriers and Other Service Providers*, 19 February 2009.

- C.2 Similar to the ACCC's observations,⁸ Optus has found that all the countries sampled impose per minute charges. Time of day pricing appears to be more common in European countries, with only a limited number of countries imposing additional call set-up costs. Routing or switching based costs are also prevalent, the most common structure including local and single tandem rates and some also including double tandem rates.
- C.3 Optus notes the ACCC's finding that geographically de-averaged charging appears to be uncommon in its sample set.⁹ However, Optus would go further than 'uncommon' – in fact, geographically de-averaged charging comparable to the current price structure for the PSTN OTA in Australia appears to be *non-existent* in the sample set.

⁸ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.147

⁹ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.148

- C.4 To explain what is meant here, there are a number of jurisdictions in the sample set which set charges which differ depending on whether the call is considered “Local”, “Regional” or “National”. That is, based on the available information it appears that if both the calling party and the called party are in the same region (for example), then the call will be charged at the “Regional” rate. Whereas if the calling party and the called party are in different regions, the “National” rate will apply. This arrangement is quite different from the current price structure for the PSTN OTA in Australia.
- C.5 Under the current price structure for the PSTN OTA in Australia, different charges are set depending on whether the called party is located in a CBD, metropolitan, provincial or rural area. That is, a long distance call terminating in a rural area (for example) will be charged at a higher rate than a call to an urban area, *regardless of the location of the calling party*.
- C.6 Given this significant difference, Optus considers that it is incorrect to categorise jurisdictions which set “Local”, “Regional” or “National” charges in the same category as Australia. Accordingly, in the table above Optus has not labelled these jurisdictions as having “geographically de-averaged charging”; rather, they are labelled ‘Local / Regional / National charging’).
- C.7 The implication of this discussion is that there appears to be zero current international support for geographically de-averaged charging comparable to the current price structure for the PSTN OTA in Australia. The only international precedents appear to be historical.
- C.8 Historically interconnection rates were geographically de-averaged in North America.¹⁰ That is, rates differed between geographic areas, typically between urban and rural areas, as well as across state or provincial borders. However, this was a product of different sized network operators in the various areas with smaller network operators in rural areas, and larger, long distance carriers operating in metro areas.
- C.9 Currently, termination in Canada is subject to Bill and Keep arrangements. However, Bell Canada, the incumbent, states in its access agreement that charges may apply if a traffic imbalance occurs.¹¹
- C.10 In the United States many incumbent network operators negotiated similar Bill and Keep arrangements with each other. The rates between incumbent operators and competitive networks were regulated, similarly the rates for long distance operators. However, the presence of different state-based regulators (and pricing approaches) resulted in an opportunity for regulatory arbitrage as the termination rates differed between providers. In a recent review of the interconnection regime, the FCC stated that:

*the evidence indicates that application of the TELRIC methodology to reciprocal compensation has not led to rates that accurately reflect a carrier’s “additional costs” as the Commission initially envisioned and Congress intended. Rather the Commission’s existing pricing standard has led to rates that not only vary significantly among states, but are generally too high, and which ultimately create regulatory arbitrage opportunities.*¹²

¹⁰ Dymond, Andrew. “Telecommunications challenges in developing countries: Asymmetric Interconnection charges for Rural Areas”, *World Bank Working Paper no.27*, February 2004, pp.11-12

¹¹ Bell Canada, *Access Services Tariffs for Interconnection with Carriers and Other Service Providers*, 19 February 2009, Item 105.sec 4(d)(1)

¹² FCC 08-262, pp.A-109

C.11 Accordingly, the FCC has implemented a series of transitional phases towards reforming all access compensation to be uniform and calculated according to the same methodology.

Appendix D: Business benefits of a single PSTN OTA charge [CiC]

CiC

Appendix E: Impact of geographic exemptions on the corporate and government market [CiC]

CiC

Appendix F: Cost allocation

- F.1 The ACCC has had regard to a number of submissions made since September 2010 in identifying adjustments to be made to those applied in the FLSM, and maintains its view that the Analysys model provides a good starting point for determining allocation factors in the FLSM, noting:

*The Analysys cost allocation factors are derived from demand data for individual services combined with routing factors to determine the percentage of assets used by each particular service.*¹³

- F.2 These adjustments were made to remove, where possible, the effects of optimisation inherent in the Analysys model and to account for changes in service demand levels since the model was developed.
- F.3 To assist in this discussion, Optus welcomes the inclusion of the cost allocation factors calculations worksheet which has been included in the FLSM to increase transparency in the approach taken to calculate the cost allocation factors.
- F.4 The 'E. Allocations factors calc' worksheet sets out the cost allocation factors applied in the FLSM, including the various adjustments applied to uplift the original allocation factors as applied in the Analysys model.
- F.5 Where a new asset class has been included, and a reliable starting point is not directly available from the Analysys model, the ACCC has also set out the assumptions it has applied in deriving the appropriate cost allocation factor for those assets.

Cost allocation factor calculations

- F.6 The ACCC has made several revisions to specific asset classes considered in the FLSM, such as, the inclusion of additional asset classes, such as 'network land' and 'network building and support assets' and the removal of asset classes not applicable to declared fixed line services, such as 'satellite equipment' and 'international network cables'. In addition, special treatment was also given to the derivation of allocation factors for 'ducts and pipes' and 'copper cables', as well as for PSTN 'switching equipment'.
- F.7 In making these revisions, the ACCC has adopted several approaches to derive the cost allocation factors for each asset class in the base year, including:
- (a) Applying a revised set of Analysys allocation factors to the corrected base year period, the ACCC has chosen to directly apply the allocations derived for a number of CAN and Core asset classes (subject to a demand-based adjustment factor).
 - (b) Developing a new methodology, taking into account geographic cost differences, to adjust the allocation of costs applicable to ULLS, WLR and other services for a number of CAN asset classes.

¹³ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, pp.123-124

- (c) Undertaking an adjustment to the PSTN OTA transmission equipment factor to take into account the significant increase in data traffic in recent years.
- (d) Deriving appropriate cost allocation factors for the new asset classes based on the Analysys model, or where this is not available based on a revenue share approach, as the starting point.

F.8 Each of these approaches will be discussed in turn.

Analysys allocation factors

- F.9 Since the September 2010 Draft Report, the ACCC has made a number of adjustments to the cost allocation factors used in the FLSM. In particular, it has corrected an error caused by using 2009-10 Analysys allocation factors instead of 2008-09 Analysys allocation factors which would be consistent with the initial RAB period being 1 July 2009.
- F.10 In addition, these Analysys allocation factors have also been based on the updated version of the Analysys model (version 2.2) which was subsequently released following the Draft Report. This can be verified against the starting values set out in tables E1.1 and E1.3 in the 'E. Allocation factors calc' worksheet in the FLSM.
- F.11 From this starting point, the ACCC has adjusted the allocation factors to take into account the changes in forecast demand in subsequent years to reflect changing asset usage based on the percentage difference in demand numbers between the Analysys model and the reported RAF in 2008-09.
- F.12 The resulting allocation factors are the default allocation factors applied for each of the relevant services, unless otherwise identified by the ACCC.

