Australian
Competition &
Consumer
Commission

Assessment of Telstra's ULLS and LSS undertakings relating to connection and disconnection charges

Draft Decisions

Public version

December 2005

Contents

Abbreviations

AAPT	AAPT Limited
ACCC	Australian Competition and Consumer Commission
ACIF	Australian Communications Industry Forum
Act	*Trade Practices Act 1974*
CAM	Customer access module
CAN	Customer access network
CCC	Competitive Carriers Coalition
CMUX	Customer multiplexer
Consultel	Consultel BWP Pty Ltd
core services	PSTN Originating and Terminating Access Services, Unconditioned Local Loop Service and Local Carriage Service
DAC	Data activation centre
Discussion paper(s)	ACCC, *Telstra's undertakings for the Unconditioned local loop service—Discussion paper*, March 2005. ACCC, *Telstra's undertakings for the Line sharing service—Discussion paper*, March 2005.
DSL	Digital subscriber line
EU	European Union
First BT request	ACCC, *Telstra's 13 December 2004 access undertakings relating to ULLS and LSS connection and disconnection charges – Request for further information under section 152BT of the Trade Practices Act 1974*, 12 August 2005.
GQAAS	Gibson Quai-AAS Pty Ltd
IDS	Integrated Deployment Solutions
IRIM	Integrated remote integrated multiplexer
IULLS	In-use ULLS
LAS	Local access switch
LCS	Local Carriage Service

LSS	Line sharing service
LTIE	Long Term Interests of End–users
Macquarie	Macquarie Telecom Pty Ltd
MNMs	Managed network migrations
NECG	Network Economics Consulting Group
Optus	SingTel Optus Pty Ltd
PIE	PSTN Ingress and Egress model
POI	Point of interconnection
Primus	Primus Telecommunications Pty Ltd
PSTN	Public Switched Telephone Network
PSTN O/T	PSTN Originating and Terminating Access Services
RAF	Regulatory accounting framework
RIM	Remote integrated multiplexer
RSS/RSU	Remote switching stage/ remote switching unit
SAOs	Standard Access Obligations
STD	Subscriber Trunk Dialling
Telstra	Telstra Corporation Limited
Telstra service	Service of a particular technical attribute as specified by Telstra in the undertaking
TOW	Ticket of work
Tribunal	Australian Competition Tribunal
TS	Transit switch
TSLRIC	Total service long-run incremental cost
TSLRIC+	Total service long-run incremental cost plus indirect costs
TULLS	Transfer ULLS
ULLS	Unconditioned Local Loop Service

Undertakings	Telstra's ULLS and LSS access undertakings lodged with the Commission on 13 December 2004.
VULLS	Vacant ULLS
WCSG	Wholesale Customer Service Group

Glossary

Access Provider	Carrier or carriage service provider who supplies declared services to itself or other persons — see s. 152AR of the Act.
Access Seeker	Service provider who makes, or proposes to make, a request for access to a declared service under s. 152AR of the Act.
Customer access network	The network which enables the connection of telephones and other customer premises equipment to switching technology. It consists of a network of conduits and pipes in the ground with a mixture of cables containing copper wires and optical fibres. It has two parts – the distribution network and the feeder network.
Distribution network	That part of the customer access network connecting the distribution point (typically a pillar) to the network termination point.
Exchange	A generic term for a major node in an exchange service area (e.g. an IRIM, RSS/RSU, LAS, TS).
Feeder network	That part of the customer access network connecting the exchange to the distribution point (typically a pillar).
Integrated remote integrated multiplexer	This device consists of a protective housing, cable and optical fibre terminating strips, and multiplexing equipment, erected in street-based housing. 'Integrated' means that the housing contains multiplexers that enable different services to be carried over the same transmission cable (i.e. special services, telephone services, public telephone services, ISDN services are all carried over the same transmission cable/fibre). The transmission protocol is integrated with the telephone exchange software.
Inter-exchange network	The network connecting exchanges to each other.
Local access switch	This equipment provides ring current, dial

	tone and battery feed to end-users, as well as switching calls locally to other local access switches. It also provides number analysis for call routing and call charge recording, and enhanced (or supplementary) services such as call waiting and call diversion.
Multiplexer	A device that combines two or more signals into a single composite data stream for transmission on a single channel.
Network termination point	The termination point of the public switched telephone network at the end-user's premises. Cabling beyond this point is customer wiring.
Pre-selection	Function that enables an end-user or service provider to select a preferred carrier or carriage service provider for a certain type of call (e.g. long distance calls).
Remote subscriber stage	A customer access module of the LM Ericsson AXE telephone switching exchange located in buildings remote from the group switching function.
Remote subscriber unit	A customer access module of the Alcatel S12 telephone switching exchange located in buildings remote from the group switching function.
Service provider	Defined in s. 86 of the *Telecommunications Act 1997*. Means a carriage service provider or a content service provider.
Total service long run incremental cost	See Australian Competition and Consumer Commission, *Access Pricing Principles – Telecommunications: A guide*, July 1997.

Summary

Telstra Corporation Limited (Telstra) lodged access undertakings with the Australian Competition and Consumer Commission (ACCC) on 13 December 2004. The undertakings specify certain terms and conditions which Telstra undertakes to meet its standard access obligations (SAOs) in respect of the unconditioned local loop service (ULLS) and the line sharing service (LSS).

The four undertakings relate predominantly to the price of supply. Two undertakings, one for each service, relate to the monthly charge for the services, while the other two relate to the connection/disconnection charge for each service. The ACCC issued a discussion paper in March and received a number of submissions on all four undertakings. This decision only relates to the connection/disconnection charge undertakings. The ACCC's draft decision on the monthly charge undertakings was released earlier in August 2005. This connection/disconnection decision was delayed while further work, including the input of independent technical advice, was completed by the ACCC.

The issue of connection/disconnection charges for ULLS and LSS is relatively recent compared to the issue of monthly charges for the same services, on which the ACCC has made a series of decisions since 2003. First, the ACCC made its model price terms and conditions determination for the PSTN O/T, LCS and ULLS (the core services) in 2003.[1] Second, the ACCC made a final decision to reject the LSS undertaking submitted on 1 September 2003[2] and made a draft decision to reject the ULLS undertaking submitted on 14 November 2003.[3] Telstra then submitted on 13 December 2004 the four undertakings which the ACCC is currently assessing. This was the first time that connection/disconnection charges were the subject of a Telstra ULLS/LSS undertaking.

Under Part XIC of the *Trade Practices Act 1974* (the Act), the ACCC must either accept or reject the undertakings. The process the ACCC follows to assess the undertakings is open and public, allowing all interested parties to express their views and provide relevant information to the ACCC. The ACCC has, inter alia, considered Telstra's connection/disconnection undertakings and their supporting submissions, and all submissions received in response to the ACCC's Discussion Paper. Subject to confidentiality restrictions, the ACCC has published copies of these documents on its website www.accc.gov.au.

Following this public assessment process, the ACCC has reached *draft* decisions to reject Telstra's ULLS and LSS connection/disconnection undertakings. The ACCC reached a draft decision to reject Telstra's ULLS undertaking because the ACCC is not satisfied that the terms and conditions of the undertaking are reasonable. The ACCC notes that while Telstra's proposed prices appear appropriate for 'vacant'

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1 ACCC, *Final Determinations for model price terms and conditions for the PSTN, ULLS and LCS services*, October 2003.

2 ACCC, *A final report on the assessment of Telstra's undertaking for the Line Sharing Service*, August 2004.

3 ACCC, *Assessment of Telstra's undertakings for PSTN, ULLS and LCS - Draft Decision*, October 2004. Telstra withdrew the ULLS undertaking following the ACCC's draft determination to reject it and accordingly the ACCC made no final decision on that undertaking.

ULLS connections (VULLS), they would not be acceptable for 'In-use' and 'Transfer' ULLS connections (IULLS and TULLS). The latter forms of ULLS connection are likely to assume greater importance in the future as access seekers migrate end user customers from resale-based services to ULLS-based services.

The ACCC has reached a draft view to reject Telstra's LSS undertaking on the bases that Telstra's proposed connection price term for LSS is not reasonable, that there are limited circumstances where a separate disconnection charge would be warranted and, in any event, Telstra's proposed charge for disconnection of a LSS would not be reasonable.

The ACCC also notes that uncertainty exists with respect to the application of the proposed charges for other than single connections of the ULLS and LSS. The ACCC notes that, for Telstra's larger scale 'Managed Network Migrations' (MNMs), where large numbers of ULLS and LSS connections are performed in a managed process, the undertakings do not expressly exclude the undertakings charges for these connections. The ACCC further notes there is uncertainty whether Telstra's purported intention to levy discounted connection charges for MNMs to a certain specified scale of migration is appropriate.

The ACCC seeks comment on this draft decision from interested parties. To this end, the ACCC seeks submissions on this draft decision by **3 February 2006**.

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Once all submissions to this draft decision have been received, the ACCC will, after consideration of these submissions, proceed to issue a final decision. At this stage, the ACCC expects to issue a final decision by **March 2006**.

1. Introduction

The unconditioned local loop service (ULLS) is a service for access to unconditioned cable, usually a copper wire pair, between an end user and a telephone exchange. The ULLS essentially gives an access seeker the use of the copper pair without any dial tone or carriage service. This allows the access seeker to use its own equipment in an exchange to provide a range of services, including traditional voice services and high speed internet access, to the end-user.

Line sharing refers to a situation where two separate telecommunications carriers or service providers supply two different services to the same end user over one copper pair. Line sharing uses the fact that different telecommunications services can be supplied on different frequencies on the same wire. In particular, the line sharing service (LSS) involves the access provider supplying a PSTN voice service, while an access seeker provides a different service (usually broadband internet access) over a higher frequency part of the line.

The ULLS and LSS have both been "declared" by the ACCC under Part XIC of the *Trade Practices Act 1974* (the Act). The ULLS was declared in July 1999,[4] while the LSS was declared in August 2002.[5]

Declaration of these services has two important consequences. Firstly, Telstra is required to supply these services to all service providers upon request. Secondly, if Telstra and a service provider cannot agree on the terms and conditions of supply, one of them can notify the ACCC of a dispute. The ACCC can then arbitrate and resolve the dispute.

To reduce the scope for disputes and therefore the need for the ACCC to conduct arbitrations, Telstra can offer the ACCC an undertaking setting out particular terms and conditions of supply. If the ACCC accepts the undertaking, then it is prevented from making an arbitration determination that is inconsistent with the undertaking.

Telstra lodged access undertakings for the ULLS and LSS with the ACCC on 13 ecember 2004. The undertakings specify certain terms and conditions by which Telstra undertakes to meet its standard access obligations (SAOs) for the ULLS and LSS. Telstra lodged four separate undertakings—for ULLS monthly charges, for ULLS connection charges (which include a net present value or discounted cost of disconnection), for LSS monthly charges and for LSS connection and disconnection charges.

This report contains the ACCC's draft decisions to reject the ULLS connection charges undertaking and the LSS connection and disconnection charge undertaking. The ACCC's draft decisions on the undertakings for ULLS monthly charges and LSS monthly charges were published separately.

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4 ACCC, *Declaration of local telecommunications services*, July 1999

5 ACCC, *Line sharing service – Final decision on whether or not a line sharing service should be declared under Part XIC of the Trade Practices Act 1974*, August 2002.

2. Background

2.1. Declaration and the regulatory framework

The ULLS and LSS have been declared under Part XIC of the Act – the ULLS in 1999, the LSS in 2002.

Once a service is declared, carriers and carriage service providers supplying the declared service to themselves or others are subject to the SAOs. These obligations constrain the manner in which those carriers and carriage service providers can conduct themselves in relation to supply of the declared service.

Section 152AR of the Act sets out the SAOs applying to those carriers and carriage service providers supplying the declared service to themselves or others. In summary,[6] if requested by a service provider, the carrier/carriage service provider is required to:

- supply the declared service
- take all reasonable steps to ensure that the declared service supplied to the service provider is of equivalent technical and operational quality as that which the carrier/carriage service provider is supplying to itself
- take all reasonable steps to ensure that the fault detection, handling and rectification which the service provider receives in relation to the declared service is of equivalent technical and operational quality as that provided by the carrier/carriage service provider to itself
- permit interconnection of its facilities with those of the service provider
- provide particular billing information to the service provider.

The terms and conditions upon which a carrier/carriage service provider is to comply with these obligations are as agreed between the parties. In the event that they cannot agree, one of them can notify the ACCC of an access dispute under s152CM of the Act. Once notified, the ACCC can arbitrate and make a determination which resolves the dispute. The ACCC's determination need not, however, be limited to the matters specified in the dispute notification. It can deal with any matter relating to access by the service provider to the declared service.[7]

The Act enables a carrier/carriage service provider to resolve potentially contentious issues with the ACCC outside the arbitral process. Amendments to the Act in 2002 encourage the lodgement of undertakings as the main means of addressing access to declared services.[8] The process requires that the carrier give the ACCC an access undertaking under s152BS of the Act, setting out the terms and conditions on which it proposes to comply with particular SAOs.

The ACCC can either accept or reject an access undertaking. Section 152BV of the Act sets out five criteria that must be fulfilled to allow the ACCC to accept an access undertaking. In summary, the criteria are that:

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[6] There are some exceptions to these obligations. These are set out in s152AR, and in any exemption issued under s152AS or s152AT of the Act.

[7] *Trade Practices Act 1974* (Cth) s. 152CP(2).

[8] Explanatory Memorandum, *Telecommunications Competition Bill 2002*, p. 1.

- the ACCC must have published the undertaking, invited comment and considered any submissions received
- the ACCC must be satisfied the undertaking is consistent with the SAOs
- the ACCC must be satisfied that the undertaking is consistent with any Ministerial pricing determination
- the ACCC must be satisfied that the terms and conditions specified in the undertakings are reasonable
- the undertakings cannot apply for more than three years.

