



Nicole Hardy
Director
Compliance and Regulatory Operations
Communications Group
Australian Competition and Consumer Commission
GPO Box 520
Melbourne VIC 3001

Dear Nicole

SUBMISSION TO ULLS DECLARATION PUBLIC INQUIRY

The Competitive Carriers Coalition is pleased to make a submission to the Commission's inquiry under subsection 152AL of the *Trade Practices Act 1974* into whether to vary the service declaration for the Unconditioned Local Loop Service. We set out in the submission attached our response to some of the issues raised by the Commission's Discussion Paper.

Please let me know if you require any further clarification in relation to the submission.

Yours sincerely,

Matt Healy

Chair

Competitive Carriers Coalition

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1 Summary

The Competitive Carriers Coalition (the **CCC**) considers ULL access to be a cornerstone of current and future competition in the Australian telecommunications industry. In our view, it is essential that the existing service declaration be varied in order to:

- (a) take account of the foreshadowed construction of a fibre-to-the-node network or networks (**FTTN**);
- (b) remove the uncertainty surrounding the scope of the current service description; and
- (c) ensure that the service description is appropriately technology neutral by removing the references to concepts such as dial tone which are specific to traditional switched telephony and broadening the definition of customer access module (**CAM**).

Accordingly, the CCC strongly supports the technologically neutral service description contained in the Commission's proposed variation. We consider that this proposed wording will provide the necessary certainty for both access seekers and access providers to undertake the necessary planning and investment for future network developments.

2 Inadequacy of current service description

The CCC considers that the current ULLS service description does not provide sufficient certainty for access seekers. Many of the CCC members have made substantial investment in ULL-based network infrastructure. The current uncertainty as to whether the declared ULLS would cover the provision of sub-loop access creates the very substantial risk that this investment may be 'stranded'. In addition, this atmosphere of uncertainty has a stifling effect on further investments.

If an FTTN network is built by Telstra, there is a concern that the current service description will not require Telstra to provide access to sub-loops, thereby effectively closing off the ability of competitors to continue to provide competitive services via their ULL-based networks. The existence of these networks has clearly delivered substantial benefits to end users, and these benefits would clearly be lost if an FTTN roll out is allowed to effectively prevent further ULL-based competition.

In addition, failure to amend and clarify the ULL service description is likely to have the effect of preventing any possibility of an FTTN roll out by either the G9 or any other potential competitor to Telstra.

These concerns arise due to the provision currently written into the service description which specifies that the point of access must be a "*potential point of interconnection located at or associated with a customer access module*" (**CAM**).

The central problem with this description is that a CAM is defined as "a device that provides ring tone, ring current and battery feed to customers' equipment". As devices such as pillars, which would form the point of interconnection between the sub-loop and a potential FTTN network, are passive devices that do not provide ring tone, ring current and battery feed, an infrastructure owner may well refuse access to sub-loops on the basis that nodes are not points of interconnection associated with a CAM.

While we do not concede that such devices are not properly regarded as "associated with the CAM", the lack of certainty means that the current service description will not be able to guarantee that competitors can continue to obtain access to the ULLS at the node level following the roll out of a FTTN network.

An additional and very significant shortcoming in the current service description is the reference to "ring tone, ring current and battery feed". Even leaving aside the issue of access seekers' requirements following a potential FTTN network modernisation, this service description is already

being rendered anachronistic given the extent to which telecommunications services are increasingly being provided over IP-based networks.

As the Commission is aware, voice over IP networks do not utilise ring tone in the manner of traditional PSTN telephony. The day will soon come when it will be open to an access provider to argue that there are no points on its telecommunications network that are associated with a CAM.

Therefore, even leaving the issue of the FTTN roll out aside, we consider that there is a growing urgency to vary the service description as proposed.

3 Is a pillar or cabinet sufficiently associated with a CAM?

As the Commission identified in the Discussion Paper, there may be some scope for argument that a pillar or cabinet is sufficiently associated with a customer access module to meet the definition contained in the existing service description. However, while it is open to access seekers to make this argument, in the CCC's view the uncertainty created by the current definition is such that a clarification of the service description is urgently required.

In our experience, Telstra, as gatekeeper to the ULLS, has already sought to take advantage of every available opportunity to frustrate competition. If Telstra were to be the provider of a future FTTN network, it is inevitable that Telstra would seek to take advantage of any shortcomings in the ULLS description to deny access to competitors.

The Discussion Paper has already canvassed a range of potential views on the meaning of 'associated with a customer access module'. Of itself this is sufficient to make it clear that a variation to the service description must be made to provide for certainty in relation to access arrangements for the post FTTN roll out environment, and to clarify the scope of the service description.

4 Commission's proposed wording

We have reviewed the wording with which the Commission proposes to vary the ULLS description. We consider that the proposed additional wording will be sufficient to require an access provider to provide access to sub-loops. The CCC supports this wording.

We have also considered the Commission's proposal to amend the definition of communications wire so as to replace 'copper based wire' with 'metallic based wire'. In our view, this change is in keeping with desirability of having a technologically-neutral service description, and we also support this variation.