Cost-reflective allocation factors for ULLS and WLR

- F.13 The ACCC previously acknowledged that the *"average unit costs of ducts and pipes and copper cables may be lower for providing ULLS than for providing WLR and other services,"*¹⁴ and has subsequently revised its cost allocation factors in the FLSM to account for the cost differences in the 'ducts and pipes' and 'copper cables' asset categories for ULLS and WLR.
- F.14 In revising its allocation factors for these specific asset classes, the ACCC has developed a new methodology to adjust the Analysys allocation factors to reflect the fact that ULLS lines have a significantly lower cost profile compared to WLR and other services (such as Telstra retail lines).
- F.15 In developing the cost-reflective allocation factors, the ACCC has had regard to Optus' proposal to use the share of SIOs and the band relativities from the PIE II model to estimate the cost of providing services in each band. While the ACCC has (at a high level) accepted the proposed approach, it has also examined the cost relativities derived from the Analysys and TEA cost models that have also been developed in recent years, reaching

¹⁴ ACCC, *Review of the 1997 telecommunications access pricing principles for fixed line services*, Draft Report, September 2010, p.92

a conclusion *“that the Analysys model relativities are appropriate for determining costs in the four geographic bands.”*¹⁵

- F.16 The ACCC has identified the following cost relativities derived from the Analysys, TEA and PIE II models.¹⁶ **CiC**
- F.17 These cost relativities are then used to derive the asset specific cost, on a geographic basis, which is subsequently used to derive the total ULLS (and WLR) specific revenue requirement. The total revenue requirement for ULLS (or WLR) as a proportion of the total revenue requirement for all CAN SIOs is then used to determine the relevant cost allocation factor to be applied.
- F.18 The following table sets out the range of CAN asset class cost allocation factors that arise in the 2009-10 base period. **CiC**
- F.19 Optus submits that the approach for allocating costs for ‘ducts and pipes’ and ‘copper cables’ is appropriate.

Allocation factors for PSTN switching equipment

- F.20 The ACCC previously set cost allocation factors for switching equipment using a set of adjustments applied to the Analysys model *“for the three classes of switching equipment (local, trunk and other) to ensure that unit costs per minute are not inflated by the loss of traffic on the switching equipment.”*¹⁷
- F.21 Optus concurs with the ACCC’s approach to revise the PSTN OTA service to exclude the categories attributed to ‘PSTN outgoing to international’ and PSTN outgoing to mobile’. However as shown in the table below, this has not significantly changed the resulting allocation factor in terms of maintaining the relativity between the 2009 Analysys factors for the trunk and other switching equipment.

Relativity to PSTN Switching	PSTN (original)	PSTN outgoing to international	PSTN outgoing to mobile	PSTN OTA
Local	1.000	1.000	1.000	1.000
Trunk	2.255	2.454	2.250	2.250
Other	2.101	2.101	2.101	2.101

- F.22 This relativity is then applied to the value derived for PSTN OTA local switching, hence emphasising the importance of setting the correct allocation factor for this asset class.

¹⁵ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.142

¹⁶ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.141

¹⁷ ACCC, *Review of the 1997 telecommunications access pricing principles for fixed line services*, Draft Report, September 2010, p.92

- F.23 The approach set out by the ACCC to calculate the allocation factor for PSTN OTA local switching is based on the actual PSTN OTA minutes in 2009-10 as a proportion of the actual total voice service usage (Telstra retail and external wholesale PSTN OTA and local call minutes) in 2002-03. As such, the basis for setting 2002-03 as the benchmark year for PSTN OTA switching equipment was set out in the September 2010 Draft Report, which noted that:

*The switching equipment in the Core was built to carry more capacity than the current level of traffic. Total voice traffic using Telstra's switching equipment peaked in 2002-03 and has fallen since then with a larger decline for PSTN OTA traffic. The fall in traffic reflects two factors: (i) Telstra's loss of market share to competing carriers that have invested in their own switching equipment and (ii) a reduction in total fixed line voice traffic as a result of a switch by end-users to alternative technologies such as mobiles.*¹⁸

- F.24 In addition, Optus submits that it is reasonable to include Telstra's retail local call minutes in the calculation of total voice service usage for 2002-03 given the significance of local call in contributing towards the total voice traffic using Telstra's switching equipment. This is also in line with the ACCC's previous conclusion on the allocation of switching equipment cost allocation factors for the LCS,¹⁹ as evidenced by the significant decline in local call minutes since 2002-03 and in particular, the ACCC's acknowledgement that "fixed to mobile substitution will be the key driver of decline in LCS demand."²⁰
- F.25 On a high level, the 2002-03 PSTN OTA usage values set out in the FLSM for the domestic long distance, international long distance and fixed-to-mobile usage can be verified from publicly reported data.²¹ The notable exception being the minutes attributed to local calls, which the ACCC has based on actual RAF data.
- F.26 For example, the ACCC reported that in 2002-03 the number of call minutes for domestic PSTN originating and termination access for Telstra, AAPT and Primus totalled 39,457 million.²² However the value as applied in the FLSM is lower than this total, hence lowering the total voice minutes attributable to the base year (that is, the denominator) used to derive the PSTN local switching allocation factors. This in turn will increase the PSTN switching equipment allocation factors in the first year (2009-10) and every subsequent year thereafter.
- F.27 Optus therefore submits that the ACCC must exercise care in ensuring that the correct pool of minutes for PSTN OTA is taken into account, especially given that if this denominator has been incorrectly set, this will result in a carry-through error.

Allocation factors for PSTN transmission equipment

- F.28 The ACCC has noted that to cater for the significant increase in data traffic over recent years, it has considered "that these investment costs [related to data traffic] should not be

¹⁸ ACCC, *Review of the 1997 telecommunications access pricing principles for fixed line services*, Draft Report, September 2010, p.92

¹⁹ ACCC, *Review of the 1997 telecommunications access pricing principles for fixed line services*, Draft Report, September 2010, p.93

²⁰ ACCC, *Review of the 1997 telecommunications access pricing principles for fixed line services*, Draft Report, September 2010, p.97

²¹ ACCC, *Telecommunications market indicator report 2002-03*, June 2004

²² ACCC, *Telecommunications market indicator report 2002-03*, June 2004

*allocated to voice traffic, including PSTN OTA... [and has] therefore adjusted the 'transmission equipment' cost allocation factor to reflect the share of the asset used to provide the PSTN OTA service, compared to data services and other voice services."*²³

- F.29 As a result, the ACCC has revised its approach used to measure total PSTN data traffic to include a mix of information sources, including RAF data for packet switched data products as well as a number of data traffic parameters reported by the ABS in its internet activity statistical surveys.
- F.30 Based on the information set out in the ABS' Internet Survey, the ACCC has made several key assumptions to interpolate this information for the FLSM, including:
- (a) The ABS data represents an aggregated total of data download by all ISPs with more than 1,000 active subscribers, and does not disaggregate by transmission type. As such, this only represents data volumes for 107 (approximately 29 per cent) of total reported ISPs²⁴ following a conclusion that ISPs with less than 1,000 subscribers only contributed less than 1% of the total output.
 - (b) In estimating the total voice and data traffic, the ACCC has also added a measure of data traffic (including ISDN voice and data calls) to Telstra's voice traffic on the PSTN reported in its RAF accounts. Therefore acknowledging there may be some double counting of ISDN data traffic resulting from this approach.²⁵
 - (c) The ACCC also notes that it does not have sufficient information to include commercial traffic that may be carried via Telstra's transmission equipment in its measure of data traffic, however it has considered that this factor "*will partly offset the over-estimation caused by the first two factors*"²⁶ mentioned above.
- F.31 Optus submits that absent of better information, it considers the ACCC's approach to include a measure for data traffic carried over Telstra's transmission equipment to be reasonable²⁷, subject to a few qualifications. In particular, surrounding the forecast data traffic growth rate to be applied from 2010-11 for the remainder of the regulatory period.
- F.32 For example, the ACCC has only forecast a conservative data traffic growth of 20% from 2010-11. This is despite the ACCC's acknowledgement that "*Recent ABS data indicates that the 2010 forecast may well be exceeded.*"²⁸ The following table sets out the information published in the ABS Internet Activity Survey for the last five periods.

