



**Submission to the ACCC Discussion Paper on the Line
Sharing Service**

May 2007

Executive Summary

The CCC submits that the Line Sharing Service should be re-declared. The service has a crucial role in delivering competitive access to broadband consumers and has made an important contribution to the long term interests of end users.

Its importance has only increased in the past two years as uncertainty and disruption created by Telstra has impacted on the stability of competitors' business planning. The regulatory arrangements applying to the LSS are the most settled of all the access options available to those competitors who have invested to deliver infrastructure-based competition because the Commission's reasoning has been examined and confirmed by the Competition Tribunal.

There is no alternative provider of the LSS. If the declaration of the service was to be removed and the service was then withdrawn by Telstra, access seekers could not find another provider.

Equally, the ULLS does not represent a substitute to the LSS. Access seekers would have to fundamentally change their business plan and internal business systems to move from providing LSS-based services to providing ULLS-based services, and to be forced to do this would, in many cases, put access seekers under considerable distress.

Introduction

The Competitive Carriers' Coalition represents non-dominant carriers in the Australian telecommunications markets. Its members operate in the wholesale, retail, fixed line, fixed wireless, mobile, voice and data, residential and corporate and government markets. Its members have all invested in network infrastructure, collectively totaling about \$5 billion in investment.

Various members of the CCC have pioneered the delivery in Australia of high speed broadband services, in many cases through the use of the LSS to deliver ADSL2+ to end users. As such, they have a vital interest in the future of that service.

Role and Importance of the LSS Declaration

This review takes place at a time when the confidence of the competitive industry is at an historic low, and competition in the Australian telecommunications market has never been more vulnerable. This is perhaps most evident in the market for broadband services, where Telstra has for two years waged an unceasing campaign of undermining certainty and confidence in the policy and regulatory regime. Never have there been more legal

challenges, more pricing disputes or more aggressive attempts to undermine the basis of regulation of the industry.

The CCC firmly believes that this campaign by Telstra has been motivated by developments in the market led in large measure by CCC member companies who have rolled out extensive DSLAM networks. In the process, these companies have proven that the copper access network is capable of much greater performance than Telstra had claimed, and forced Telstra to respond by:

- Admitting that it could deliver ADSL over much greater distances than it had in the past claimed;¹
- Removing the artificial download speed limit on its ADSL services, and;
- Offering ADSL2+ in those exchanges where competitors had invested to provide that service.

There is no evidence that Telstra would have ever taken these initiatives had it not felt forced to by the actions of competitors such as those represented by the CCC. The services that have allowed this competitive entry, the LSS and the ULLS, have therefore clearly delivered long term benefits to end users.

Telstra's has focused particular efforts at undermining the use of the ULLS, a service that many of the CCC member companies had envisaged would by now have allowed them to move to a position of competitive sustainability. This uncertainly has slowed the deployment of competitive DSLAMs. Telstra's attempts to force the Government to raise the price of the ULLS continue, and it must be noted that the Government has yet to declare publicly whether it will intervene to provide this price increase to Telstra. The continued campaign by Telstra to force the Government and the Commission to allow it to deploy a Fibre to the Node network on Telstra's terms means no investor can be confident a DSLAM investment will not be cut off with only 15 weeks notice from Telstra.

In an environment where numerous challenges have been raised by Telstra to the stability of the regulatory regime, the LSS is the most settled of all the access options available to those competitors who have responded to the policy and regulatory signals encouraging the deployment of competitive infrastructure. The Commission's approach to the pricing principles has been challenged and endorsed before the Competition Tribunal, giving confidence to competitors that they can acquire customers using this service and expect the arrangements around acquiring this access service to remain in place. The CCC expects that the take up of the LSS will therefore increase in the near and medium term.

¹ CCC Press Release July 20 2006 "Give Us the Truth About the Copper, Telstra"

Relationship between the ULLS and the LSS

There is no clear transition path from LSS to the ULLS, even though some members of the CCC regarded LSS as a stepping stone to ULLS when they first began acquiring the service. There are two reasons for this lack of clarity.

On one hand, there is the uncertainty around the future pricing and availability of the ULLS, as discussed above.

On the other hand, it is clear that there is a national market for broadband services that is separate to the markets for voice services, for example. It is possible to acquire customers to a broadband service who might not be willing to switch all their voice and data services. While it is still the intention of some CCC members to transition to the ULLS to offer voice services in addition to broadband, Telstra recent activities in these markets (such as the price squeeze on line rental that led to the recent declaration of the wholesale line rental product) and aggressive bundling strategies of services that are undeclared with those that are declared, has further slowed competitive entry into voice markets.

While it could be expected that over time competitors will migrate from LSS to ULLS based services, the significance of the investment and the operational changes needed to make this possible should not be underestimated. Business plans and internal business systems that are predicated on the LSS are markedly different to those that are predicated on delivering services via the ULLS. Forcing access seekers to use the ULLS by withdrawing the LSS would put competitors under even greater distress at a time when the industry confidence is at an historic low.

Impact of Removing the LSS Declaration

The CCC submits that the Commission should be under no illusion that if the declaration were removed, Telstra would cease offering the LSS as soon as possible. If it felt constrained in removing the service immediately, it could be expected to immediately increase the price for the service to a level that made it commercially unviable for a competitor to use it.

Access seekers have no alternative supplier of LSS available to them in the event that Telstra withdrew or increased the price of the service.

In the present circumstances, there is every likelihood that this would force competitors out of the broadband market. The option of moving to the ULLS is fraught, for the reasons discussed above, and the lack of confidence in the stability of the policy and regulatory regime would be increased markedly.

In these circumstances the CCC submits, it is crucial that the LSS continue to be a declared service. The confirmation of the pricing principles provided by the ACT means that the Commission should see no reason to depart from past practice.

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