If accepted by the ACCC, the undertaking becomes binding on the carrier/carriage service provider. Hence if a carrier/carriage service provider breaches the undertaking, the Federal Court can make an order requiring compliance with the undertaking, the payment of compensation, or any other order that it thinks fit. Once an undertaking is in operation, the ACCC must not make an arbitral determination that is inconsistent with the undertaking.[9]

2.2. The declared services

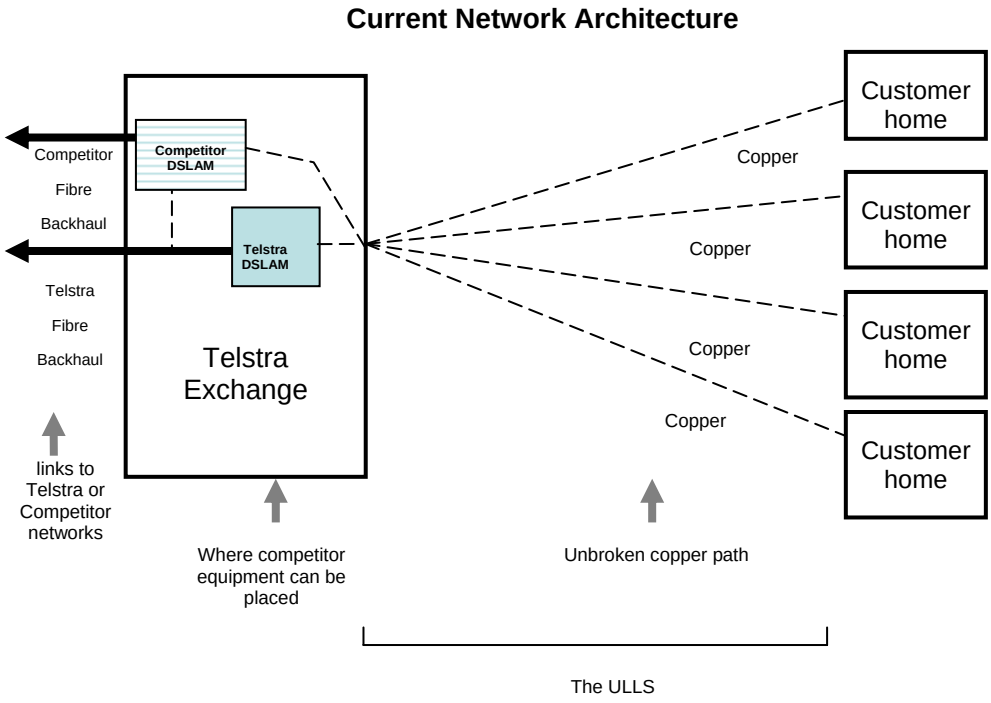
2.2.1. Unconditioned Local Loop Service

The ULLS involves the use of unconditioned cable, primarily copper pairs, between end-users and a telephone exchange, where the unconditioned cable terminates.

Under Telstra's customer access network (CAN) architecture, customers are connected to the broader network by cables, which run from a customer's premises to what is known as Customer Access Module (CAM) equipment. CAM equipment includes remote switching units or stages (RSUs/RSSs), remote (and integrated remote) integrated multiplexers (RIMs/IRIMs) or newer generation remote customer multiplexers (C-MUXs). The CAM equipment can then be connected (directly, or by means of other CAM equipment) to a LAS and/or a data/IP network. Voice traffic is currently routed to the LAS for carriage using a circuit switched network, while data traffic is routed to a data/IP network (not separately shown below). This is illustrated in Figure 2.2.1. In some areas, notably in CBDs, customers are directly connected to a LAS which effectively serves as the CAM.

[9] *Trade Practices Act 1974* (Cth) s. 152CQ(5).

Figure 2.2.1 Use of the ULLS



Telstra, as the predominant supplier of this service, has ownership of the copper CAN located throughout Australia.

The declared ULLS is used by access seekers to connect their own networks to existing infrastructure and deliver new and innovative high-speed and data-based services to end-users more efficiently. It can also potentially be used to provide voice services more efficiently using voice over IP and DSL technologies. Possible services include high speed Internet access, 'tele-working', distance learning, video-on-demand, remote local area network (LAN) access and other multimedia and data applications, as well as traditional local, STD and IDD call services in competition with Telstra.

2.2.2. Line Sharing Service

Line sharing refers to a situation where two separate carriers provide separate services over a single metallic pair (or 'line'). A metallic pair is capable of providing a broad range of services by utilising the full spectrum of the line. Traditionally, only 3.1 kHz, which is a relatively small part of the useable spectrum of a metallic pair of several MHz, is used to provide voice services. Until recently, the rest of the spectrum remained unused. With the development of xDSL technology,[10] however,

[10] xDSL refers to the 'family' of digital subscriber line services (e.g. ADSL=Asymmetric DSL, HDSL = High bit rate (or high-speed) DSL etc). For instance, ADSL uses a dedicated line from the customer premises to a network exchange to provide an 'always on' data service with downstream access speeds over 1.5 Mbits per second and upstream speeds typically one quarter of the downstream rate. At the same time an independent public switched telecommunications network (PSTN) dial-up voice service is supported over the same line.

the remaining part of the spectrum can be used to provide a variety of broadband services. This allows a combination of low-speed and high-speed services to be provided on a single line at the same time.

Under line sharing, the metallic line spectrum is normally split (or shared) so that one carrier or service provider provides the voice services over the line, while another carrier provides high-speed data services through the use of its own xDSL technology. This is also sometimes referred to as spectral unbundling or spectrum sharing.

The LSS considered during this assessment refers to a specific form of line sharing. The ACCC has adopted the following service description:

> The High Frequency Unconditioned Local Loop Service is the use of the non-voice band frequency spectrum of an unconditioned communications wire (over which wire an underlying voiceband PSTN service is operating) between the boundary of a telecommunications network at an end-user's premises and a point on a telecommunications network that is a potential point of interconnection located at, or associated with, a customer access module and located on the end-user side of the customer access module.

Hence, a LSS would involve the access provider providing a voiceband PSTN service to an end-user, whilst providing access to another carrier (the access seeker) to simultaneously provide services to the same end-user over the high-frequency portion of the unconditioned local loop. For example, if Telstra is the access provider, it could deliver voice services to end-users, while a second carrier could simultaneously provide high-speed data services (such as ADSL) over the same line.

3. Summary of the undertakings

3.1. Terms and conditions of the undertakings

In assessing an undertaking, it is necessary to form a view about its terms and conditions.

Telstra has lodged access undertakings with the ACCC specifying the price-related terms and conditions, and limited non-price terms, upon which it undertakes to meet its SAOs to supply the ULLS and the LSS. These undertakings were lodged on 13 December 2004. However, public versions of Telstra's supporting submissions were not provided to the ACCC until 2 March 2005, significantly delaying the commencement of public consultations.

There are four undertakings in total. The two undertakings assessed in this draft decision relate to proposed connection and disconnection charges for the ULLS and LSS. Two other undertakings relate to the monthly ongoing charges for provision of the ULLS and the LSS respectively and were assessed separately. If accepted, the undertakings would apply until 30 June 2006.

3.2. ULLS connection/disconnection undertaking

3.2.1. Telstra's proposed prices

Telstra's proposed ULLS connection charges differ depending on geographic region. Unlike the monthly charges undertaking, the proposed connection prices are not limited to RSS/RSU connected ULLS, and appear to also apply to connection for an IRIM/RIM/CMUX connected ULLS. The prices in the undertaking would apply in 2004-05 and 2005-06. Table 3.2.1 outlines Telstra's proposed ULLS connection charges.

Table 3.2.1 ULLS Charges (exclusive of GST)

Band 1	Band 2	Band 3	Band 4
$93	$98	$98	$108

In Telstra's submission in support of the undertaking, it argues that the proposed prices should be accepted primarily because:

- they are consistent with current commercial arrangements
- the proposed prices are significantly below Telstra's estimates of efficient costs, and are therefore a generous offer.[11]

Telstra has not proposed to charge for disconnection but instead has proposed to recover disconnection costs as part of the connection charge. Its submission in support of the undertaking argues that this is appropriate because it reflects long-standing commercial practice and the fact that there is 'no necessity to disconnect the ULLS in a timely manner'.

3.2.2. Telstra claimed ULLS efficient costs

Telstra's estimated efficient costs of ULLS connection and disconnection for 2004-05 and 2005-06 are outlined in Table 3.2.2, Table 3.2.3 and Table 3.2.4 below.

Table 3.2.2 Telstra's estimated ULLS efficient connection costs

Cost elements	Costs per ULLS			
	Band 1	Band 2	Band 3	Band 4
Labour to travel to the exchange and perform jumpering	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Pair tagging at the customer premises	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Vehicle	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Material	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Jumpering tools	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Back-of-house costs[12]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Total cost	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]

[11] Telstra, *Telstra's submission in support of the ULLS connection charges undertaking dated 13 December 2004*, 2 March 2005, p. 2.

[12] In July 2005, Telstra revised the way in which it claimed back-of-house costs in its original submissions in support of the undertakings. However it did not explicitly seek to have the revised costs included in its modelling and the ACCC has left Telstra's previously claimed costs in for the purpose of this table. The revised costs are further discussed in section 6.4.4

Table 3.2.3 Telstra's estimated ULLS efficient disconnection costs

Cost elements	Costs per ULLS			
	Band 1	**Band 2**	**Band 3**	**Band 4**
Labour to disconnect the jumpering at the exchange	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Back-of-house[13]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Total cost	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]

Table 3.2.4 Sum of net present value of connection and disconnection costs

Cost elements	Costs per ULLS			
	Band 1	**Band 2**	**Band 3**	**Band 4**
Connection costs	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Net present value of disconnection costs	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Total cost	$159.47	$158.89	$173.25	$193.52

The ACCC's conclusions in relation to each of Telstra's claimed components of efficient costs are set out in section 6.

3.2.3. Non-price terms

Telstra has amended the network modernisation provisions in the ULLS connection undertaking as a result of the ACCC's previously expressed concerns. Telstra's submission in support of the undertakings states that the amendments clarify that the network modernisation provisions are not intended to over-ride other terms and conditions of supply relating to matters such as variations to services or service specifications and the applicable notice periods for such variations. Telstra also submits that the non-price terms and conditions in the undertaking are consistent with both the service description for the declared ULLS, and with the terms and conditions of its access agreements with its wholesale customers.

3.3. LSS connection/disconnection undertakings

3.3.1. Telstra's proposed prices

Telstra has proposed to charge $90 (exclusive of GST) per LSS connection for 2004-05 and 2005-06. The proposed charge is uniform across the period.

Telstra's undertaking submits that the proposed prices should be accepted primarily because:

- they are consistent with current commercial arrangements
- the proposed prices are significantly below Telstra's estimates of efficient costs, and are therefore a generous offer.[14]

[13] See footnote 12 above.

Unlike the ULLS charge, the proposed LSS connection charge does not vary between geographic bands. Telstra's submission argues that averaged prices across geographic areas should be accepted as they are consistent with commercial practice and there is likely to be little difference in connection costs in different geographic regions.

3.3.2. Telstra claimed LSS efficient costs

Telstra's estimated efficient costs of supplying the LSS for 2004-05 and 2005-06 are outlined in Table 3.3.1 below.

Table 3.3.1 Telstra's estimated efficient LSS connection costs

Cost elements	Costs per LSS			
	Band 1	**Band 2**	**Band 3**	**Band 4**
Labour to travel to the exchange and do the jumpering	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Vehicle	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Materials	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Tool box	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Back-of-house[15]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Total cost	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Average total cost[16]	**$110.92**			

Table 3.3.2 Telstra's estimated efficient LSS disconnection costs

Cost elements	Costs per LSS			
	Band 1	**Band 2**	**Band 3**	**Band 4**
Labour to travel to the exchange and do the jumpering	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Vehicle	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Tool box	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Back-of-house[17]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Total cost	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Average total cost[18]	$92.34			

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[14] Telstra, *Telstra's submission in support of the SSS monthly charges undertaking dated 13 December 2004*, 2 March 2005, p. 2.

[15] See footnote 12 above.

[16] Telstra's averaged total cost is based on the distribution of copper pairs between the four geographic areas.

[17] See footnote 12 above.

[18] See footnote 16 above.

In its submission in support of the LSS undertaking, Telstra argues that it always incurs disconnection costs even if the end-user then chooses to acquire services from another LSS access seeker, as the connection and disconnection requests are received separately. Telstra submits that it must disconnect the service straight away in order to prevent loss or degradation of the voice service it is supplying to the end-user.

3.3.3. Non-price terms

Telstra's undertaking documents outline amendments to the non-price terms and conditions relative to its previously lodged LSS undertaking on 1 September 2003. These amendments relate to:

- network modernisation provisions to clarify that they do not over-ride certain other terms and conditions of supply, as a result of the ACCC's previously expressed concerns
- provisions regarding compliance with the Network Deployment Rules, as a result of the ACCC's previously expressed concerns
- the inclusion of a requirement that an underlying voice service must be in operation.

4. Legislative Background

4.1. Form and contents of an undertaking

Section 152BS of the Act provides that an access undertaking is a written document given to the ACCC under which the relevant carrier or provider undertakes to comply with the terms and conditions specified in the undertaking in relation to the applicable SAOs.

Section 152BS sets out that an undertaking may be one of the following types:

- an undertaking containing terms and conditions that are specified in the undertaking, or
- an undertaking where the terms and conditions are specified by adopting a set of model terms and conditions set out in the telecommunications access code, as in force at that time.[19]

Telstra's undertaking falls into the first category.

4.2. Criteria for acceptance of an undertaking

Section 152BV sets out the matters which the ACCC must be satisfied before it can accept the undertaking. It applies where an ordinary access undertaking is given to the ACCC and the undertaking does not adopt a set of model terms and conditions set out in the telecommunications access code. Telstra's undertaking is an ordinary access undertaking.

Each of the matters in s. 152BV are explained in turn below.

4.2.1. Public process

Sub-section 152BV(2)(a) of the Act provides that the ACCC must not accept an undertaking unless:

- the ACCC has published the undertaking and invited people to make submissions on the undertaking
- it has considered any submissions that were received within the time limit specified by the ACCC when it published the undertaking.

ACCC's Discussion Paper

In accordance with sub-section 152BV(2)(a) of the Act, the ACCC published the Undertakings and, at the same time, released its *Telstra's Undertaking for the Unconditioned Local Loop Service – Discussion Paper*[20] (the 'Discussion Paper'), inviting interested parties to make submissions over a prescribed period of time (the 'Consultation Period'). The Consultation Period formally expired on **20** May 2005.