²³ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.130

²⁴ ABS, 8153.0 – Internet Activity, Australia, June 2010

²⁵ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.131

²⁶ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.131

²⁷ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.131

²⁸ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.131

	Dec-08	Jun-09	Dec-09	Jun-10	Dec-10
TOTAL data volume downloaded (TB)	81,353	99,248	127,955	155,502	191,838
% change between survey periods		22.0%	28.9%	21.5%	23.4%

F.33 This data clearly demonstrates that in each subsequent survey period, the increase in total data volume downloaded has increased by more than 20%, which represents a 24% change during each survey period. Optus submits that based on this information, the ACCC should increase its forecast assumption to at a minimum 24% for the period from 2010-11 onwards.

Allocation factors for new asset classes

F.34 Since the September 2010 Draft Report, the ACCC has introduced several new asset classes to the FLSM, including:

- (a) 'Network land' and 'Network buildings and support' which requires the apportionment of costs to each of the ULLS, WLR, LCS and PSTN OTA services;
- (b) 'Indirect capital assets' which requires the apportionment of costs to each of the ULLS, WLR, LCS and PSTN OTA services; and
- (c) 'Other communication plant and equipment' which requires the apportionment of costs to each of the LCS and PSTN OTA services.

F.35 The basis of setting the cost allocation factors for each of these asset classes vary from the use of the Analysys model, to the adoption of a revenue share approach.

F.36 For 'Network land' and 'Network buildings and support', a combination of both approaches has been taken into account. In the case of the CAN Network, the Analysys cost allocation factor for 'LE costs' has been applied for both ULLS and WLR. However in the case of LCS and PSTN OTA, which occurs in the CORE network, the revenue share approach has been taken into account.

F.37 For 'Indirect capital assets' the ACCC has applied the revenue share based approach to derive the relevant CAN and CORE cost allocations for the relevant services.

F.38 For 'Other communication plant and equipment', a combination of both the revenue share approach and a weighted average approach has been taken into account. Given that "Telstra did not specify whether the building assets included in the asset class related to the CAN or the Core network"²⁹ the ACCC has made the assumption to allocate these assets in the same proportion as 'Network buildings and support'. For LCS and PSTN OTA, the cost allocation factors have been set equal to the 'Network buildings and support' cost allocations used in the FLSM. For ULLS and WLR service, this has been based on the

²⁹ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.133

weighted average of the relevant Analysys cost allocations for CAN radio equipment and CAN building and support assets.³⁰

Revenue share based allocation factors

- F.39 Where the Analysys model does not provide any cost allocation factors for certain asset classes, the ACCC has used a revenue share approach to derive the starting point for the relevant asset class. Using the approach set out below:
- (a) The 2009-10 total revenue requirement is calculated for a set of identified asset classes
 - (b) The equivalent revenue requirement related to the assets listed, are then calculated for the relevant service.
 - (c) To calculate the relevant cost allocation for the relevant service, the equivalent revenue requirement (at step 2) was calculated as a proportion of the total revenue requirement (at step 1).³¹
- F.40 To determine the 2009-10 cost allocation factors for 'Network land' and 'Network buildings and support' for both LCS and PSTN OTA, the ACCC has identified the relevant CORE asset classes to include: 'switching equipment', 'inter-exchange cables', 'transmission equipment' and 'CORE radio bearer equipment'.
- F.41 To determine the 2009-10 cost allocation factors for 'Indirect capital assets', the ACCC has used the same set of identified CORE asset classes to derive the cost allocation factors for WLR, PSTN OTA and LCS. While for ULLS and WLR, it has identified the relevant CAN asset categories to include: 'Ducts and pipes', 'Copper cables', 'Other cables', 'Pair gain systems', 'CAN radio bearer equipment', 'Other CAN assets' and 'Other communications plant and equipment'.
- F.42 Optus submits that it remains cautious of the revenue share based allocation approach given that this approach is largely dependent on the cost allocations (and specified list of asset classes) for the identified asset classes being correct. Hence, any change in the cost allocation assumption for an identified asset class can result in a significant change in the calculated cost allocation factor calculated using this approach.
- F.43 For example, Optus notes that while the asset class 'Other communications plant and equipment' exists in both the CAN and CORE networks, in the context of the revenue share based approach, this is only taken into account in the CAN network with regards to Step 1. This has several implications on the cost allocation that is derived as a result.
- F.44 Firstly, based on the identified description asset classes in the CORE network, the ACCC has marginally over estimated the total revenue requirement applicable (at step 1). Correcting for this error, there is only a very minor change to the cost allocation factor for 'Network land' and 'Network buildings and support' but no change to the overall price for PSTN OTA or LCS.

³⁰ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.133

³¹ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.132

- F.45 In contrast, should the asset class be included, this should also be taken into account in Step 2. However this cannot be corrected in the model given that the cost allocation attributable to this asset class is in effect the same cost allocation factor as calculated for 'Network land' and 'Network buildings and support'.
- F.46 Second, given the inclusion of the 'Other communications plant and equipment' asset class in the CAN calculations, it seems somewhat counter-intuitive to exclude the asset class in the CORE calculations. It is also not immediately clear why the ACCC has chosen to set cost allocation for this asset class in the CAN network based on the allocation factor derived from the calculation of one *minus* the allocation factor for CAN radio equipment derived from the allocation factors in the Analysys model.

Allocation factors applicable to LSS

- F.47 Optus in general supports the inclusion of LSS into the FLSM, however notes that the LSS cost allocation applied in the FLSM has only been set to recover 100% of the total revenue requirement allocated to 'LSS equipment' in the CORE network. As such, this is based entirely on the direct opex forecast for LSS with no allowance for indirect mark-up. Optus has made submissions on the appropriate contribution of the LSS to the common cost of the local loop infrastructure in its main submission.

Final cost allocation factors applied in the FLSM

- F.48 Taking into account the adjustments discussed above, the ACCC arrives to a final set of cost allocation factors applicable in the FLSM for 2009/10. From this base, the cost allocation factors are then adjusted using the calculated adjustment factor for each service in each subsequent period.

Deriving the adjustment factor

- F.49 The adjustment factor applied is based on the percentage difference in the demand forecasted in the Analysys model and the actual RAF reported values for each of the declared fixed line services in 2008-09. The resulting adjustment factor for 2008-09 is applied to the change in forecast demand for the relevant declared fixed line service for 2009-10. Each subsequent adjustment factor is then used to calculate the following adjustment factor and is then applied to derive the cost allocation factor to be applied in each period.
- F.50 As a result, the adjustment factor used to derive the cost allocation factors in the FLSM in each period is calculated using the following equation:

$$\text{adjustment factor}(n+1) = \text{adjustment factor}(n) \times \Delta\text{demand}(n+1)$$

- F.51 Optus submits that this approach appears reasonable, however is cautious to emphasise the approach's reliance on, and importance of, setting the correct allocation factor in the base year.

Appendix G: Optus' detailed response in relation to the ACCC's proposed non-price terms and conditions

- G.1 Optus detailed response in relation to the ACCC's proposed non-price terms and conditions is outlined in this Appendix. Each non-price term contained in the draft FAD will be discussed in turn below.