5 Impact on the CCC members and the LTIE if the variation is not made

The CCC considers that there is the potential for considerable harm to the ability of its members to provide competitive services to their customers if the proposed variation is not made. The members of the CCC extensively rely on ULL access to provide downstream services to their customers and the ability to continue to provide these services is likely to be substantially impeded in the absence of this variation.

The potential for harm to competition arises principally from the possibility that access to ULL will no longer be provided following the roll out of a FTTN network by Telstra. If that network is built it will be necessary for Telstra's competitors to obtain access to the network at a point closer to the sub-loop than currently is occurring under the present ULL access arrangements. If Telstra is able to exploit the service description to deny access to its competitors, today's competitive environment would effectively be replaced by the monopoly conditions of the past.

It follows that if the members of the CCC were unable to provide competitive services in downstream markets as a result of an inability to obtain access to ULL, there would be significant harm to the long term interests of end users. This would be manifested through a reduction in the range and choice of services which the members of the CCC currently provide to our customers, and the inevitable

relaxation of the downward price pressure which the presence of the CCC members in the market currently provides.

In addition, a failure to vary the service description would be likely to prevent or substantially impede any potential FTTN roll out by a competitive operator or consortium, as result of the lack of certainty about access to the sub-loop.

6 Previous attempts to gain access to the sub-loop

The CCC is aware of a number of attempts by various members to negotiate access to the sub-loop with Telstra under the present access arrangements. As far as we are aware none of these attempts have been successful. The responses by Telstra to these requests, and reasons for refusing access have varied. Generally members have considered that Telstra has placed unreasonable barriers to the conclusion of these negotiations through requiring unreasonably detailed information from access seekers as to the location of interconnection points, and citing technical difficulties. Even where members have offered to contribute to, or fully fund, the necessary infrastructure to permit access, these offers have been rebuffed by Telstra.

7 Effect of deployment of FTTN on ability to use current equipment

As the Commission is aware, the members of the CCC have primarily obtained access to the ULLS through the installation of our own DSLAMs in Telstra's local exchanges. The installation of this infrastructure has required significant investment, which will be largely rendered redundant following the roll out of a FTTN network. In order to continue to provide facilities-based competition it will then be necessary to install infrastructure at the level of the node/sub-loop. Many members of the CCC have already begun planning for the necessary investments that will be required to operate in these markets in a post FTTN environment. However, they are unable to proceed with these proposed investments without the certainty of future access that would be achieved through the proposed variation.

8 Should the Commission consider declaring a new service rather than varying the ULLS declaration?

The CCC does not consider that there is any need for the Commission to declare a new service if the proposed variation is adopted.

In our view, the provision of access at the level of the sub-loops rather than at the exchange does not represent the development of new service, but merely a natural evolution of the existing ULLS.

Accordingly, the CCC does not consider that it is necessary, or warranted, for the Commission to expend resources embarking on the identification and declaration of a new service.

9 Are transitional arrangements required?

In our view there is no need for the implementation of any transitional arrangements to enable the variation of the service description to take effect.

A key benefit of the proposed technologically-neutral service description is that it is capable of applying equally to both the existing access arrangements and the type of access arrangements which are contemplated in the future following a FTTN roll out. This means that there will be no need for any phasing out of the existing arrangements. Therefore, no transitional arrangements should be required to allow for the implementation of the proposed variation.

10 How would the proposed variation affect the legitimate commercial interests of the access provider?

The CCC considers that the proposed variation will not result in any substantive change from the present ULL access regime. As discussed above, we consider that the proposed variation represents an evolution of the ULLS, rather than the development of a new service as such. Following the roll-out of a FTTN network the access provider would continue to be required to provide access to ULL, and would be subject to the same competitive environment which exists today. Therefore, in our view, the proposed variation will not result in any substantial change to the current effect of the access regime on the legitimate commercial interests of the access provider.

11 Is sub-loop access currently being provided by Telstra and/or other access providers? On what basis?

As discussed above, while we are aware of attempts by members of the CCC to obtain access to sub-loops, to our knowledge Telstra is not currently providing access to sub-loops to any of our members.

12 Is it technically feasible to connect to the local loop at a RAU such as a node? How? Are there any technical impediments? Is it possible for access to be provided at the exchange at the same time as access further along the communications cable at a RAU? Does this affect the quality of services supplied from either point? In what way (if any)? How can this be overcome?

While we are aware that there has been considerable discussion about the various technical difficulties that may be associated with connecting to the local loop at the point of the node, the CCC consider that these difficulties can be overcome. Further, we consider that the resolution of these technical issues must form a key part of the planning process for a FTTN roll out to ensure that it results in a continued competitive telecommunications environment, and does not recreate the monopoly environment of the past. To this end, the proposed variation will assist in setting out the framework for the future access arrangements, and ensure that access issues are properly taken into account during the planning phase.

We also note that to date, the members of the CCC have offered to assist in the resolution of any technical issues associated with sub-loop access, and will continue to provide assistance in the future.