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[19] *Trade Practices Act 1974* (Cth) ss. 152BS(3) and (4). No code is currently mandated under Part XIC.

[20] ACCC, *Telstra's Undertaking for the Unconditioned Local Loop Service – Discussion Paper*, March 2005.

Submissions from Telstra

Telstra has made a series of submissions to the undertaking assessment process. These include initial submissions provided in February 2005 in support of the undertakings, submissions in response to the Discussion Paper provided in May 2005, supplementary submissions provided in June 2005 and responses to information requests made by the ACCC pursuant to s152BT of the Act. These submissions are included in Appendix B.

Consultation after release of the ACCC's Discussion Paper

The ACCC also received a number of submissions from interested parties following the release of the Discussion Paper. A list of submissions made and supplementary submissions provided in response to the ACCC's information requests by these parties is also provided in Appendix B. To the extent possible, the ACCC has posted electronic copies of submissions on its website (http://www.accc.gov.au). Where parties have provided submissions in confidence or, where parts of submissions have contained confidential information as claimed by submitters, this has not been included on the website.

Use by the ACCC of an expert consultant

The ACCC employed an expert consultant, Dr Paul Brooks of Consultel BWP Pty Ltd (Consultel), to assist it with respect to the various technical and operational requirements needed to make connections and disconnections of the ULLS and LSS[21]. More particularly, assistance was sought to assess the technical and operational assumptions which underpin Telstra's purported connection and disconnection costs used by Telstra to justify the charges it proposes be levied on access seekers for ULLS and LSS connection and disconnection.

The ACCC considered it preferable that it receive independent expert advice and assessment on relevant technical and operational issues to assist it in its undertakings assessment. It is also the case that access seekers submitted their own technical analyses on the appropriateness of Telstra's proposals and these too needed to be scrutinised.

The employment of Consultel for this purpose was made known to the industry by correspondence with interested parties in late June 2005. As part of the assessment process, the ACCC advised that Consultel's Interim Report on technical and operational matters relevant to the undertakings assessment would be made available for public comment as part of the process of responding to the ACCC's draft decisions on the undertakings. Accordingly, Consultel's Interim Report is included as Appendix C to this report and parties are invited to comment on this report, together with responses to the draft decisions, according to the process outlined in the Summary section of this report.

4.2.2. Consistency with the standard access obligations

Section 152BV(2)(b) provides that the ACCC must not accept an undertaking unless the ACCC is satisfied that the undertaking is consistent with the SAOs that are applicable to the carrier or provider.

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[21] For example, time taken to effect jumpering work and to travel to exchanges.

The SAOs are set out in s. 152AR of the Act. In summary, if requested by a service provider, an access provider may be required to:

- supply the declared service
- take all reasonable steps to ensure that the technical and operational quality of the service supplied to the service provider is equivalent to that which the access provider is supplying to itself
- take all reasonable steps to ensure that the fault detection, handling and rectification which the service provider receives in relation to the declared service is of equivalent technical and operational quality as that provided by the access provider to itself
- permit interconnection of its facilities with the facilities of the service provider
- take all reasonable steps to ensure that the technical operational quality and timing of the interconnection is equivalent to that which the access provider provides to itself
- if a standard is in force under s. 384 of the *Telecommunications Act* 1997, take all reasonable steps to ensure that the interconnection complies with the standard
- take all reasonable steps to ensure that the service provider receives interconnection fault detection, handling and rectification of a technical and operational quality and timing that is equivalent to that which the access provider provides to itself
- provide particular billing information to the service provider
- supply additional services in circumstances where a declared service is supplied by means of conditional-access customer equipment.

The question of whether Telstra's undertakings are consistent with any applicable SAOs is considered in Section 5.

4.2.3. Consistency with Ministerial pricing determination

Division 6 of Part XIC of the Act provides that the Minister may make a written determination setting out the principles dealing with price-related terms and conditions relating to the SAOs.[22]

Paragraph 152BV(2)(c) provides that the ACCC must not accept an undertaking dealing with price or a method of ascertaining price unless the undertaking is consistent with any Ministerial pricing determination.

To date, a Ministerial pricing determination has not been made. Accordingly, the ACCC is not required to assess the undertaking under this criterion.

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[22] *Trade Practices Act 1974* (Cth) s. 152CH. 'Price-related terms and conditions' means terms and conditions relating to price or a method of ascertaining price.

4.2.4. Whether terms and conditions are reasonable

Sub-section 152BV(2)(d) of the Act provides that the ACCC must not accept an undertaking unless the ACCC is satisfied that the terms and conditions specified in the undertaking are reasonable.

In forming a view about whether particular terms and conditions are reasonable, the ACCC must have regard to the range of matters set out in s. 152AH(1) of the Act. In the context of assessing Telstra's undertaking, these are:

- whether the terms and conditions promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services (the long-term interests of end-users)
- the legitimate business interests of Telstra, and its investment in facilities used to supply the declared services
- the interests of all persons who have rights to use the declared services
- the direct costs of providing access to the declared services
- the operational and technical requirements necessary for the safe and reliable operation of a carriage service, a telecommunications network or facility
- the economically efficient operation of a carriage service, a telecommunications network or a facility.

The ACCC may also consider any other relevant matter.[23]

Set out below is a summary of the key phrases and words used in the above matters. While, in general, these phrases and words have not been the subject of judicial interpretation, it is necessary for the ACCC to form a view as to what they mean.

Long-term interests of end-users

The ACCC has published a guideline explaining what it understands is meant by the 'long-term interests of end-users' in the context of its declaration responsibilities.[24] A similar interpretation would seem to be appropriate in the context of assessing an undertaking. However the ACCC notes that recent revisions to the Act have amended the definition of the long-term interest of end-users.

In the ACCC's view, particular terms and conditions promote the interests of end-users if they are likely to contribute towards the provision of goods and services at lower prices, higher quality, or towards the provision of greater diversity of goods and services.[25]

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[23] Section 152AH does not use the expression 'any other relevant matter'. However, s. 152AH(2) states that the matters listed in s. 152AH(1) do not limit the matters to which the ACCC may have regard. Thus, the ACCC may consider any other relevant matter.

[24] ACCC, *Telecommunications services — Declaration provisions: a guide to the declaration provisions of Part XIC of the Trade Practices Act*, July 1999.

[25] Ibid, pp. 32-33.

To consider the likely impact of particular terms and conditions, the Act requires the ACCC to have regard to whether the terms and conditions are likely to result in the achievement of the following objectives:[26]

- the objective of promoting competition in markets for carriage services and services supplied by means of carriage services
- for carriage services involving communications between end-users, the objective of achieving any-to-any connectivity
- the objective of encouraging the economically efficient use of, and economically efficient investment in, infrastructure by which carriage services and services provided by means of carriage services are supplied, or any other infrastructure by which listed services are, or are likely to become, capable of being supplied.

The phrase 'economically efficient use of, and economically efficient investment in... infrastructure' obviously requires consideration of the concept of economic efficiency. This has three components:

- Productive efficiency. This is achieved where individual firms produce the goods and services that they offer at least cost.
- Allocative efficiency. This is achieved where the prices of resources reflect their underlying costs so that resources are then allocated to their highest valued uses (i.e. those that provided the greatest benefit relative to costs).
- Dynamic efficiency. This reflects the need for industries to make timely changes to technology and products in response to changes in consumer tastes and in productive opportunities.

The recent amendments to the Act add to the previous matters for consideration a new consideration that when considering the economically efficient use of and investment in infrastructure within the context of the LTIE, regard must be had to the incentives for investment in any other infrastructure by which services are, or are likely to become, capable of being supplied. Regard must also be had to the risks involved in making that investment.

Legitimate business interests and direct costs

The ACCC is of the view that the concept of legitimate business interests should be interpreted in a manner consistent with the phrase 'legitimate commercial interests' used elsewhere in Part XIC of the Act. Accordingly, it would cover the carrier's or carriage service provider's interest in earning a normal commercial return on its investment.

This does not, however, extend to receiving compensation for loss of any 'monopoly profits' that occurs as a result of increased competition. In this regard, the Explanatory Memorandum for the Trade Practices Amendment (Telecommunications) Bill 1996 states:

> ... the references here to the 'legitimate' business interests of the carrier or carriage service provider and to the 'direct' costs of providing access are intended to preclude arguments that the provider should be reimbursed by the third party seeking access for

[26] *Trade Practices Act 1974* (Cth) s. 152AB(2).

> consequential costs which the provider may incur as a result of increased competition in an upstream or downstream market.

When considering the legitimate business interests of the carrier or carriage service provider in question, the ACCC may consider what is necessary to maintain those interests. This can provide a basis for assessing whether particular terms and conditions in the undertaking are necessary (or sufficient) to maintain those interests.

Interests of persons who have rights to use the declared service

Persons who have rights to use a declared service will, in general, use that service as an input to supply carriage services, or a service supplied by means of carriage services, to end-users. In the ACCC's view, these persons have an interest in being able to compete for the custom of end-users on their relative merits. Terms and conditions that favour one or more service providers over others and thereby distort the competitive process may prevent this from occurring and consequently harm those interests.

While s. 152AH(1)(c) directs the ACCC's attention to those persons who already have rights to use the declared service in question, the ACCC can also consider the interests of persons who may wish to use that service. Where appropriate, the interests of these persons may be considered to be 'any other relevant consideration'.

Economically efficient operation of, and investment in, a carriage service

In the ACCC's view, the phrase 'economically efficient operation' embodies the concept of economic efficiency set out earlier. It would not appear to be limited to the operation of carriage services, networks and facilities by the carrier or carriage service provider supplying the declared service, but would seem to include those operated by others (e.g. service providers using the declared service).

In the context of assessing an undertaking, the ACCC may consider whether particular terms and conditions enable a carriage service, telecommunications network or facility to be operated in an efficient manner. This may involve, for example, examining whether they allow for the carrier or carriage service provider supplying the declared service to recover the efficient costs of operating and maintaining the infrastructure used to supply the declared service.

In general, there is likely to be considerable overlap between the matters that the ACCC takes into account in considering the long-term interests of end-users and its consideration of this matter.[27]

The question of whether the terms and conditions set out in Telstra's undertakings are reasonable is considered in Chapter 6.

4.2.5. Expiry date

Sub-section 152BS(7) of the Act provides that the undertaking must specify the expiry time of the undertaking. Further, sub-section 152BV(2)(e) provides that the expiry time of the undertaking must be within 3 years after the date on which the undertaking comes into operation.

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[27] Relevantly, in considering whether particular terms and conditions will promote the long-term interests of end-users, the ACCC must have regard to their likely impact on the economically efficient use of, and economically efficient investment in, the infrastructure by which carriage services and services provided by means of carriage services are supplied.

The Undertakings are to expire by no later than 30 June 2006. The expiry dates in the Undertakings are therefore within the 3 years required by the Act.

4.3. Procedural matters

4.3.1. Confidentiality

In arriving at its draft view, the ACCC has relied on commercial-in-confidence information supplied by Telstra and interested parties. The ACCC has assessed this material according to its policy on treatment of information[28] and has determined that, in most instances, it should not reproduce that material in this report.

Accordingly, where information that is commercially sensitive has been relied upon in reaching a conclusion in this report, it has either been aggregated to a level such that it is no longer of commercially sensitive or, where this is not possible, it has been masked with the designation **[c-i-c]**. Unless otherwise indicated, information masked with **[c-i-c]** is information provided by Telstra over which it has made a confidentiality claim.

The ACCC recognises that its decision making processes should be as transparent as practicable, and in this regard notes the opportunity for interested parties to obtain the commercial-in-confidence information from the provider of that information upon the giving of appropriate undertakings. The ACCC notes that interested parties have been able to negotiate such undertakings in respect of most of the confidential information that has been relied upon by the ACCC.

The ACCC notes that, unless it can corroborate commercial-in-confidence information in some way, it is constrained in the weight that it can give to information that has not been subject to broader industry scrutiny.

4.3.2. Information relied upon

The ACCC, in its assessment of the Undertakings, has primarily used the supporting submissions of Telstra, the submissions of Telstra and interested parties made pursuant to the Discussion Paper, and the interim report provided by Consultel. It has also referenced other documents. The documents are listed at Appendix B.

4.3.3. Decision-making period

The ACCC has a 6 month statutory time frame by which it must make a decision to accept or reject an access undertaking. For the purposes of calculating the 6 month timeframe certain periods of time are disregarded. In particular, the time it takes between when the ACCC makes a request for further information (under s.152BT of the Act) and when an access provider has fulfilled the information request is disregarded, as is the time between when the ACCC publishes an undertaking (and seeks submissions[29]) and the due date for receipt of those submissions (the 'Consultation Period').

For this assessment of the Undertakings, the 'clock has been stopped' while s. 152BT information requests have remained unfulfilled and for the duration of the Consultation Period. This process has resulted in the end of the six-month assessment

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[28] ACCC, *Collection and Use of Information*, 2000.

[29] *Trade Practices Act 1974* (Cth) s. 152BV(2)(a).

period being extended. Once comments to this Draft Decision are received and considered, the ACCC will look to issue a final determination by **March 2006**.

5. Consistency with standard access obligations

5.1. The standard access obligations

Under s. 152BV(2)(b), the ACCC must not accept undertakings unless it is satisfied that they are consistent with the SAOs that are applicable to Telstra. The SAOs are set out in s. 152AR of the Act. An access provider that supplies a declared service to itself or others must comply with any applicable specified obligations. These obligations were referred to above in section 4.2.2.

Most of the SAOs detailed in section 4.2.2 apply to Telstra in its supply of the declared ULLS and LSS. The exceptions are the SAOs that would apply if a relevant standard was in force under s. 384 of the *Telecommunications Act* 1997 and the SAOs that relate to a declared service supplied by means of conditional-access customer equipment.

5.2. Approach to assessing consistency with the standard access obligations

The Act does not detail a specific approach for assessing whether the terms and conditions in an undertaking are consistent with the access provider's SAOs. The ACCC finds it useful to consider whether the terms and conditions in an undertaking raise any inconsistencies with the SAOs. If the terms and conditions are not inconsistent with the obligations, the ACCC is likely to regard them as consistent.