Billing and Notification

- G.2 Optus supports the inclusion of billing and notification provisions in the draft FAD. It outlines the billing and notification framework, including the manner in which access provider is paid for services it supplies, and sets out procedures dealing with billing disputes.³²
- G.3 The ACCC should however amend some of these clauses so that it reflects the ACCC's in principle position in ensuring access provider will provide accurate bills to access seekers so that end-users are billed accurately and in a timely manner.³³ Optus specific comments in response to the billing provisions are outlined below:

- (a) Backbilling: Clause 8.5 (b)

Optus submits that access provider should only be allowed to backbill within a period of 95 days instead of six months outlined in the draft FAD. This brings the provision in line with what is currently adopted in the Telecommunications Consumer Protections (TCP) Code.³⁴ The TCP Code says:

*"A Supplier must ...not delay the Billing Charges to another Supplier in the Billing chain by more than 95 days from the date the Charge was incurred by the Customer."*³⁵

- (b) Backbilling in relation to "New service": clause 8.5(b)(ii)

Optus submits that the ACCC should define the term "New Service". It is not clear what new service refers to, eg whether it is a new account or individual service. If it is an individual service, then the six month clause is largely redundant. Missed billing is usually only with new individual services.

Further, the backbilling period for "New service" should be restricted to 190 days instead of 8 months. Again, this brings the provision in line with the TCP Code. The TCP Code says:

"A Supplier must...not Bill for Charges older than 190 days from the date the Charge was incurred by the Customer".³⁶

³² ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion paper, April 2011, p.190

³³ ACCC, *Final Determination –Model Non-price Terms and Conditions*, November 2008, p.14

³⁴ Communications Alliance, *Industry Code Telecommunications Consumer Protections Code C628:2007*

³⁵ Communications Alliance, *Industry Code Telecommunications Consumer Protections Code C628:2007*, clause 6.5.4(c)

- (c) Timeframe to provide material relied upon: clause 8.17

There is no period within which the other party has to provide the relevant materials upon which it is to rely. Optus suggests that this information should be provided within 25 days of the Billing Dispute Notice. The proposed redraft is as follows:

Clause 8.17: “Each party shall, as early as practicable after a Billing Dispute Notice, but in all cases within 25 Business Days of receipt of the Billing Dispute Notice (or longer period if agreed by the parties), provide...”

Creditworthiness and security

- G.4 Optus accepts the ACCC’s proposal to include creditworthiness and security terms in the draft FAD. Optus however proposes the ACCC to make a minor amendment to clause 9.1 in ensuring security should only be requested when it is reasonably necessary to protect the legitimate business interests of the Access Provider. The proposed amendment is outlined below:

“Unless otherwise agreed by the Access Provider, subject to clause 9.3, the Access seeker must (at the Access Seeker’s sole cost and expense) provide to the Access Provider and maintain, on terms and conditions reasonably required by the Access Provider and subject to clause 9.2, the Security (as shall be determined having regard to clause 9.3 and as may be varied pursuant to clause 9.4) in respect of amounts owing by the Access Seeker to the Access Provider under this FAD.”

General dispute resolution procedures

- G.5 Optus supports the ACCC’s proposal to include general dispute resolution procedures in the draft FAD. Optus agrees with the ACCC that general dispute resolution procedures facilitate the resolution of disputes in an expeditious manner without the need to resort to legal proceedings or commercial arbitration.³⁷
- G.6 Optus further agrees with the ACCC’s proposed drafting.

Confidentiality provisions

- G.7 Optus supports the ACCC’s proposal to include confidentiality provisions in the FAD. The provisions ensure confidential information will only be used or disclosed where there is a legitimate purpose.
- G.8 Optus further supports the ACCC to include the standard confidentiality undertaking form in the FAD.
- G.9 The drafting of the confidentiality provisions are appropriate. Optus however questions the inclusion of clause 11.11 since it does not appear to be a standard contract term –it provides access seekers the right to invoke an audit process if it has prima facie evidence to suggest that an access provider has used the confidential information for non-legitimate reason.

³⁶ Communications Alliance, *Industry Code Telecommunications Consumer Protections Code C628:2007*, clause 6.5.4(d)

³⁷ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion paper, April 2011, p.191

Communication with end-users

- G.10 Optus supports the ACCC's proposal to include terms and conditions for communications with end users for all declared fixed services. This is particularly so when access seekers often have to rely on the Access Provider's technicians to perform services which means that access seekers are placed in a vulnerable position should the access provider try to 'win back' customers.
- G.11 However Optus questions the practicality of clause 12.4, as it would be onerous to make and maintain each record of communication the party has with the other party's end user.

Network modernisation and upgrade provisions

- G.12 Optus supports the ACCC's proposal to include the network modernisation and upgrade provisions. However, Optus' past experience in regard to Telstra's network modernisation in South Brisbane suggests that the network modernisation provision outlined in the draft FAD is not sufficient to ensure equivalence between Telstra and access seekers. The information supplied by Telstra is of limited use and does not assist access seekers to plan for the migration or to advise end users about the upgrade.
- G.13 Optus therefore proposes that the ACCC include in the FAD the specific information Telstra must provide to access seekers when it notifies access seekers about the upgrade. This should include at a minimum the following information:
- (a) the alternative services available;
 - (b) the date of supply, pricing, interconnection requirements and technical specifications of the alternative services available;
 - (c) the planned migration process including the migration dates for individual services and the costs involved;
 - (d) the extent of the network upgrade;
 - (e) the exact services that will be affected;
 - (f) the exact manner in which the services will be affected, including whether the service will be affected, in whole or, in part; and
 - (g) the cease sales date for any new services.
- G.14 The inclusion of these specific information requirements is important in reducing the effect on end-users. Without the information, access seekers are not in a position to know how to optimise their networks and services in the most efficient manner and in the timeframe provided by Telstra.
- G.15 **ciC**
- G.16 **ciC**
- G.17 **ciC**
- G.18 **ciC**

- G.19 **ciC**
- G.20 **ciC**
- G.21 **ciC**
- G.22 **ciC**
- G.23 **ciC** This is not in the LTIE and will not promote competition in the relevant markets.
- G.24 Optus further proposes the ACCC to request Telstra to provide access seekers forecast for its upgrade, including upgrades that involve only one ESA. While the current draft FAD already has a provision on Coordinated Capital Works Program (CCWP) Forecast, Telstra is only obliged to provide the CCWP forecast when the upgrade involves more than one ESA.
- G.25 **ciC**
- G.26 Optus submits the inclusion of a forecast upgrade for one ESA will promote equivalence of access between Telstra and access seekers. An earlier notification would provide access seekers an opportunity to make contingency plans and take the planned upgrade into account in their infrastructure planning and in their marketing. Access seekers might adjust a marketing campaign they would otherwise have carried out in the affected area.

Suspension and termination

- G.27 Optus generally accepts the ACCC's position to include suspension and termination provisions in the FAD. Optus however is concerned that:
- (a) the proposed termination provisions do not address circumstances in which an access seeker would be entitled to terminate part, or all of, the services or agreement as a result of contractual breaches of the access provider;
 - (b) the propose termination provisions provide access provider the right to terminate the service in the event that there is a billing dispute on hand;
 - (c) in some circumstance, remedial actions requested by access provider might take longer than 20 business days.
- G.28 To address these problems, Optus proposes the ACCC to amend clause 14.2 so that:
- (a) it is mutual (and make all other consequential amendments), or insert new clauses that deal with suspension and termination by access seeker;
 - (b) it ensures the service does not terminate in the event that there is a billing dispute on hand;
 - (c) it allows the 20 business days to be extended in circumstance where reasonably required as a result of the remedial action requested by the access provider. This prevents the situation where the access provider requests remedial action that cannot be undertaken within 20 business days and therefore is able to engineer a right to terminate part or all of the services. The proposed amendment to the wording of clause 14.2(3) is as follows:

“...within 20 Business Days (or other period as is reasonable as a result of the remedial action requested in the Suspension Notice)...”