The ACCC considers that terms and conditions specified in an undertaking would be inconsistent with the SAOs if an access provider in giving effect to those terms and conditions would not satisfy each of the applicable obligations. Such inconsistency could arise either expressly or by implication from the circumstances in which the terms and conditions could be satisfied.

The purpose of this assessment is to ensure that an access provider would comply with the SAOs should the undertakings be accepted. The ACCC is not here concerned with the reasonableness of the terms and conditions of the Undertakings. Reasonableness is assessed separately in section 6.

In making this assessment, it has been necessary for the ACCC on occasion to interpret how the Undertakings would operate. The ACCC's assessment of the Undertakings is based on the ACCC's interpretation of the relevant terms and conditions. Any alternative interpretation that might be given to the Undertakings at a later time cannot be said to have been considered or accepted by the ACCC as consistent with the SAOs. Accordingly, an undertaking can only be considered as accepted to the extent that it is given effect consistent with the ACCC's understanding of the undertaking at the time of conducting its assessment.

The ACCC has especially considered whether any of the non-price terms and conditions specified in the Undertakings (including the attachments) are inconsistent with each of the applicable SAOs. The price terms and conditions are more relevant to an assessment of reasonableness.

5.3. Assessment

Clause 3.1 of each of the respective undertakings provides that Telstra will comply with the terms and conditions specified in the various attachments to the Undertakings to satisfy the relevant SAOs.

The terms and conditions principally relate to pricing, although the attachments also contain clauses that may be classified as non-price terms and conditions.

The Undertakings specify services of particular technical attributes (Telstra services) and then set out the terms and conditions upon which these Telstra services will be supplied. These terms and conditions do not specify all the matters which an access provider and access seeker would need to agree on in the supply of the services.

5.3.1. Non-exhaustive scope of the undertakings

While the price and non-price terms and conditions that are contained in the Undertakings do not cover all of the matters relating to the supply of a service, it is the ACCC's view that it is not necessary for an undertaking to exhaustively address all matters that could relate to the applicable SAOs.

Any relevant matters that are not addressed in the Undertakings could be settled by commercial negotiation. Should the parties be unable to reach agreement, the matters could be determined in an ACCC arbitration if a dispute was notified.

Accordingly, the ACCC considers that the absence of terms and conditions about certain matters does not, of itself, make an undertaking inconsistent with the SAOs. However, it is open to the ACCC to form a view that the absence of certain terms and conditions could make the undertaking unreasonable in the terms of section 152BV. This issue is discussed further below in relation to whether the undertaking should better clarify its application to certain connection/provisioning scenarios.

This is particularly relevant to the current approach, where Telstra has submitted separate undertakings for monthly charges and connection/disconnection charges for each service. However, it should be noted that the monthly and connection/disconnection undertakings combined do not contain all terms and conditions of access to the ULLS and LSS.

5.3.2. Whether the undertakings specify terms and conditions for services other than the Telstra services

The ACCC notes that there could be uncertainty about the scope of the Undertakings as they specify terms and conditions for services which are not defined in the precise form used to define the relevant declared services. In certain respects, the Telstra services would appear more limited than the declared services. Some of these limitations are noted below.

The ACCC's interpretation is that the price and non-price terms specified in the Undertakings apply *only* to the services supplied by Telstra (the Telstra Services) and not to the relevant (corresponding) declared services if there are differences in definition or specification. In other words, Telstra would not be required to supply, on the terms in the Undertakings, a form of the declared service that was different to or beyond the scope of a Telstra Service. The ACCC may be required to arbitrate a dispute in the event there was disagreement about the terms and conditions of access to a form of the declared service that was outside the scope of the a Telstra Service.

It should be noted that if the Undertakings were asserted as specifying terms and conditions for *all* possible forms of the declared services, then Telstra could conceivably refuse to supply any form of the declared service other than the Telstra Service. Clearly if such an interpretation was given to the Undertakings the ACCC could not be satisfied that the Undertakings were consistent with Telstra's SAOs.

Accordingly, the views expressed below assume that the Undertakings specify terms and conditions only for the supply of Telstra Services and not for every possible form of the relevant declared services.

The practical consequence of this distinction depends on the extent to which a Telstra service would not actually cover all instances of the corresponding declared service.

The ACCC notes the following about the ULLS connection undertaking:

- the Telstra service will support a connection with DC continuity – there is no requirement for the Telstra service to support any other service
- the Telstra service involves the use of a continuous metallic twisted pair, whereas the declared service involves the use of an unconditioned copper based wire.

The ACCC also notes the following about the LSS undertaking:

- the Telstra service specifies that the access seeker gets access to the non-voice ADSL frequency spectrum while the declared service only specifies non-voiceband frequency spectrum
- the Telstra service involves the use of a continuous metallic twisted pair, whereas the declared service involves the use of an unconditioned copper based wire
- the Telstra service excludes certain provisions of the LSS where the Telstra customer access module is not located in a Telstra exchange, whereas the declared service does not draw this distinction.

At this time, the ACCC's consultation with access seekers has not revealed any significant current or prospective use of the relevant declared services that would not fall within the scope of the services definitions or specifications in the Undertakings. The ACCC has not been presented with evidence that such a use will emerge before the expiry of the undertakings.

However, if an access seeker was to seek access to a form of a declared service other than as specified in the Undertakings, then the ACCC believes that it would be open to the access seeker to negotiate access to the different form of the declared service from Telstra. If Telstra and the access seeker could not agree on terms and conditions of access to such a form of the declared service, the access seeker could ask for the ACCC to arbitrate.

5.3.3. Supply, quality and fault handling in relation to the declared services

The attachments to the Undertakings specify certain technical requirements and applicable codes or industry standards relating to supply of the Telstra services. The ACCC has not received submissions contending that these requirements would be inconsistent with the obligation to provide services of an equivalent technical and operational quality.[30] On their face, the provisions of the Undertakings do not appear to be inconsistent with this obligation insofar as they relate to the Telstra services.

[30] The ACCC has previously sought industry comment on the appropriateness of these or quite similar technical attributes.

The Undertakings do not contain provisions specifying how Telstra will satisfy its obligations regarding the quality and timing of fault detection, handling and rectification for the Telstra services. Nor do they contain provisions on the commencement, refusal, suspension or termination of supply.

The ACCC does not consider that this necessarily makes the Undertakings inconsistent with the SAOs specified in section 152AR(3) of the Act. Rather, Telstra has simply chosen not to specify in these undertakings all aspects concerning how these obligations will be satisfied in respect of the Telstra services[31]. The ACCC considers that, should agreement not be reached on these matters, any such disagreement could be resolved by the ACCC in arbitration.[32]

At this time, the ACCC is of the view that the Undertakings are not inconsistent with the standard access obligations in relation to the supply and quality of the Telstra services and related fault handling obligations.

5.3.4. Interconnection of facilities

The attachments to the Undertakings specify how the location of points of interconnection (POI) between Telstra's network and the service provider's network are to be determined. The undertakings for the ULLS and LSS are similarly worded, stating that the POI:

> "means, in relation to a line, a point that is an agreed point of interconnection located at or with a TCAM and located on the [ULL/SSS] End Customer side of the TCAM"

In particular, the Undertakings specify that the POI will be at a point agreed by Telstra and the service provider.

It is unclear to the ACCC why the POI would be defined by relation to a TCAM, when the use of a ULLS should mean that there is no Telstra equipment involved in the provision of services to the end-user. It would be expected that the access seeker would provide the customer access module if it was acquiring an ULLS. While the ULLS line would attach to Telstra's MDF, the ACCC understands that an MDF would not be considered as a TCAM. However the ACCC notes that this issue was not raised by interested parties and therefore may not be a concern. The ACCC would welcome submissions on this issue from interested parties.[33]

The Undertakings do not contain further provisions relating to the technical and operational quality and timing of interconnection, or provisions in relation to interconnection, fault detection, handling and rectification.

The ACCC considers that the terms and conditions set out in the Undertakings relating to interconnection of facilities would not make the Undertakings inconsistent with the SAO to permit interconnection of facilities (s. 152AR(5)). While Telstra has chosen not to specify in its Undertakings all the terms concerning interconnection of facilities, the ACCC does not consider that this makes the Undertakings inconsistent with the SAO to permit interconnection of facilities. Should the negotiations contemplated by the terms and conditions, or negotiations concerning other aspects of

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[31] It is understood such aspects are addressed by Telstra in its individual access agreements.

[32] It should be noted that the ACCC has also published its views on the model (non-price) terms and conditions for the ULLS and this view would also inform any dispute on such matters.

[33] The ACCC notes that it raised this issue in its draft decision on the Telstra ULLS and LSS monthly charge undertakings. However the ACCC would welcome any comments to this assessment.

facilities interconnection, not result in agreement, the ACCC considers that those matters could fall for determination by the ACCC in arbitration.

At this time, the ACCC considers that the Undertakings are not inconsistent with the SAOs relating to interconnection of facilities.

5.3.5. Provision, timing and content of billing information

Sub-section 152AR(7) of the Act provides that the billing information that must be provided by an access provider to a service provider must be given at such times and in a manner ascertained in accordance with the *Trade Practices Regulations*. Regulation 28S provides that billing information must be given in a manner and form, and at the times, agreed by the access provider and service provider. It also sets out the type of billing information that must be given.

The undertakings do not contain terms and conditions on the provision, timing and content of billing information. The ACCC therefore considers that billing matters would be resolved by commercial negotiation or arbitration, and considers at this time that the undertakings are not inconsistent with the billing information SAOs.

5.3.6. Conclusion

The ACCC's draft view is that the undertakings are not inconsistent with Telstra's SAOs.

However, the ACCC wishes to emphasise that it considers the undertakings cover only certain forms of the declared services – Telstra's Services – and that it would be open to access seekers to seek other forms of the declared services, including by recourse to arbitration by the ACCC if agreement cannot be reached between Telstra and the access seeker. However, the ACCC acknowledges that it is unlikely that access seekers would seek to access the declared services in different forms from that specified by Telstra during the period of operation of the undertakings.

The ACCC also emphasises that the undertakings do not contain a complete set of terms and conditions or deal with all aspects of acquiring the services covered in the undertakings. However the undertakings are not required to be exhaustive, and other terms and conditions of supply could be determined by commercial negotiation, or failing agreement, through arbitration by the ACCC.

6. Reasonableness of the proposed ULLS and LSS connection and disconnection charges

6.1. Approach to consideration of reasonableness

The ACCC must not accept an undertaking unless it is satisfied that the terms and conditions are reasonable. In forming a view about whether particular terms and conditions are reasonable, the ACCC must have regard to the range of matters set out in s. 152AH(1) of the Act. These were summarised in section 4.2.4. The ACCC is not limited to consideration of the matters set out in s. 152AH(1) of the Act.[34]

This chapter contains the ACCC's draft assessment as to the reasonableness of the proposed terms and conditions set out in the undertakings. The key terms, for the purpose of this assessment, are the terms setting out the charges. This chapter starts by outlining the cost models proposed by Telstra to support its proposed charges. The key inputs or costs elements used in those models are then assessed with reference to the relevant criteria in section 152AH of the Act. In forming its draft views the ACCC has considered:

- submissions from Telstra and other parties on these matters
- the advice provided by the ACCC's technical consultant, Consultel
- information provided to the ACCC by Telstra following requests for information made pursuant to s152BT
- certain specified information obtained by the ACCC in the context of its arbitration of access disputes under Part XIC
- comparisons of Telstra's proposed ULLS and LSS connection charges to charges applying in the European Union in August 2004.

This chapter also discusses the uncertainty as to whether the undertakings' charges may be read to apply to all instances of the declared services and are not explicitly qualified with respect to the circumstances under which connections are made. This discussion focuses on the issue of whether if the undertakings were in place there would be sufficient certainty that the undertakings' charges will be discounted in circumstances where multiple connections are made as access seekers migrate end user customers from resale services to ULLS or LSS-based services (see section 6.6).

In considering the various criteria in s. 152AH, the ACCC will apply, where appropriate, the 'future with and without' test expressed in the Sydney Airports case.[35] This test requires the ACCC to contrast the outcome in the event the undertaking was accepted compared to the outcome in the event the undertaking was not accepted.

The ACCC notes that in the Seven Network Ltd case, the Australian Competition Tribunal considered that the 'future with and without' test provides helpful guidance in assessing the LTIE test.[36] The ACCC likewise considers that this test is an appropriate analytical tool to assist the ACCC in assessing the undertakings against

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34 *Trade Practices Act 1974* (Cth) s. 152AH(2).

35 *Sydney Airports Corporation Ltd* (2000) 156 FLR 10

36 *Seven Network Ltd [2004]* ACompT 11

certain of the reasonableness criteria in s. 152AH(1). However the ACCC does not consider that the 'future with or without' test will assist the ACCC in assessing all of the reasonableness criteria, and the ACCC will only apply the test to criteria where it facilitates the ACCC's analysis.

The overall test for reasonableness is that specified in s. 152BV(2)(d) of the Act, which says that to accept an Undertaking, the ACCC must be satisfied as to the reasonableness of the terms and conditions specified in the Undertaking.

6.2. Summary of findings

ULLS undertaking

The ACCC's draft views are that Telstra's undertaking terms and conditions

- are reasonable to the extent they apply de-averaged charges of $93-108 for a 'vacant' ULLS connection (VULLS)
- are not reasonable to the extent they apply de-averaged charges of $93-108 for other types of ULLS connection, namely, for an 'in-use' (IULLS) or a 'transfer' (TULLS) ULLS connection
- are not reasonable to the extent the undertaking is unclear as to whether it applies to multiple or bulk connections. The uncertainty and consequent potential for the undertaking to be applied to multiple and bulk connections leads the ACCC to the view that the terms and conditions are not reasonable.

The ACCC has reached these conclusions after assessment of the statutory reasonableness criteria in s. 152AH of the Act. The ACCC's draft view is that it considers that the price terms and conditions in the ULLS connection undertaking:

- are unlikely to promote the LTIE, as they will not promote competition and will not encourage the economically efficient use of infrastructure
- result in Telstra recovering more than is necessary to promote Telstra's legitimate business interests, for certain types of ULLS connections
- would harm the interest of access seekers, the persons who have rights to use the ULLS, who would pay excess costs for certain connections and be limited in their ability to compete
- exceed the direct costs of providing access to the ULLS, for certain types of ULLS connections
- do not have a material effect on the operational and technical requirements necessary for the safe and reliable operation of the ULLS or other telecommunications services
- could potentially encourage inefficient connection procedures by Telstra.