Changes to operating manuals

- G.29 Optus accepts the ACCC’s inclusion of the changes to operating manuals provision in the FAD. As discussed in Optus’ submission of 2008³⁸, Optus does not consider it is in the LTIE to allow Telstra to change the operating manuals unilaterally. Optus submits that the amendments should only be made with access seekers’ agreement.
- G.30 Optus refers and relies on examples it has previously provided to the ACCC regarding the unreasonable changes Telstra has made unilaterally to the operating manuals. Optus considers the drafting of this schedule is appropriate.

Ordering and provisioning

- G.31 Optus supports the ACCC’s inclusion of the ordering and provisioning provisions in the FAD. Access seekers have had numerous ordering and provisioning problems with Telstra which had significantly delayed the provisioning time it takes for end-users to connect their services with access seekers than with Telstra. The ordering and provisioning provisions therefore promote equivalence between access provider and access seekers and thus promote competition in the relevant markets.
- G.32 The drafting of the provisions Managed Network Migrations (MNM) to ULLS, Capacity Limits on ULLS provisioning and connect outstanding process are appropriate. Optus refers and relies on its submission of 2008 regarding the provisioning problems it had with Telstra.³⁹
- G.33 Optus however submits that more work is required for the complex service provision and the LSS to ULLS transfer process.

Complex Service provisions

- G.34 Optus supports the ACCC’s inclusion of the complex service provision. However, it considers the ACCC should request Telstra to not only identify the complex services on the line but to remove the complex services provided access seekers have already obtained authorisation from the end-users.
- G.35 A large number of ULLS service qualification (SQ) queries have been rejected by Telstra due to the presence of a complex service on the line. Telstra requires the end user to disconnect the complex service before they can connect their new services with Optus. However, disconnection of the complex service has not been straightforward, and Telstra’s processes have not facilitated disconnection. This is because, first, Optus has not able to identify the type of complex service on the line and second, Optus has not had the ability to request Telstra to remove the complex service on the customers’ behalf.
- G.36 Often Optus and the end users are not aware of the existence of the complex service until Telstra notifies Optus that it did not pass the SQ due to complex service. The SQ performed by Telstra could take up to 3 business days after the receipt of the initial ULLS request. Telstra would not provide Optus with information on the type of complex service on the

³⁸ Optus, “Submission to the ACCC on draft model non-price terms and conditions”, October 2008 p.26

³⁹ Optus, “Submission to the ACCC on draft model non-price terms and conditions”, October 2008

line. Telstra has previously contended that it is prohibited by the privacy provisions of the Telecommunications Act 1997.

G.37 CiC

G.38 CiC

G.39 CiC

G.40 CiC

G.41 CiC

G.42 CiC

G.43 The current drafting of the draft FAD only requires Telstra to provide a list of Complex Services present on the line. To address this problem, Optus submits that the ACCC should include a separate clause which requires Telstra to remove the complex services on the customers' behalf. **CiC**

G.44 CiC

G.45 Further, Optus submits the current definition of "complex service" should be amended to reflect the definition adopted by the industry. An appropriate definition would be what is stated in the ULL Ordering and Provisioning Code⁴⁰.

G.46 CiC

G.47 CiC

G.48 CiC

LSS to ULLS Transfer processes

G.49 As demonstrated in Table 1, a large number of ULLS orders was been rejected by Telstra for reasons of SSS. Optus therefore supports the ACCC's inclusion of the LSS to ULLS transfer processes. It promotes equivalence of provisioning timeframes between access seekers and Telstra.

G.50 Optus however submits that it is not currently entirely clear from the drafting if it applies only to the transfer of a LSS to a ULLS from the current LSS access seeker on the line or if it applies to other ULLS access seekers.

G.51 Optus notes that the ACCC has in its report of 2008 stated that its intention is to have this provision applied to any ULLS access seeker, not just the current LSS access seeker on the line. It stated:

"In this regard, the envisaged LSS to ULLS transfer process is not only applicable where the ULLS access seeker is the current LSS access seeker on the line, but also

⁴⁰ Communications Alliance, *Industry Code Unconditioned Local Loop Service –Ordering, Provisioning and Customer Transfer*, ACIF C569:2005

*where another service provider with a firm order for the end-user's DSL service wishes to acquire the ULLS.*⁴¹

- G.52 The ACCC's intention should therefore be reflected in the provisions. Optus proposes the ACCC to insert another clause which states that:

"For the avoidance of doubt, the LSS to ULLS transfer processes process is not only applicable where the ULLS access seeker is the current LSS access seeker on the line, but also where another service provider with a firm order for the end-user's DSL service wishes to acquire the ULLS."

Enhanced Service Assurance

- G.53 Optus submits that the ACCC should include another provision "enhanced service assurance" in Schedule 16. **CiC**
- G.54 **CiC**
- G.55 The level of SLAs offered by Telstra retail to its business customers are in fact better than what Telstra Wholesale currently offers to Optus.
- G.56 **CiC**
- G.57 **CiC**
- G.58 **CiC**
- G.59 **CiC**
- G.60 **CiC**
- G.61 **CiC**
- G.62 **CiC**
- G.63 **CiC**
- G.64 Optus therefore submits that the ACCC should include a provision on enhanced service assurance in the FAD in ensuring Telstra Wholesale will provide equivalent SLAs to access seekers as it provides to its Retail arm. Such a provision would promote competition, particularly in the business market.
- G.65 Optus considers that one way to achieve this is to request Telstra to provide access seekers SLA products that are comparable to what Telstra Retail offers, ie the different SLA Premium products mentioned in Table 3 and/or "the fee for service".

⁴¹ ACCC, "Final Determination -Model Non-Price Terms and Conditions", November 2008 p.p.48-49

Appendix H: Fixed principles provision

- H.1 Under its new powers, the ACCC has the option to set fixed principles provisions in the access determinations process. In doing so, it must have regard to the criteria set out in subsection 152BCA of the Competition and Consumer Act 2010 (CCA).
- H.2 The legislative requirement to which the ACCC must abide for fixed principles provisions implies that the ACCC does not necessarily need to lock-in fixed principles provisions in its access determination. As set out in s.152BCD(1) of the CCA, the legislation only states:

*An access determination **may** include a provision that is specified in the determination to be a fixed principles provision.*⁴² [emphasis added]

- H.3 It follows that should the ACCC choose to set fixed principles provisions, it must be confident that the provisions are well constructed and will continue to remain relevant until the notional termination date is reached. The importance of this criterion is further emphasised by the strict requirement in s.152BCD(5) of the CCA [and enforced in s.152BCN(4) of the CCA]which states:

If a fixed principles provision is included in an access determination, the access determination must:

- (i) *Provide that the access determination **must not** be varied so as to alter or remove the fixed principles provision; or*
- (ii) *Provide that the access determination **must not** be varied so as to alter or remove the fixed principles provision except in such circumstances as are specified in the access determination.*⁴³ [emphasis added]

- H.4 Optus therefore considers that the ACCC should be cautious in its approach to setting its fixed principles provisions and should instead choose to reserve its right to set fixed principles provisions at a later date if required. In particular, Optus is concerned that while these provisions appear to draw parallels with the pricing principles process under the previous regime, the lack of separate consultation and the possibility for a prolonged length of applicability are grounds for caution.