The key findings that informed the ACCC's views on the criteria are:

- the connection charge in the undertaking is appropriate for VULLS connections, and broadly reflect the efficient costs of making such a connection
- however the connection charge in the undertaking is excessive for IULLS and TULLS connections, and does not reflect the direct costs of an efficient provider in making those connections

- the excessive prices for IULLS and TULLS connection may inhibit competition from access seekers as they would not be able to compete for end-users on an equal footing with Telstra
- the undertaking is unclear on the treatment of managed network migrations (MNMs) and this uncertainty could inhibit competition were the undertaking prices enforced in MNMs

Having regard to these findings the ACCC forms the draft view that it is not satisfied that the terms and conditions contained in the ULLS connection undertaking are reasonable.

LSS undertaking

The ACCC's draft views are that Telstras's undertaking terms and conditions;

- are not reasonable to the extent they apply an average charge of $90 for single LSS connections
- are not reasonable to the extent they apply disconnection charge where a cancellation is occasioned by an end user customer churning from one access seeker to another or back to Telstra
- are not reasonable to the extent they apply a disconnection charge of $90 where all services are cancelled by an end user
- are not reasonable to the extent the undertaking is unclear as to whether it applies to multiple or bulk connections. The uncertainty and consequent potential for the undertaking to be applied to multiple and bulk connections leads the ACCC to the view that the terms and conditions are not reasonable.

The ACCC has reached these conclusions after assessment of the statutory reasonableness criteria in s. 152AH of the Act. The ACCC's draft view is that it considers that the price terms and conditions in the LSS connection undertaking:

- are unlikely to promote the LTIE, as they will not promote competition and will not encourage the economically efficient use of infrastructure
- result in Telstra recovering more than is necessary to promote Telstra's legitimate business interests
- would harm the interest of access seekers, the persons who have rights to use the LSS, who would pay excess costs for connections and disconnections and be limited in their ability to compete
- exceed the direct costs of providing access to the LSS
- do not have a material effect on the operational and technical requirements necessary for the safe and reliable operation of the LSS or other telecommunications services
- would encourage inefficient connection and disconnection processes currently employed by Telstra.

The key findings that informed the ACCC's views on the criteria are:

- the connection charge in the undertaking is excessive for LSS connections, and does not reflect the efficient direct costs of the connection

- an efficient operator would not separately disconnect the LSS in a separate process from connection when the end-user customer churns between providers, but rather co-ordinate the disconnection and reconnection. The disconnection charge in the undertaking is therefore inappropriate, and is excessive and does not reflect the direct costs of an efficient provider even in the limited situations where a separate disconnection is warranted
- the excessive connection price and unnecessary disconnection price may inhibit competition from access seekers as they would not be able to compete for end-users on an equal footing with Telstra
- the undertaking is unclear on the treatment of managed network migrations (MNMs) and this uncertainty could inhibit competition were the undertaking prices enforced in MNMs

Having regard to these findings the ACCC forms the draft view that it is not satisfied that the terms and conditions contained in the LSS connection undertaking are reasonable.

6.3. Telstra's cost model

Telstra contends that it has modelled the efficient and forward looking costs of making ULLS and LSS connections and disconnections. Thus, in Telstra's view, the modelling seeks to abstract from the actual costs incurred by Telstra and attempts to model the costs an efficient operator would incur in effecting connections and disconnections of these services for access seekers.[37]

As a ULLS or LSS connection or disconnection are events which incur costs once, rather than in an ongoing manner, Telstra contends that the charges for these events should be 'once-off' charges. The ACCC draft view is to accept this approach.

As previously noted in section 3, Telstra also proposes to charge geographically based or de-averaged prices for ULLS connections and volume weighted average prices for LSS connections and disconnections.

The key cost elements included in Telstra's cost models for ULLS and LSS connections and disconnections are as follows:

- labour costs of travelling to an exchange to perform jumpering work (discussed in section 6.4.3)
- labour costs incurred within exchanges to perform jumpering work (discussed in section 6.4.1 and 6.4.2)
- 'back of house' costs incurred in supporting the deployment and the line testing work of field technicians performing jumpering work (discussed in section 6.4.4)
- labour costs incurred in line testing and pair tagging in relation to VULLS connections only (discussed in section 6.4.5); and
- costs of a vehicle and equipment used by field technicians to make connections and disconnections.

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[37] Telstra, *Telstra's submission in support of the ULLS connection and disconnection charges undertaking dated 13 December 2004*, February 2005, p.3.

The ACCC has formed a draft view that the cost models proposed by Telstra to cost ULLS connections and LSS connections and disconnections have an appropriate structure and approach to modelling relevant cost factors. In forming this view, the ACCC notes that parties commenting on Telstra's proposals to date have not taken issue with the modelling per se but, rather, have disputed the inputs used in the model.

The ACCC has concerns with a number of the technical and operational assumptions that underpin key cost inputs. These concerns are outlined in subsequent sections of this report.

6.4. Analysis of key cost inputs

In assessing these inputs the ACCC has had regard to the matters set out in section 152AH(1) of the Act, and notes the particular relevance of the requirements to have regard to the LTIE, the direct costs of providing access, the economically efficient operation of the ULLS and LSS, and the legitimate business interests of Telstra.

6.4.1. Hourly labour cost

Telstra's cost model

Telstra's cost model for ULLS and LSS connections has, as a key input, the hourly labour costs for the technicians that perform ULLS and LSS jumpering.[38] These hourly labour costs are used in conjunction with Telstra's claimed times for travel to the exchange, jumpering and (for ULLS) pair testing and tagging to contribute to Telstra's claimed costs for ULLS and LSS connections.

Telstra's hourly labour rates are calculated in the Annexure B to both its supporting submissions[39] and consist of direct wage costs, direct loadings and cost mark-ups for overheads. The direct wage costs and direct loadings are identical for ULLS and LSS. However the overhead mark-ups on top of the sum of direct wages and direct loadings vary between the ULLS and LSS. The statement of **[c-i-c]** provides detail on Telstra's calculations.[40]

Appendix A to this draft report contains details of Telstra's cost model and derivation of an hourly labour rate, the views of interested parties and the ACCC's assessment of Telstra's calculations. Telstra derives hourly labour rates of **[c-i-c]** for ULLS connections and **[c-i-c]** for LSS connections. With respect to the matters set out as relevant under section 152AH(1) the ACCC's assessment is that there would appear to be two appropriate minor adjustments to Telstra's calculations with regard to payroll tax and long service leave. An assessment of Telstra's indirect cost overheads and the percentage of time spent actually making connections is less easily done. The ACCC questions the appropriateness of the costs proposed by Telstra and considers that it would be more appropriate to assess the efficient hourly labour rate for

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38 While Telstra's initial supporting submissions and cost models originally contained estimates of the hourly labour cost for back-of-house staff, Telstra subsequently revised its basis for claiming back-of-house costs. This is discussed further in section 6.4.4.

39 Telstra, *Telstra's submission in support of the ULLS connection charges undertaking dated 13 December 2004*, Feb 05.

Telstra, *Telstra's submission in support of the SSS connection and disconnection charges undertaking dated 13 December 2004*, Feb 05.

40 **[c-i-c]**, *Statement of **[c-i-c]***, 26 May 2005.

connection work by reference to quotes from third-party contractors for ULLS and LSS connection work.

ACCC's draft view

Use of third party contractor information

The ACCC provided a s. 152BT information request to Telstra on 18 August 2005, part of which requested that Telstra provide information on its use of third party contractors to provide connection or jumpering work for the ULLS and/or LSS. Telstra provided a response to this request on 29 September 2005. The response provided rates quoted to Telstra for the jumpering work involved in connecting the ULLS and LSS. Prices were quoted on three different bases depending on the manner in which work is distributed and IT equipment is supplied. The ACCC considers that the price basis most comparable to Telstra's own employees' jumpering work is **[c-i-c].**

The per connection prices quoted to Telstra by third party contractors for the **[c-i-c]** jumpering work for connection of ULLS and LSS are:

Table 6.4.1 ULLS connection prices quoted to Telstra per connection

Contractor	**Up to 50 ToW per day**	**50-100 ToW per day**	**Over 100 ToW per day**
masked	**[c-i-c]**	**[c-i-c]**	**[c-i-c]**
masked	**[c-i-c]**	**[c-i-c]**	**[c-i-c]**
masked	**[c-i-c]**	**[c-i-c]**	**[c-i-c]**
masked	**[c-i-c]**	**[c-i-c]**	**[c-i-c]**

Table 6.4.2 LSS connection prices quoted to Telstra per connection

Contractor	**Up to 50 ToW per day**	**50-100 ToW per day**	**Over 100 ToW per day**
masked	**[c-i-c]**	**[c-i-c]**	**[c-i-c]**
masked	**[c-i-c]**	**[c-i-c]**	**[c-i-c]**
masked	**[c-i-c]**	**[c-i-c]**	**[c-i-c]**
masked	**[c-i-c]**	**[c-i-c]**	**[c-i-c]**

The ACCC notes that the prices quoted for ULLS connection work are equivalent to the steps in paragraphs 6(c)(v) to 6(c)(xvi) of the **[c-i-c]** statement and that the prices for LSS connection work are equivalent to the steps in paragraphs 11(c)(v) to 11(c)(xxiv) of the **[c-i-c]** statement.[41] The ACCC notes the advice of its consultant

[41] **[c-i-c]**, *Statement of **[c-i-c]***, 25 May 2005, pp. 8-10, 13-14.

Consultel that earlier steps in that statement would have a negligible impact on costs and/or be unlikely to be followed.[42]

The ACCC agrees with the view put by Consultel that the quoted prices for connection are likely to more closely represent 'efficient' rates, given that they are derived from a competitive tendering process whereby contractors would have quoted rates to Telstra that would allow costs and achieve a commercial return.[43] The ACCC agrees that these prices are likely to represent the best estimate available of the costs incurred by an efficient operator for connection activities. The ACCC considers that these prices would preserve Telstra's legitimate business interests as the rate would include a normal commercial return.

The average prices from the quotes provided by contractors are **[c-i-c]** for ULLS connection and **[c-i-c]** for LSS connection. Consultel has recommended that 10% be added to these values to account for contract management overheads and come up with a proxy for an efficient exchange jumpering process. While such an overhead may overstate the costs of an efficient provider (to the extent that its own staff, if operating at the same efficiency, would not require third party contract management), the ACCC considers that this approach may be reasonable in that an efficient operator might contract out its jumpering work. Alternatively the additional 10% could be seen to account for the allocated field supervisor wage amount claimed by Telstra. In either case the ACCC considers that the 10% uplift is appropriate.

The comparison of these rates to the Telstra cost estimates are:

Table 6.4.3 Third party contractor and Telstra jumpering rates

Cost estimate	ULLS	LSS
Average contractor quoted price for jumpering work	**[c-i-c]**	**[c-i-c]**
Average contractor quoted price plus contract management overhead	**[c-i-c]**	**[c-i-c]**
Telstra cost estimate for jumpering work	**[c-i-c]**	**[c-i-c]**

The Telstra cost estimates are derived from the hourly wage rates estimated by Telstra of **[c-i-c]** and **[c-i-c]** for the ULLS and LSS respectively, multiplied by Telstra's estimate of the time taken for the jumpering process of **[c-i-c]** minutes and **[c-i-c]** minutes. The ACCC also considers that the contractor rates would include an allowance for tools – which Telstra has claimed at **[c-i-c]** per connection in Bands 1 and 2 and **[c-i-c]** per connection in Bands 3 and 4.

The ACCC considers that the third party contractor rates should be used as a better guide to efficient costs and that Telstra's claimed jumpering cost is unlikely to be reasonable as a result. It considers that these rates will be sufficient to recover Telstra's costs of performing jumpering and that using this rate would therefore not harm Telstra's legitimate business interests.

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42 Consultel, *Analysis of ULLS and LSS undertakings and subsequent submissions*, November 2005, p. 25.

43 Consultel, p. 12

Application of third party contractor information to calculate labour rates for travel and tagging and testing

The ACCC is aware that the use of the third party contractor information is only directly relevant to jumpering costs and that the difference between the third party charges and Telstra's charges may be due to a shorter average time to affect the jumpering work or a lower labour cost or some combination of both. Consultel has suggested that it may be appropriate to discount the wage rate used for calculating travel and tagging and testing costs by **[c-i-c]** to reflect the difference between the third party contractor jumpering costs and Telstra's jumpering costs – effectively assigning the third party contractor efficiencies to the labour cost.[44]

While the ACCC notes Consultel's view, it considers that its decision to accept or reject the undertakings does not depend crucially on the labour rates used for travel or jumpering (as discussed below) and that there is insufficient information available at this stage to say where the discounted costs should be attributed. The ACCC considers that it would be inappropriate to attribute all of the reduced cost to labour rate at this stage as it may harm Telstra's legitimate business interests to state that the hourly rate is inefficient. This would be as it may cause corresponding decreases to the costs for pair tagging and travel where the cost should have actually been allocated to the time taken for jumpering.

As such, the ACCC does not intend to make a definitive conclusion as to the hourly labour rate. However, it notes that Telstra's estimate can be seen as an upper bound on the possible hourly costs, and notes its minor amendments in relation to payroll tax and long service leave, which would revise these upper bound estimates to **[c-i-c]** per hour for ULLS and **[c-i-c]** per hour for LSS. The ACCC also accepts Consultel's recommendation that Macquarie Telecom's estimated hourly rate is likely to be lower than efficient costs.

6.4.2. 'In-exchange' work

Telstra's view

The processes and tasks undertaken in Telstra's exchanges to effect ULLS and LSS connections are described in detail in the statement of **[c-i-c]**.[45]

The ACCC understands that the parties making submission on the Undertakings do not take particular issue with the need for the processes described in the Luscombe statement. However, the efficiency with which these tasks are performed, especially in terms of average times estimated by Telstra to perform these tasks, are disputed.