Setting fixed principles provisions on the pricing framework

- H.5 While the ACCC has recognised that *“it has not previously consulted explicitly on making fixed principles provisions,”*⁴⁴ it considers that doing so will:
- (a) Provide certainty on how prices are to be estimated over the course of the proposed regulatory period, and any future periods prior to the ‘notional termination date’;
 - (b) Reduce regulatory burden and time required to conduct price resets; and

⁴² s.152BCD(1) of the CCA

⁴³ s.152BCD(5) of the CCA

⁴⁴ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.252

- (c) Promote price stability, for example, by locking-in the initial RAB used in the FLSM for estimating prices.
- H.6 Accordingly the ACCC has proposed *“to make fixed principles provisions that specify the method of estimating prices using a BBM approach. In developing its views, the ACCC has considered pricing principles and rules adopted for other industries by regulators including the ACCC and AER.”*⁴⁵
- H.7 Optus notes a number of the proposed principles were identified in the ACCC’s September 2010 Draft Report⁴⁶ to which stakeholders were given an opportunity to comment (refer to the following Annex for some examples of these comments). However, Optus is concerned that while the specific BBM-related provisions to be included as fixed principles may be similar at a high level, some of the underlying principles have changed and have not been sufficiently scrutinised. As such, the ACCC should not be swayed by the Working Proposal set out by Telstra in its last submission.
- H.8 It would inappropriate at this point in time to lock-in fixed principles and while Optus does not necessarily accept the comments (as set out in the Annex), it does consider the comments to date may present a suitable starting point from which to begin further consultation.
- H.9 In addition, Optus is highly concerned that the brief duration of the current consultation period is disproportionate to the length of the period for which these fixed principles provisions will be locked-in.
- H.10 Given the ACCC has set a notional termination date of 30 June 2021 for the application of these fixed principles provisions, Optus submits the ACCC should reserve its right to set the fixed principles provisions at a later date and subject to a separate review. In doing so, the ACCC could make a fixed principles provision to specify the method of estimating prices using a BBM approach, while leaving the option for the fixed principles provisions for each of the BBM-specific parameters to be set at a later date and subject to a separate review.

⁴⁵ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.253

⁴⁶ ACCC, *Review of the 1997 telecommunications access pricing principles for fixed line services*, Draft Report, September 2010

Annex: Comments regarding the setting of fixed principles provisions

H.11 The following table sets out a comparison of the ACCC’s views on each of the initial fixed principles provisions being proposed in the access determination for fixed line services, since the release of its September 2010 Draft Report. The table also summarises Telstra’s view as set out in Schedule 5⁴⁷ of its submission, followed by some initial comments by Optus.

Fixed principles provision	ACCC’s preliminary view	Telstra’s proposed principle	Optus’ initial comment
Initial RAB	<i>“The ACCC proposes that the RAB value, once set, should not be subject to revaluation.”</i> ⁴⁸	Telstra proposes locking in the initial RAB. ⁴⁹ In particular, that the initial RAB be <i>“determined as the optimised replacement cost of the Fixed Network Assets, less accumulated depreciation, as at 30 June 2010.”</i> ⁵⁰	Optus agrees that the RAB should not be subject to revaluation.
RAB roll-forward mechanism	The ACCC proposes the roll-forward mechanism to be such that: <i>“The opening RAB for the next regulatory period is equal to the closing RAB for the current year.”</i> ⁵¹	Telstra proposes locking in the RAB roll-forward mechanism (similar to the ACCC’s proposed process) with the exception that Telstra also wants to add indexation to the roll-forward process. ⁵² In arriving at the opening RAB for the next regulatory period, Telstra considers this should be calculated as follows: Opening RAB(n+1) = Opening RAB(n) <u>plus</u>	In principle, Optus supports the ACCC’s approach on the roll-forward mechanism, and emphasises that there should be no allowance for indexation of the RAB in the roll-forward process.

⁴⁷ Telstra, *Pricing principles for fixed line services Response to the ACCC’s Draft Report*, Schedule 5 – *BBM framework for declared fixed line services: A working proposal*, October 2010

⁴⁸ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.254

⁴⁹ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.253

⁵⁰ Telstra, *Pricing principles for fixed line services Response to the ACCC’s Draft Report*, Schedule 5 – *BBM framework for declared fixed line services: A working proposal*, October 2010, p.10

⁵¹ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.254

⁵² ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.253

Fixed principles provision	ACCC's preliminary view	Telstra's proposed principle	Optus' initial comment
		<p>estimated value of the Capex (incurred or forecast) adjusted to a real value as at the start of the Financial Year <i>less</i> depreciation in the preceding Financial Year <i>less</i> disposal value of any assets disposed of during the Financial Year <i>plus</i> an amount necessary to maintain the real value of the RAB by adjusting that value for inflation and any deferral of depreciation ⁵³</p>	
Depreciation		<p>Telstra states depreciation should be calculated for assets which have not been fully depreciated as at the commencement of the Financial Year, where:</p> <p>Depn(n) = [DEA(n) and DIA(n)] <i>multiplied by</i> (1 <i>plus</i> g-factor)</p> <p>Where the g-factor is the rate at which depreciation is deferred for the Financial Year (intended to allow for a price path over time which minimises price shocks) ⁵⁴</p>	<p>In response to the Sept 2010 Draft Report, Optus supported the use of straight-line depreciation provided the NBN did not proceed.⁵⁵ Should the NBN be expected to proceed, depreciation should be backloaded to account for the compensation Telstra will receive.</p> <p>That said, Optus does not support a depreciation methodology be included in the fixed principles at this time given the uncertainty regarding Telstra recovering capital costs from the NBN agreement.</p>
Operating and capital expenditure	<i>"The ACCC proposes that details on the nature and timing of the operating and</i>	Telstra proposes the inclusion of a clause that states the ACCC must accept a forecast of	In principle, Optus supports the ACCC's proposal that details on the nature and

⁵³ Telstra, *Pricing principles for fixed line services Response to the ACCC's Draft Report*, Schedule 5 – *BBM framework for declared fixed line services: A working proposal*, October 2010, pp.15-16

⁵⁴ Telstra, *Pricing principles for fixed line services Response to the ACCC's Draft Report*, Schedule 5 – *BBM framework for declared fixed line services: A working proposal*, October 2010, p.14

⁵⁵ Optus, *Optus submission to ACCC in response to the Draft Report: Telecommunications access pricing principles for fixed line services*, October 2010, pp.27-29

Fixed principles provision	ACCC's preliminary view	Telstra's proposed principle	Optus' initial comment
forecasts	<i>capital expenditure forecasts, and supporting evidence, required from Telstra will be specified in the BBM RKR.</i> ⁵⁶	<p>required Capex of an access provider if it satisfies a number of conditions, including what it considers to the capital expenditure criteria (ie. a realistic expectation of the demand forecasts and costs inputs).⁵⁷</p> <p>In addition, Telstra also proposes clauses where the access provider may:</p> <ul style="list-style-type: none"> • at any time submit to the ACCC investment and expenditure guidelines for approval; and • vary or withdraw investment and expenditure guidelines at any time by written notice to the ACCC⁵⁸ 	timing of the opex and capex forecasts, and supporting evidence, as required from Telstra will be specified in the BBM RKR, the contents of which are to be determined during a separate consultation.
		<p>Telstra proposes the inclusion of a clause that an access provider is entitled to recover its Opex if it satisfies a number of conditions, including what it considers to the operating expenditure criteria (ie. a realistic expectation of the demand forecasts and costs inputs).⁵⁹</p> <p>For the first period, Telstra considers this should</p>	In principle, Optus supports the ACCC's proposal that details on the nature and timing of the opex and capex forecasts, and supporting evidence, as required from Telstra will be specified in the BBM RKR, the contents of which are to be determined during a separate consultation.

⁵⁶ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.255

⁵⁷ Telstra, *Pricing principles for fixed line services Response to the ACCC's Draft Report*, Schedule 5 – *BBM framework for declared fixed line services: A working proposal*, October 2010, p.11

⁵⁸ Telstra, *Pricing principles for fixed line services Response to the ACCC's Draft Report*, Schedule 5 – *BBM framework for declared fixed line services: A working proposal*, October 2010, p.12

⁵⁹ Telstra, *Pricing principles for fixed line services Response to the ACCC's Draft Report*, Schedule 5 – *BBM framework for declared fixed line services: A working proposal*, October 2010, p.16

Fixed principles provision	ACCC's preliminary view	Telstra's proposed principle	Optus' initial comment
		<p>be calculated as follows:</p> $O\&M(n) = O\&M(\text{for period commencing 18 months and ending 6 months prior to the beginning of the price period}) \textit{ multiplied by } (1 \textit{ plus inflation over the opex period minus the annual factor representing the expected rate of change in O\&M costs) \textit{ to the power of } 1.5$ <p>For the subsequent period, For the first period, Telstra considers this should be calculated as follows:</p> $O\&M(n+1) = O\&M(\text{for period commencing 18 months and ending 6 months prior to the beginning of the price period}) \textit{ multiplied by } (1 \textit{ plus inflation over the opex period minus the annual factor representing the expected rate of change in O\&M costs) \textit{ to the power of } 2.5$	
WACC	<p><i>"The ACCC proposes to make a fixed principles provision specifying that a real vanilla WACC is used in estimating prices."</i>⁶⁰</p> <p>Refer to section 25.3.4 in the discussion paper for the ACCC's preliminary views on the WACC parameters (pp.256-257)</p>	<p>Telstra proposes that the provisions include specifying that the WACC is a nominal pre-tax WACC, and fixing values for most of the WACC parameters and specifying the method used to estimate the inflation rate, the risk-free rate and the DRP used for each price reset.⁶¹</p>	<p>Optus supports the ACCC's principle to utilise a real vanilla WACC.</p>
Nominal risk free	<p><i>"the ACCC's preliminary view is that the</i></p>	<p>To be determined on a moving average basis</p>	<p>Optus supports the ACCC's approach.</p>

⁶⁰ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.256

⁶¹ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.253

Fixed principles provision	ACCC's preliminary view	Telstra's proposed principle	Optus' initial comment
rate	<i>risk-free rate is based on the yield of a 10 year CGS bond, using an averaging period of between 10-40 business days commencing as close as practically possible to the start of the regulatory period.</i> ⁶²	<p>from the annualised yield on CGS with maturity of 10 years using:</p> <ul style="list-style-type: none"> • indicative rates published by the RBA; and • based on a 15 day averaging period ending no more than 15 days prior to (i) date of submission of the access pricing proposal – for an access seeker, or (ii) date of any decision – for the ACCC <p>Specifically, Telstra states that the nominal risk free rate must be determined by interpolating on a straight line basis the two CGS closest to the 10 year term and which also straddle the 10 year expiry date.⁶³</p>	
Market risk premium	<i>"The ACCC's preliminary view is that the MRP is based on a long-term historical average value."</i> ⁶⁴	Telstra considers the MRP is deemed to be 6.5 ⁶⁵	Optus supports the ACCC's view that the MRP be determined based on a long-term historical average value.
Equity beta	<i>"The equity beta used in estimating prices is a benchmark value that typically does not change significantly over time. The ACCC's preliminary view is that the equity</i>	Telstra considers the equity beta must take a value of 0.8 ⁶⁷	Optus supports the ACCC's view that the equity beta be set with reference to an appropriate benchmark value.

⁶² ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.256

⁶³ Telstra, *Pricing principles for fixed line services Response to the ACCC's Draft Report*, Schedule 5 – *BBM framework for declared fixed line services: A working proposal*, October 2010, p.14

⁶⁴ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.256

⁶⁵ Telstra, *Pricing principles for fixed line services Response to the ACCC's Draft Report*, Schedule 5 – *BBM framework for declared fixed line services: A working proposal*, October 2010, p.16

Fixed principles provision	ACCC's preliminary view	Telstra's proposed principle	Optus' initial comment
	<i>beta should be set in reference to an appropriate benchmark value.</i> ⁶⁶		
Equity issuance costs	<i>"The ACCC considers that equity issuance costs should be recovered as a cash flow (operating expenditure) allowance when Telstra raises equity capital."</i> ⁶⁸		Optus supports the ACCC's position that equity issuance costs be recovered in opex, rather than as a component of the cost of equity.
Debt risk premium	<p>The ACCC proposes the following approach be used to calculate the benchmark DRP.</p> <p><i>"The proposed method would require that the DRP be estimated on the basis of benchmark gearing level on the yields of the relevant corporate bonds with a 10 year maturity to match the term of the risk free rate. The averaging period used in estimating the DRP would be the same as that used in estimating the risk-free rate...</i></p> <p><i>The relevant corporate bonds would have the same credit rating as that applicable to a benchmark telecommunications business."</i>⁶⁹</p>	To be determined as the margin between the annualised 10 year CGS rate and the observed annualised Australian benchmark corporate bond rate for corporate bonds with a maturity of 10 years and Telstra's credit rating from S&P, observed over the same 15 day averaging period as set out for the calculation of the nominal risk free rate. ⁷⁰	Optus supports the ACCC's proposed approach.

⁶⁷ Telstra, *Pricing principles for fixed line services Response to the ACCC's Draft Report, Schedule 5 – BBM framework for declared fixed line services: A working proposal*, October 2010, p.13

⁶⁶ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.256

⁶⁸ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.256

⁶⁹ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.257

⁷⁰ Telstra, *Pricing principles for fixed line services Response to the ACCC's Draft Report, Schedule 5 – BBM framework for declared fixed line services: A working proposal*, October 2010, p.14

Fixed principles provision	ACCC's preliminary view	Telstra's proposed principle	Optus' initial comment
Gearing	<p>The ACCC considers the 40:60 debt-equity ratio is a benchmark and is therefore not expected to vary significantly over time.</p> <p><i>"Fixing this benchmark value as a fixed principles provision would promote regulatory certainty and consistency. It would also provide an incentive for the access provider to implement more efficient capital financing arrangements."</i>⁷¹</p>	<p>Telstra considers the value of equity as a proportion of equity and debt (ie. E/V) must take a value of 70%⁷²</p> <p>Telstra considers the value of debt as a proportion of equity and debt (ie. D/V) must take a value of (1-E/V)⁷³</p>	Optus supports the continued adoption of a debt gearing level of 40%.
Debt issuance costs	<p><i>"To estimate debt issuance costs, the ACCC and the AER employ a methodology set out in the 2004 Allen Consulting Group's (ACG) report 'Debt and equity raising transaction costs'. The estimated debt issuance costs are periodically updated using this methodology."</i>⁷⁴</p>		Optus supports the ACCC's approach.
Debt beta	<p><i>"The ACCC has previously used a debt beta of zero after consulting with industry. The ACCC proposes that a fixed principles provision specify that the debt beta is zero."</i>⁷⁵</p>		Optus supports the ACCC's approach.