The average times to effect jumpering work for various connections and disconnections, as claimed and used by Telstra in its cost modelling are set out in Table 6.4.4 below.

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44 Consultel p.13

45 **[c-i-c]**, *Statement of **[c-i-c]***, 25 May 2005, pp. 8-10, 13-14.

Table 6.4.4 Average times taken to perform ULLS and LSS connections and disconnections, Telstra

Service	Connection	Disconnection
ULLS	[c-i-c] minutes	[c-i-c] minutes
LSS	[c-i-c] minutes	[c-i-c] minutes

As part of its First s. 152BT request to Telstra, the ACCC noted that:[46]

> ...Telstra has relied on what could be characterised as anecdotal evidence of estimates of times taken to perform jumpering work. In giving weight to any such views the ACCC would prefer that Telstra should support its estimates of in-exchange work time by other than opinions, albeit informed opinions, of its staff. The ACCC notes that an interrogation of the Telstra 'Connect' system was able to ascertain average travelling times to effect ULLS and LSS connections.
>
> The ACCC therefore requests that Telstra provide further information based on actual records and/or an interrogation of its 'Connect' system that demonstrates, in as verifiable and robust a way as possible, estimates of the time it takes to perform jumpering work in exchanges.

In response to this request, Telstra advised that its systems could not capture records of actual times taken by technicians to perform jumpering work. However, in addition to the estimates submitted by **[c-i-c]**, Telstra stated that it also relied upon the findings of its own expert engaged for the Primus-Telstra LSS arbitration, Mr Dick Prince, with respect to the time estimated for SSS connections, which he determined was reflective of necessary and efficient work practices.[47] Telstra foreshadowed that Mr Prince was being commissioned to write a report for the Undertakings on this matter. However, the ACCC has yet to receive this submission.

Views of interested parties

The CCC has disputed the times claimed by Telstra for in-exchange jumpering work and argues for a set of times shown in Table 6.4.5.

Table 6.4.5 Average times taken to perform ULLS and LSS connections and disconnections, CCC

Service	Connection	Disconnection
ULLS	[c-i-c] minutes	[c-i-c] minutes
LSS	[c-i-c] minutes	[c-i-c] minutes

ACCC's view

As previously discussed in the analysis of hourly labour rates, the ACCC notes the conclusions of Consultel that the rates charged of Telstra by third party (3P)

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[46] ACCC, *Telstra's 13 December 2004 access undertakings relating to ULLS and LSS connection and disconnection charges – Request for further information under section 152BT of the Trade Practices Act 1974*, 12 August 2005, p.2.

[47] Telstra, *Commission 152BT request in respect of Telstra's access undertakings relating to ULLS and SSS connection and disconnection charges dated 13 December 2004*, 29 September 2005, p. 3.

contractors provide an appropriate basis upon which to assess the in-exchange work costs claimed by Telstra.[48]

Telstra's costs amount to **[c-i-c]** for ULLS connections (based on a time of **[c-i-c]** minutes charged at **[c-i-c]** per hour) and **[c-i-c]** for a LSS connection (based on a time of **[c-i-c]** minutes charged at **[c-i-c]** per hour). However, Consultel concluded that an average cost for a ULLS connection of only **[c-i-c]**, based on the rates charged by 3Ps, would be more reasonable. The ACCC notes that a rate of **[c-i-c]** reflects an average of all the charges levied by 3Ps uploaded by 10 per cent to allow for management overhead costs.

For LSS connections, Consultel concluded that an average cost of **[c-i-c]**, based on the rates charged by 3Ps, uploaded by 10 per cent, was more reasonable. On these rates, Consultel stated that

> We believe the price quoted by third party contractors in a contestable and competitive tender process forms a reasonable and valid independent estimate of the efficient cost to perform this function, and when uplifted by a factor to account for contract management and supervision overhead a cost of **[c-i-c]** for the exchange jumpering labour component of a ULLS, and **[c-i-c]** for LSS jumpers is a reasonable cost.[49]

The margin of around **[c-i-c]** between Telstra's modelled costs and the 3P charges may be due to either a shorter average time to perform the jumpering work or a lower labour cost or a combination of both. A presumption that 3Ps pay their staff about the same rate as Telstra would imply that ULLS jumpering would take 3Ps, on average, about **[c-i-c]** minutes. The ACCC notes that Consultel's desktop study suggests such a time would not be unreasonable.[50]

The ACCC's draft view is that Telstra's claimed costs are excessive, having regard to 3P contractor rates for ULLS connections work performed in exchanges. However, the ACCC cannot establish whether it is especially the labour cost or the time to perform the jumpering work that lies behind Telstra's relative inefficiency.

6.4.3. Travel time and costs

Telstra's view

The average times used by Telstra for various regions are shown in Table 6.4.6:

Table 6.4.6 Travelling time to effect ULLS and LSS connections and disconnections, Telstra

Service and process	CBD	Regional	Regional	Metro
ULLS connection	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
ULLS disconnection	0	0	0	0
LSS connection and disconnection	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]

48 Consultel, p. 13

49 Consultel, p. 27.

50 Consultel, p. 28.

Telstra contends that the travel time estimates that it uses as inputs in its single connection and disconnection cost models are *average* travel time measures, based on actual data stored in its 'Connect' system.[51]

Telstra's 'Connect' computer-based system assigns the work required of Telstra's field technicians to support the supply of Telstra's services, including the ULLS and SSS. Telstra submits that an important objective in performing this assignment of work is the minimisation of travel time between jobs, subject to the achievement of other priorities, such as meeting statutory customer service obligations and private contractual obligations. As stated by **[c-i-c]**,

> Connect assigns tasks to field technicians according to certain parameters or business objectives and business value functions (by evaluation of the work schedule as a whole) that:
>
> (a) ensure that orders are completed within the timeframe required by Telstra's customer service and other contractual obligations;
>
> (b) give priority to the completion of tasks due today before tasks that are due tomorrow
>
> (c) apply Telstra's "on the day" business priorities tasks for the day – complete high priority tasks (such as "Life and Limb Emergencies" or damage to Telstra equipment that poses a risk to the public - rated a 99 or 98 out of 100) over lower priority tasks (such as exchange tasks for retail and wholesale customers - rated an 85 - or payphone install work - rated a 55);
>
> (d) maximise the number of jobs per day that can be completed by Telstra technicians by:
>
> (i) allocating work to technicians based at "manned" exchanges where possible;
>
> (ii) ensuring the technicians allocated the work have the sufficient skills to complete the work expediently; and
>
> (iii) minimising the travel time required by Telstra technicians to complete the daily tasks allocated to them; and
>
> (iv) allocating tasks in the most cost effective manner - for example, a schedule filled with the minimum amount of travel is more cost-effective than a schedule filled with long travel times.[52]

The ACCC sought further information from Telstra about the nature and bases of these average travel times in its First BT request.

The ACCC understands that the times shown in Table 6.4.6 reflect the *average* time taken for technicians to travel to exchanges to perform work there for *all* assignments performed in such locations, not just for ULLS and SSS connections and disconnections[53]. Furthermore, Telstra states that it now has (undisclosed) data taken from the Connect system which supports the view that the travel times for ULLS

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51 **[c-i-c]** *Statement of **[c-i-c]***, 7 July 2005 pp. 5-6.

52 Extract from **[c-i-c]** *Statement of **[c-i-c]***, 22 June 2005 p.3. The ACCC has used this extract from a submission by Telstra to a separate ACCC process.

53 Telstra, *Commission 152BT request in respect of Telstra's access undertakings relating to ULLS and SSS connection and disconnection charges dated 13 December 2004*, 29 September 2005, p. 2.

connections would be more than the averages it has used in its ULLS connection cost modelling.[54]

The trips or assignments included in the calculations exclude trips to perform MNMs[55]. The average times calculated are based on the activity undertaken over the 11 month period 1 June 2004 to 31 May 2005 when **[c-i-c]** ULLS and **[c-i-c]** LSS connections were made.[56] Also, **[c-i-c]** LSS disconnections were made for the 12 month period ending 30 June 2005.[57]

The zero travel times assumed for ULLS disconnections reflects the fact that there is no technical necessity or imperative to effect a ULLS disconnection, immediately upon notification that the service is no longer required, enabling ULLS disconnections to be performed consequent upon a trip being initiated to perform other work at the exchange. As stated by Telstra

> In costing the disconnection process, given that it is not strictly time critical, these jobs can be combined with other tasks that may be required at the exchange. Therefore, Telstra has not included any cost for travelling time to the exchange. That is, Telstra has taken a very conservative approach of allocating all of the costs of the travelling time to the other tasks undertaken at the exchange when the jumper is eventually removed.[58]

Telstra has also confirmed that zero travel times were recorded for some of the individual exchange work assignments which the ACCC understands reflects multiple assignments being performed by a technician as a result of a single trip to an exchange. As stated by **[c-i-c]**,

> The data in Connect takes into account tickets of work that are grouped together at exchanges and do not require travel. For example, if two tickets of work (TOWs) are carried out at an exchange, only one period of time is recorded and allocated to the two tickets performed.[59]

Reflecting the objective of minimising travel time, the Telstra states that the Connect system aggregates the assignment of work, that is, it allocates similar TOWs in a similar location to a particular technician to the extent that,

> Currently, approximately 30 per of the field workforce receive aggregated tickets of work.[60]

However, while there is a degree of aggregation with respect to the assignment of ULLS and LSS connection jobs, with consequent reductions in travel times allocated per connection, the ACCC notes that Telstra has stated that

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54 Ibid p. 3.

55 Ibid p. 2.

56 Ibid p. 2.

57 Ibid, p. 2.

58 Telstra, *Telstra's submission in response to the Australian Competition and Consumer Commission's Discussion Paper in respect of ULLS received March 2005*, 27 May 2005, p. 36.

59 **[c-i-c]** *Statement of **[c-i-c]***, 7 July 2005, p 5.

60 Ibid, p. 4.

> Telstra does not presently have a process in place to facilitate batching of connection requests because to date the demand for ULLS and SSS has been insufficient to justify the incurring of costs to introduce such a process.[61]

The ACCC understands that the statement of **[c-i-c]** refers to the lack of an explicit batching process where ULLS and/or LSS connections for a particular access seeker are hoarded until a specified volume is reached and then technicians are despatched to an exchange to make a number of ULLS and/or LSS connections at a time. While there is no explicit process whereby ULLS and/or LSS connections are deliberately hoarded and then technicians are despatched to an exchange to make a number of ULLS and/or LSS connections at a time, a less explicit and more incidental batching process occurs whereby it can be the case, on any one day, that ULLS and LSS connection jobs or ToWs are combined together, or combined with other exchange work or ToWs, by the Connect system.

Thus, batching of TOWs relating to ULLS and LSS connections or disconnections occurs as a product of the operation of the Connect system allocating TOWs across the full range of field work rather than ULLS and LSS TOWs being aggregated as a result of a separate process dedicated to the ULLS and/or LSS.

Views of other interested parties

The CCC submitted that there should be zero travel time for ULLS and LSS connections at CBD and 'manned' metropolitan and regional exchange locations.[62] Where a travel cost estimate is required, because connections are made at 'unmanned' exchanges, the CCC contends that Telstra's travel time should reflect a per unit estimate derived from at least 20 connections per exchange visit for most unmanned connections[63]. Thus, where Telstra claims **[c-i-c]** minutes, the CCC argues that the travel time per connection should be one-twentieth of this.

Table 6.4.7 Proposed travel times for single connections

	CBD	Metro manned (minutes)	Metro unmanned (minutes)	Regional manned (minutes)	Regional unmanned (minutes)	Rural unmanned (minutes)
Telstra	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
CCC	0	0	[c-i-c]	0	[c-i-c]	[c-i-c]

1. The CCC assumes 4 connections are made for each trip to a Rural exchange.

Optus takes issue with the Telstra travel estimates from a number of points of view. In particular, it contends that the Telstra estimates reflect the current rate of ULLS take-up and, as this take-up increases, the per ULLS connection travel time will

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61 **[c-i-c]**, *Statement of **[c-i-c]***, 26 May 2005. p. 2.

62 GQAAS, *Competitive Carriers Coalition response to the ACCC Discussion Papers on ULLS and LSS Undertakings*, May 2005, p.24.

63 Ibid.

decrease[64]. It contends that this will occur over the undertakings period until 30 June 2006. One source of travel cost economy, according to Optus, will be that technicians will not be required to travel as far to exchanges, as serviceable areas per technician will decrease as more technicians are employed.[65]

More precisely, Optus submits that Telstra's travel time estimates would likely reflect no more than 1 connection per day per exchange based on the number of ULLS connections made at the time of lodgement (13 December 2004)[66]. Optus contend that, based on its ULLS forecasts for June 2006, connections will rise to **[c-i-c]** services per exchange per day for services, excluding bulk migrations. In short, Optus argue that travel could be at least halved[67].

ACCC's draft view

In relation to ULLS connection travel costs, the ACCC notes the views of its consultant Consultel that distinctions between types of ULLS connections need to be made, which, inter alia, impact on the assessment as to reasonable travel times to effect ULLS connections.

The different types of ULLS connections identified by Consultel include:

- 'in use' ULLS (IULLS) connections – where a ULLS is provided on a copper pair that is currently being used by Telstra to provide PSTN-based services on a wholesale or retail basis;
- 'transfer' ULLS (TULLS) connections - where a ULLS previously provided to one access seeker is churned to another access seeker; and
- 'vacant' ULLS (VULLS) connections – a new ULLS connection on an otherwise unused copper line which has not previously been operating a PSTN-based or other service (this may be a currently vacant copper pair or may require the building of a new copper path).

As also further discussed in more detail under 'Pair tagging and testing' below, it is important to distinguish between ULLS connections that can be performed in full at an exchange ('in use' and 'transfer' ULLS connections) and ULLS connections that require some additional travelling from the exchange to a customer premises, and intermediate points in between ('vacant' ULLS connections).

For vacant ULLS (VULLS) connections, Consultel commented in its Interim Report that it was necessary (and efficient) for a technician to travel to an end user customer's premises to effect such a connection and to travel from that location to perform the next ToW assignment.[68] Thus, travel times for such connections would need to refect this degree of travel. As noted above, the times claimed by Telstra

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64 Optus *Optus submission toAustralian Competition and Consumer Commission on telstra's ULLs undertakings*, May 2005, p. 26.