⁷¹ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.257

⁷² Telstra, *Pricing principles for fixed line services Response to the ACCC's Draft Report*, Schedule 5 – *BBM framework for declared fixed line services: A working proposal*, October 2010, p.14

⁷³ Telstra, *Pricing principles for fixed line services Response to the ACCC's Draft Report*, Schedule 5 – *BBM framework for declared fixed line services: A working proposal*, October 2010, p.14

⁷⁴ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.257

⁷⁵ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.257

Fixed principles provision	ACCC's preliminary view	Telstra's proposed principle	Optus' initial comment
Imputation credits	<i>"The value of gamma cannot be estimated with any certainty due to the wide range of empirical estimates."</i> ⁷⁶	Telstra considers the utilisation of imputation credits must take a value of 0.5 ⁷⁷	Optus proposes that the ACCC adopt a principle that a gamma be set such that Telstra recovers only its costs.
Tax	<i>"The ACCC proposes to make a fixed principles provision that sets out the initial opening tax RAB as at 1 July 2009 equal to the initial opening RAB as at 1 July 2009 and that the tax RAB is rolled forward."</i> ⁷⁸ The ACCC also proposes that the tax rate to be applied in the BBM <i>"will be set equal to the corporate tax rate specified in legislation."</i> ⁷⁹	Telstra considers the statutory corporate income taxation rate must take a value of 30% ⁸⁰	Optus supports the ACCC's approach.
Demand forecasts	<i>"The ACCC proposes that details on the nature and timing of the demand forecasts, and supporting evidence, required from Telstra will be specified in the BBM RKR."</i> ⁸¹	Telstra considers demand forecasts should be set according to: <ul style="list-style-type: none"> the demand forecast submitted by Telstra, is to be taken from Telstra's 	In principle, Optus supports the ACCC's proposal that details on the nature and timing of the demand forecasts, and supporting evidence, as required from Telstra will be specified in the BBM RKR,

⁷⁶ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.257

⁷⁷ Telstra, *Pricing principles for fixed line services Response to the ACCC's Draft Report*, Schedule 5 – *BBM framework for declared fixed line services: A working proposal*, October 2010, p.14

⁷⁸ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.257

⁷⁹ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.258

⁸⁰ Telstra, *Pricing principles for fixed line services Response to the ACCC's Draft Report*, Schedule 5 – *BBM framework for declared fixed line services: A working proposal*, October 2010, p.14

⁸¹ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.258

Fixed principles provision	ACCC's preliminary view	Telstra's proposed principle	Optus' initial comment
	<p>The ACCC's preliminary view is that the provision would state that:</p> <p><i>"In forecasting demand for the declared fixed line services for the next regulatory period, the ACCC will take into account any forecasts provided by the access provider. In assessing the access provider's forecasts, the ACCC will consider whether the forecasts provided by the access provider:</i></p> <ul style="list-style-type: none"> • <i>are based on an appropriate forecasting methodology</i> • <i>are based on reasonable assumptions about the key drivers of demand</i> • <i>utilise the best available information, including historical data that can identify trends in demand, and</i> • <i>take account of current demand and economic conditions."</i>⁸² 	<p>demand forecasting database; and</p> <ul style="list-style-type: none"> • the demand forecasts for declared fixed services to be set out on a six-monthly basis⁸³ 	<p>the contents of which are to be determined during a separate consultation.</p>
Cost allocation factors	The ACCC's preliminary view is that the provision would state that:	Telstra considers that the following principles constitute the Cost Allocation Principles:	Optus supports the ACCC's approach.

⁸² ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.258

⁸³ Telstra, *Pricing principles for fixed line services Response to the ACCC's Draft Report*, Schedule 5 – *BBM framework for declared fixed line services: A working proposal*, October 2010, p.48

Fixed principles provision	ACCC's preliminary view	Telstra's proposed principle	Optus' initial comment
	<ul style="list-style-type: none"> • <i>“The allocation of the costs of operating the PSTN should reflect the relative usage of the network by various services to the extent that it is possible to obtain reliable information on their usage of the network.</i> • <i>To the extent it is possible to obtain reliable information on the direct costs incurred in providing specific services, direct costs should be attributed to the service to which they relate and not more than once to any category of service.</i> • <i>The cost allocation factors for shared costs should reflect causal relationships between supplying services and incurring costs where such relationships can be reliably identified without undue cost and effort.</i> • <i>No cost should be allocated more than once to any service.”</i>⁸⁴ 	<ul style="list-style-type: none"> • detailed principles and policies used by an access provider to allocate costs between services must be described in sufficient detail to enable the ACCC to replicate the reported outcomes; • allocation of costs must be determined according to the substance of a transaction or event rather than its legal form; • the following costs are to be allocated to a particular service: <ul style="list-style-type: none"> ○ costs which are directly attributable to the provision of those services; and ○ a reasonable share of common costs which are not directly attributable to the provision of those services • any cost allocation method which is used, the reasons for using that method and the numeric quantity of the chosen allocator must be clearly described; • the same cost must not be allocated more than once; 	

⁸⁴ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.258

Fixed principles provision	ACCC's preliminary view	Telstra's proposed principle	Optus' initial comment
		<ul style="list-style-type: none"> • the entire Aggregate Service Cost for each Financial Year must be allocated to services to be provided in that Financial Year; and • the principles, policies and approach used to allocate costs must be consistent with any accounting separation rules or ring fencing guidelines applicable to the access provider⁸⁵ 	
Nominal termination date	<p>s.152BCA(1) of the CCA requires that there must be a 'notional termination date' for fixed principles provisions. This can be set at a date later than the expiry of the AD.</p> <p><i>"The ACCC's preliminary view is that the nominal termination date should be 30 June 2021."</i>⁸⁶</p>		As set out in Section 9 of its main submission, Optus considers the ACCC should exercise caution in the setting of fixed principles provisions at this point in time.
Other issues for consideration			
Non-price terms and conditions	<p><i>"Since the ACCC has not previously consulted on non-price terms and conditions, it has not considered at this stage, if fixed principles should be made in respect of non-price terms."</i>⁸⁷</p>		In principle, Optus supports the ACCC's proposal to not set fixed principles in respect of non-price terms in this FAD.

⁸⁵ Telstra, *Pricing principles for fixed line services Response to the ACCC's Draft Report, Schedule 5 – BBM framework for declared fixed line services: A working proposal*, October 2010, p.17

⁸⁶ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.259

⁸⁷ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.258

Fixed principles provision	ACCC's preliminary view	Telstra's proposed principle	Optus' initial comment
Length of regulatory period	By virtue of the AD structure, the ACCC is proposing a five-year regulatory period.	Telstra proposes a regulatory period of two years with specified processes and timeframes for the ACCC's price resets. ⁸⁸	As set out in Section 5 of its main submission, Optus does not support the proposed five year regulatory period and has proposed a period of three years be adopted.
Process for submitting other information		Telstra proposes that a process for Telstra to submit all other required inputs is set out with limited provision for ACCC revisions and assessment. ⁸⁹	In principle, Optus does not support Telstra's proposal to set out limited provisions for ACCC revisions and assessment of information it provides.
Pass through provision		Telstra proposes a clause be set allowing that the Access Provider may adjust prices to recover approved pass through amounts. ⁹⁰	In principle, Optus does not support Telstra's proposal to establish a pass through provision for the recovery of costs.

⁸⁸ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.253

⁸⁹ ACCC, *Public inquiry to make final access determinations for the declared fixed line services*, Discussion Paper, April 2011, p.253

⁹⁰ Telstra, *Pricing principles for fixed line services Response to the ACCC's Draft Report*, Schedule 5 – *BBM framework for declared fixed line services: A working proposal*, October 2010, pp.18, 33-34