65 Optus, p. 27.

66 Optus, p. 26.

67 Optus, p. 35.

68 Consultel , p. 17.

reflect travel between all assignments rather than between ULLS connection assignments. Indeed, Telstra claims the latter would be higher. In this regard, the ACCC notes that, to the extent that ULLS connections represent **[c-i-c]** per cent of all ULLS connections, as claimed by Telstra[69], then this statement may, indeed, be valid.

For other than vacant ULLS connection, however, Consultel concluded that travel times for these ULLS connections would be a fraction of the time that elapses between all ToW assignments because this work would (and should) be batched with other work performed only at exchanges, such as connecting ADSL services or making LSS connections. The times that Consultel considers might be reasonable for such ULLS connections is equivalent to the average travel time it estimates for LSS connections.

For LSS connection travel costs, Consultel considered that the average travel times for all ToW assignments overstates the average travel costs that would or should apply for assignments involving LSS connections at exchanges only. As these connections can be batched with other exchange-based work, notably, ADSL connections, then the travel times should reflect a fraction of the average travel time cost. Consultel proposed a methodology for estimating this fraction at 36 per cent of the average travel cost.

The ACCC's draft view is that a discount from the average travel time cost is reasonable for both LSS and certain (IULLS and TULLS) ULLS connections for the reasons outlined by Consultel. Similarly, its draft view is that the methodology suggested by Consultel for calculating this discount is, broadly, reasonable.

For travel needed to perform vacant ULLS connections, however, the ACCC's draft view is that Telstra's time estimates are reasonable. In coming to this view, the ACCC agrees with Consultel's view that these times reflect efficient scheduling practices. There would appear to be little further scope for further travel time scale economies from expected higher daily ULLS connection rates, as suggested by Optus, because the current scheduling of ULLS connections already reflects a practice of scheduling from a very large pool of potential work, namely, all of Telstra's field work. Hence, any volume increase in ULLS connections will not greatly effect how technicians are (or should be) despatched to Telstra's various exchanges and customer premises to perform a range of connection, maintenance and other service work.

In response to the concerns of the CCC, the ACCC considers that batching of ULLS connection work already occurs to a significant degree, in terms of the batching of ULLS and LSS connection work with other Telstra work performed at exchanges (as noted and outlined above).

As stated by Telstra,

> …when individual tickets of work are allocated, it may happen that more than one ticket relates to the same exchange. …Telstra's algorithms ensure where possible that travel time is reduced. Hence where there is a capability to aggregate orders to a particular technician at a

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[69] Telstra, *Commission 152BT request in respect of Telstra's access undertakings relating to ULLS and SSS connection and disconnection charges dated 13 December 2004*, 29 September 2005, p. 4.

> particular site, Telstra will do so. This approach extends across not only the individual ULLS and LSS connections, but all TOW in a way that maximises overall efficiencies.[70]

To estimate reasonable travel costs requires judgments to be made about both reasonable hourly labour cost and time estimates. As noted in section 6.4.1, the ACCC has not formed a view on hourly labour cost. However, in the ACCC's view, as discussed below, it is possible for it to form a draft view as to the reasonableness of the undertakings without forming a view on the appropriate hourly rate.

6.4.4. 'Back of house' costs

Telstra's view

Telstra's initial submissions in support of its undertakings provided estimates of its back of house connection based on work carried out by the Data Activation Centre (DAC). Those submissions stated that the work carried out by the DAC covered three broad tasks—service qualification testing, validation of the ULLS/LSS at the point of interconnect and manual assignment of cable pairs in systems where auto assignment cannot be performed. Further detail of DAC involvement was provided in the statement of **[c-i-c]** dated 27 May 2005 which provided a list of six tasks a DAC member might have to do during a ULLS connection, four tasks a DAC member might have to do during an LSS connection, and a list of tasks for a ULLS disconnection.[71]

Those submissions estimated that these tasks would take **[c-i-c]** minutes on average for the ULLS, and **[c-i-c]** minutes on average for the LSS. Telstra then used a CFW5 labour rate to cost the back-of-house involvement in connections. Telstra also estimated **[c-i-c]** minutes of DAC involvement in ULLS disconnections and **[c-i-c]** minutes in LSS disconnections.

However, in supplementary submissions provided in July, Telstra revised its claims for back-of-house costs. Telstra's revised claims for back-of-house activities attribute costs for ULLS and LSS connections to the DAC and the Integrated Deployment Solutions (IDS) group. Telstra's revised claims for back-of-house disconnection work attributes costs to the IDS and DAC groups for ULLS disconnection and to the IDS group and Wholesale Customer Service Group (WCSG) for LSS disconnections. The statement of **[c-i-c]** provided at this time states that the IDS group is responsible for distributing tickets of work through the Connect system.[72]

Telstra's revised claim also changed the way that costs were claimed by Telstra. This was explained in the supplementary statement of **[c-i-c]** dated 6 July 2005 which states that Telstra has discovered it is unable to show how frequently some DAC tasks are performed, and therefore is unable to determine how many minutes a back-of-house staff member would take on average per connection.[73]

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70 Telstra, *Commission 152BT request in respect of Telstra's access undertakings relating to ULLS and SSS connection and disconnection charges dated 13 December 2004*, 29 September 2005, p. 5.

71 **[c-i-c]**, *Statement of **[c-i-c]***, 27 May 2005.

72 **[c-i-c]**, *Statement of **[c-i-c]***, 7 July 2005.

73 **[c-i-c]**, *Supplementary statement of **[c-i-c]***, 6 July 2005.

Telstra instead calculates the total labour cost for each group and divides it by the number of transactions handled by each group to come up with an average cost per transaction:

Table 6.4.8 Back of house costs for ULLS and LSS connections, Telstra

	ULLS		LSS	
	IDS	**DAC**	**IDS**	**DAC**
Annual labour cost	**[c-i-c]**	**[c-i-c]**	**[c-i-c]**	**[c-i-c]**
# transactions	**[c-i-c]**	**[c-i-c]**	**[c-i-c]**	**[c-i-c]**
Cost per connection	**[c-i-c]**	**[c-i-c]**	**[c-i-c]**	**[c-i-c]**

Views of other interested parties

As the revised basis for claiming back-of-house costs was only presented by Telstra in July 2005, after the period for submission to the ACCC's discussion paper, other interested parties have not had an opportunity to comment on Telstra's revised cost claims. However parties did provide comment on Telstra's initial method for claiming DAC costs on a per minute basis.

Macquarie Telecom considered that the level of costs claimed by Telstra for the DAC (**[c-i-c]**) was unreasonable, and particularly questioned whether 'validation of the ULLS at the point of interconnect' was required.[74]

Optus questioned the service qualification role of the DAC, noting that it already paid Telstra a separate **[c-i-c]** charge for service qualification testing and suggesting that Telstra might be recovering this charge twice. Optus also submitted that Telstra might be seeking to pass on the costs of inefficient IT systems given that there were costs associated with manual assigning of copper pairs where automatic systems did not work. Finally, Optus was dubious of the timings presented by Telstra.

The CCC submitted that **[c-i-c]** minutes and **[c-i-c]** minutes were excessive periods of time for ULLS and LSS connection, submitting that 2-4 minutes would be more appropriate.

ACCC draft view

DAC group

Although other interested parties have not had an opportunity to comment on Telstra's revised claimed costs, it should be noted that Macquarie, Optus and the CCC all questioned the back-of-house costs attributed to the DAC alone.

Consultel's report discussed Telstra's back-of-house processes in three sections: DAC involvement in ULLS connection, DAC involvement in LSS connection, and the IDS group.

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[74] Macquarie Telecom, *Macquarie Telecom's response to Telstra's undertakings on the unconditioned local loop service*, 1 June 2005, p. 13

With regard to the DAC involvement in ULLS, Consultel considered that the costs associated with the group would vary depending on whether the ULLS being connected was a Vacant, In-use or Transfer ULLS[75]. For VULLS, Consultel considered that the DAC would be required to spend around **[c-i-c]** minutes in the testing of the line (discussed further below at 6.4.5). For In-use or Transfer ULLS, Consultel considered that line testing would not be required, although **[c-i-c]** minutes of DAC involvement would be required to notify the DAC that cutover had occurred. Consultel considered more generally that it would be appropriate to allow 1 to 2 minutes to account for validation of the ULLS at the point of interconnect and 1 to 2 minutes for manual assignment of cable pairs. Consultel considered that any allowance for service qualification would be negligible as this would be an automatic process.

Based on these conclusions, Consultel considered that Telstra's claimed DAC costs of **[c-i-c]** are efficient for a vacant ULLS, but overstate the efficient charge for an In-use or Transfer ULLS. The ACCC considers that Consultel's assessment of the DAC costs for ULLS is appropriate, and therefore accepts Telstra's submission of **[c-i-c]** of DAC costs for Vacant ULLS but not for In-use or Transfer ULLS.

With regard to the DAC involvement in LSS, Consultel considered that validation of point of interconnect should not require manual activity, that minimal time should be allowed for service qualification testing and that connection assistance would require around 1 to 2 minutes on average. Consultel considered that the DAC involvement in LSS connections should be around 2-3 minutes on average. The ACCC considers that Consultel's assessment of the DAC costs for LSS is appropriate and therefore accepts that Telstra's estimate of DAC costs for LSS is likely to overstate efficient costs.

While Consultel's report takes a different approach to assessing DAC costs to that presented by Telstra, the ACCC considers that Consultel's approach, which is based on its estimate of the appropriate time spent on a connection by DAC staff, might be more likely to be close to economically efficient costs than Telstra's estimate which simply uses the historical costs of the DAC group.

IDS group - are the costs of the IDS group already recovered by Telstra?

The ACCC notes that the larger portion of Telstra's claimed back-of-house costs are attributed to the IDS group, who distribute tickets of work to technicians using Telstra's Connect IT system. This function is not limited to the ULLS and LSS but rather covers wider work such as PSTN connections and general fault repair work.[76] Telstra's claimed costs include labour costs but also claims for overheads such as IT expense.

As the IDS group work covers a variety of connections, the ACCC had a concern that the IDS group costs may already be included in other cost categories relating to common network costs which are reflected in other charges for PSTN and other services, including network costs allocated to ULLS and recovered in monthly access

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[75] A Vacant ULLS is a new ULLS connection on an otherwise un-used copper line. An In-use ULLS is a ULLS connection on a copper lien that currently carries a PSTN service. A Transfer ULLS is a ULLS connection used by one access seeker that is transferred to another access seeker after the end-user switches telecommunications providers.

[76] **[c-i-c]** *Statement of **[c-i-c]***, 7 July 2005, p. 4

charges. If so, it would be inefficient for Telstra to recover these costs twice over in both connections and recurring charges.

As such the ACCC requested that Telstra provide further information on the way in which its accounting systems capture IDS group costs and whether the costs had already been accounted for in mark-ups over operating and maintenance costs within Telstra's PIE II model.[77]

Telstra responded that there was no double counting of costs because the mark-ups within the PIE II model had been determined when ULLS take-up was very small (around 1600 connections). As such, only the costs associated with connecting that small number of connections would have been accounted for, and any further connections would be incremental to costs already in the cost pool. Telstra states that this means that it is appropriate to recover IDS costs within connection costs.[78]

At this stage the ACCC is concerned that IDS costs may be being recovered twice. Based on the ACCC's understanding of the information provided by Telstra, recovery of IDS group costs does occur within the network costs in the PIE II model. However Telstra is saying that the ULLS take-up now is incremental to the costs already accounted for in the model and that it is appropriate that these incremental costs are recovered in connection charges.

The ACCC considers that this approach may be problematic. Firstly, the ACCC questions whether the costs are properly incremental. Telstra's claim that the IDS costs associated with ULLS and LSS work are incremental seems to conflict with the approach it has taken to calculating costs, where it has simply produced an average cost across all tickets of work. If the costs associated with ULLS connection work are properly incremental, then the ACCC would expect that Telstra would be able to separately identify these costs. However Telstra has instead produced an average amount per connection from its common costs that it has then allocated to ULLS connections.

The ACCC considers that it could be expected that the overall costs of the IDS group may not have changed significantly since the time where the mark-ups were determined. In particular, it might be expected that as the number of ULLS connections has increased, the amount of other types of exchange work would have decreased as less lines of other types would be available. This could particularly be true given that the total number of fixed basic access lines has consistently dropped since 2000. This would leave IDS group costs at the same total amount since 1999-00.

If the costs associated with ULLS and LSS connections are not incremental, it would be inappropriate for Telstra to recover a contribution to IDS costs within its ULLS and LSS connection charges as they would already be fully recovered within the network costs in the PIE II model. For the costs to be incremental as Telstra has claimed, the costs must be avoidable if the ULLS service was no longer provided by Telstra. However the ACCC considers it more likely that, if the ULLS service was no

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[77] ACCC, *Telstra's 13 December 2004 access undertakings relating to ULLS and LSS connection and disconnection charges – Request for further information under section 152BT of the Trade Practices Act 1974*, 12 August 2005, p. 3

[78] Telstra, *Commission 152BT request in respect of Telstra's access undertakings relating to ULLS and SSS connection and disconnection charges dated 13 December 2004*, 29 September 2005, p. 4

longer available, any IDS group costs associated with ULLS connection work would be likely to move towards PSTN connection work.

However there may have been some incremental IDS group costs associated with the ULLS and LSS services. Even if this is true, the ACCC considers that Telstra's proposed charging structure may still be problematic. This is because, as stated above, the amount that Telstra is seeking to recover for IDS group costs in its connection charge cost model is based on an average per ticket of work cost. However Telstra has claimed that the costs associated with the ULLS are incremental. The ACCC considers that average costs and incremental costs are unlikely to be the same.

Telstra has presented evidence that various elements of IDS group work, such as the allocation and dispatch of tickets of work to field technicians, are handled automatically by the Connect system.[79] To the extent that the costs associated with such automated work would not be expected to vary with the number of tickets, the variable incremental costs per connection of the IDS group would be low and fixed costs would be high. These fixed costs would be already recovered within PIE II as they would have already been incurred at the time the O&M mark-ups were determined. As such, the ACCC considers that all of the costs claimed by Telstra in its ULLS and LSS connection and disconnection charges are unlikely to be incremental. Telstra should therefore not recover both the average costs in the connection charge and the contribution already made by access seekers within PIE II. In such a situation Telstra is likely to be at the least recovering the fixed costs of the IDS group and the Connect system twice over.

The ACCC considers that in such a case where Telstra is recovering an average cost amount in its connection and disconnection charges, it might be appropriate that the O&M markups on network costs in PIE II are reduced. However this could be problematic and would introduce a difference in the way Telstra recovers its own costs for exchange work—by ongoing charges—and the way in which access seekers are charged for these costs—by upfront charges. As such the ACCC considers that it would perhaps be more appropriate to include any additional costs from ULLS connections in the O&M markups. This would also make cost recovery consistent between Telstra and access seekers.

The ACCC notes Telstra's comment that the regulatory accounts used to derive O&M ratios will only include connection expenditure for a particular year. However the ACCC also notes that Telstra has said that there were **[c-i-c]** million tickets of work forecast for 2004/05 and that Telstra has elected to derive its costs based on all tickets of work. The ACCC has no reason to believe that the overall tickets of work would be any lower in 1999-00 than in any other year.[80] The ACCC therefore considers that Telstra's comment does not change the ACCC's analysis.

The ACCC remains concerned that Telstra may not be recovering these back-of-house costs in an appropriate manner, as it is not clear that costs have increased or that, if

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79 **[c-i-c]** *Statement of **[c-i-c]***, 7 July 2005, p. 3

80 While information on the tickets of work in 1999-00 has not been presented to the ACCC, the ACCC further notes that Telstra has previously said that there were **[c-i-c]** connections on new estates only in 1999-00: Annexure E to Telstra, *Submission in relation to the methodology used for deriving prices proposed in its undertakings*, 13 February 2003. The ACCC expects that there would be many more non-new estate connections and non-connection tickets of work.

they have, Telstra is not recovering at least part of its costs twice. The ACCC invites comment on this issue from Telstra and other interested parties.

IDS group - costs incurred by Telstra per ULLS or LSS connection

If Telstra's claimed costs are genuinely incremental and its recovery approach is appropriate, it is necessary for the ACCC to estimate the appropriate level of costs incurred by the IDS group.

The ACCC notes the advice of Consultel that the tasks carried out by the IDS group would be likely to be more automated than those carried out by the DAC group, and that it might reasonably be expected that there would be less IDS labour cost per connection than for the DAC. Consultel derives a cost for efficient IDS group activity based on the avoidable labour costs if no ULLS connections were made, and estimates that this would be in the region of **[c-i-c]** depending on overhead cost uplift. Based on this assessment, Consultel considers that the Telstra's costs claims for the IDS group are likely to be excessive.[81]

The ACCC considers that it is appropriate to measure IDS group costs for ULLS and LSS connection in the way presented by Consultel, although being based on Telstra's historical costs it may not be based on efficient costs. However the ACCC also notes that Consultel supports its estimated cost based on its understanding and observations of the processes followed by the IDS group.

Overall draft conclusions on back-of-house costs

The ACCC firstly notes its considerations relating to cost recovery within the PIEII model which may suggest that the costs of back-of-house activities are already being recovered by Telstra within its network costs.

Secondly, the ACCC considers that if Telstra's cost recovery approach is appropriate, the estimates provided by Consultel are likely to represent a robust estimate of efficient costs for back-of-house activities. While the exact amount of the costs may not be possible to quantify, the ACCC notes that Consultel's estimated costs are significantly below the costs claimed by Telstra and therefore considers that Telstra's costs cannot be considered appropriate. However, the ACCC does not consider it is in a position to determine exact costs at this time.

6.4.5. Pair tagging for ULLS connections

A unique cost element applying to some ULLS connections, but not other ULLS connections, or LSS connections or disconnections, is 'pair tagging' (and testing). This involves the technician, after having performed the ULLS connection jumpering in the exchange, travelling to the end-user customer's premises and performing two tasks. Firstly, the technician, in conjunction with the access seeker, tests the line to see that there is a complete copper path from the premises to the access seeker's equipment and that the line accords with the relevant ULLS specifications. Secondly, the technician identifies the ULLS copper pair inside the customer premises and places a cardboard tag with the line number and DAC sequence on the line. The ACCC understands that this is performed to make it easy for access seekers to subsequently identify the ULLS line.

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[81] Consultel p 39

The process involves the technician, after performing the jumpering work for the ULLS, travelling to the customer premises to check that an unbroken line runs from the end-user's premises back to the access seeker's equipment in the exchange.

Telstra's view

Telstra estimates that the pair tagging and testing process takes around **[c-i-c]** minutes of travel time and a further **[c-i-c]** minutes for testing.[82] The ACCC understands from questions at its Telstra exchange visit that the pair tagging itself—writing a line number and DAC sequence on a paper tag and attaching it to the customer end of the line—takes negligible time. As stated during the above assessment of DAC costs, testing involves the DAC—the technician will contact the DAC, who will contact the access seeker. The access seeker will then electronically test the line for continuity.

Telstra estimates a **[c-i-c]** cost for the technician to conduct pair tagging, derived by multiplying its estimated hourly labour cost of **[c-i-c]** by the estimated half hour travel and testing time.

The testing process is not necessary for LSS as there is an underlying PSTN connection on an LSS line and so continuity can be checked for by testing for PSTN dial tone from the exchange.

Telstra advised the ACCC that tagging and testing was necessary for around **[c-i-c]** per cent of all ULLS connections.[83] This percentage reflects the amount of connections that are Vacant ULLS connections (ie. where there was no pre-existing PSTN connection for that line). Telstra submitted that it expected that VULLS would represent this percentage of connections for the life of the undertaking.

Views of interested parties

Optus stated that pair tagging was accepted practice for some business lines that have not already been tagged, although it was not required by the ACIF code.[84] However Optus stated that it did not consider that it would be appropriate to allow the recovery of a cost element for pair tagging as it believed that the proportion of connections that would *not* require pair tagging would increase significantly. Optus stated that this was because pair tagging was not required for lines that were already in use, and submitted that **[c-i-c]**.[85] It also stated that residential properties will generally not need pair tagging as the line will already be easily identifiable. Optus submitted that its forecasts were that over **[c-i-c]** per cent of its ULL connections would be residential.[86]

Optus therefore concluded that it would be inappropriate to allow recovery for pair tagging for all connections.

The CCC also stated that pair tagging would be required in certain circumstances and that it had no issue with Telstra's estimate of half an hour to tag and test a line when it

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82 Telstra, *Telstra's submission in support of the ULLS connection charges undertaking dated 13 December 2004*, February 2005, Annexure B, p.3

83 Telstra, *Commission 152BT request in respect of Telstra's access undertakings relating to ULLS and SSS connection and disconnection charges dated 13 December 2004*, 29 September 2005, p. 4

84 Optus p. 28

85 Optus p. 29

86 Optus p. 29

was necessary.[87] However it stated that it believed that pair tagging would only be necessary where there had been no previous service on a copper pair and did not consider that tagging would be necessary for residential services. The CCC stated that there would therefore be few instances where tagging was required.

ACCC's draft view

The ACCC notes firstly that it understands that it is the testing of the ULLS line that accounts for the **[c-i-c]** minutes of time spent at the customer premises that is claimed by Telstra, rather than the tagging which takes negligible time and can be done as testing is taking place. The ACCC therefore considers that the main question in assessing whether a claim for pair tagging costs is efficient is in what situations testing would be required. However there could also potentially be situations where tagging might be required even if testing is not.

The ACCC notes the views of Optus and the CCC that pair tagging would not be required for lines which were already in use, although it notes that neither submission particularly notes that both tagging and testing would take place and are different activities. The ACCC likewise notes Consultel's opinion that tagging would not be required for In-use or Transfer ULLS as they could be identified by associated PSTN numbers or ULLS service ID, and that testing would be unnecessary as the line would already be known to be operating through to the customer premises. [88]

The ACCC further notes Consultel's advice that it is 'necessary and reasonable' that a technician perform tagging and testing for Vacant ULLS connections.[89]

The ACCC considers that it is efficient for Telstra to tag and test a Vacant ULLS line and to recover its costs for doing so as part of the connection charge. As such a line does not have an active service, it would not be known by Telstra whether the line was in a workable condition and it is reasonable that testing should occur in those circumstances. The ACCC agrees with Consultel's view that where a Vacant ULLS line would have to be built to the customer premises it would be appropriate for the technician to continue to the premises and tag the line, even if the technician had largely tested while building the line. However, the ACCC would expect that many Vacant ULLS would be taken where the line was already built. In either case tagging and testing would be appropriate.

Given its understanding of the In-use and Transfer ULLS services, the ACCC considers that it would not be appropriate for Telstra to recover for tagging and testing for this type of connection. The ACCC considers that tagging would be unnecessary as the line could be identified by other means and that testing would be unnecessary as the line would already be known to be a functioning line. The ACCC considers that it would therefore be inefficient to perform pair tagging and testing on these lines if it was unnecessary.

The ACCC notes the submissions of Optus and the CCC that consider that the proportion of IULLS and TULLS out of total ULLS would be likely to grow in the future from the current level of **[c-i-c]** per cent. The ACCC considers that this is likely

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87 GQAAS p. 26

88 Consultel, p. 30

89 Consultel p. 32

given the announced plans of access seekers that are now migrating residential customers from wholesale ADSL onto their own facilities-based broadband products via ULLS and that these processes will by definition involve IULLS connections.[90] As such the ACCC does not consider that it would be appropriate to assume that VULLS will remain **[c-i-c]** per cent of all connections over the course of the undertakings.

As in its discussion of travel costs, the ACCC does not consider that it is necessary that it determine an applicable hourly labour rate for pair tagging and testing as it can determine a view whether to accept or reject the undertakings without it.

6.5. Disconnection charges

In contrast to connections of the ULLS or LSS, there is strong disagreement over how, in technical terms, the disconnection of these services should be effected and whether Telstra need incur significant costs in disconnecting such services, warranting either a separate $90 charge for a LSS disconnection or a significant addition to ULLS connection costs to form a higher ULLS connection charge. In regard to the ULLS, Telstra is proposing that a disconnection fee should effectively be paid up-front and in advance of the actual ULLS disconnection, on the presumption that each ULLS has a 2 year life span.

The rationale for the different approaches to disconnection, as between the ULLS and LSS, is discussed below.

Telstra's view

The processes and tasks undertaken in Telstra's exchanges to effect ULLS and LSS disconnections are described in detail in the statement of **[c-i-c]**.[91]

ULLS disconnection

For a ULLS disconnection, Telstra states that

> …there is no necessity to disconnect the ULLS in a timely manner.[92]

and

> In costing the disconnection process, given that it is not strictly time critical, these jobs can be combined with other tasks that may be required at the exchange. Therefore, Telstra has not included any cost for the traveling time to the exchange. That is, Telstra has taken a very conservative approach of allocating all of the costs of the traveling time to the other tasks undertaken at the exchange when the jumper is eventually removed.[93]

As immediate disconnection of a ULLS is not required, Telstra argues that a disconnection can be performed at a later time and, moreover, combined with other work that a technician is required to perform at the exchange where the disconnection has to be effected. Thus, a disconnection implies a zero travel cost and there is no imperative for the immediate and separately levying of a disconnection charge.

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90 See, e.g. Primus media release, *Primus Telecom broadband network rollout gaining momentum*, 8 September 05; iiNet media release, *iiNet expands DSL infrastructure to over 200 exchanges*, 4 March 05; Optus media release, *Optus steps up competition with DSL rollout*, 22 September 05.

91 **[c-i-c]**, *Statement of **[c-i-c]***, 25 May 2005, pp. 8-10, 13-14.

92 Telstra, *Telstra's submission in support of the ULLS connection charges undertaking dated 13 December 2004*, February 2005, p. 3.

93 Telstra, *Telstra's submission in response to the Australian Competition and Consumer Commission's discussion paper in respect of ULLS received March 2005*, 27 May 2005., p. 36.

However, according to Telstra, sooner or later, a disconnection requiring the physical disconnection of a jumper that has, hitherto, enabled a ULLS to be provided, will have to performed to enable the copper pair to be re-used. It estimates that this will take **[c-i-c]** minutes. Telstra suggest this cost can be added to the other costs incurred when a connection is effected to form a once-off total (connection/disconnection) cost. This approach implies that the disconnection cost should be paid in advance, and calculated in present value terms on the basis that the service will last 2 years, at the time the initial connection is made.

LSS disconnection

For a LSS disconnection, Telstra claims it is necessary for it to immediately physically disconnect a LSS, as a separate and discrete process, if a particular access seeker no longer requires the LSS to service a particular end user with a broadband service. Telstra contends that, if it were not to disconnect the LSS, then the PSTN voice service would continue to be run through a connection to the access seeker's equipment and could be impaired by that connection because the access seeker has no interest nor obligation to protect that connection to its equipment (and the quality of the voice service) since it no longer offers a LSS-based service using that connection.

In circumstances where an end user customer is seeking to churn from one access seeker's LSS-based broadband service to another, Telstra appear to acknowledge that, potentially, the LSS disconnection process required for the 'losing' access seeker could be fused with the connection process required for the 'gaining' access seeker. However, Telstra state that such a confluence would require an industry agreed notification process and they imply that it should not be obliged, in the context of an undertaking, to institute such a process.

As stated by Telstra,[94]

> The disconnection costs are necessarily incurred by Telstra even if the end user customer chooses to acquire services from another SSS access seeker. This is because the request to disconnect the old SSS and connect the new SSS are not provided to Telstra simultaneously[4]. [Footnote 4: If an access seeker submits an application for SSS but an existing SSS was still in place then the request would be rejected.]

and

> There is no industry agreed process to facilitate the migration of SSS between carriers including the return of the end user to Telstra. Since the disconnection and possible reconnection process is end user driven and orders are lodged with providers at different times, little opportunity presently exists to co-ordinate the disconnection and reconnection orders. This is particularly problematic when a service is returned from an SSS access seeker to Telstra as Telstra's retail front of house staff have no visibility of the previously supplied SSS service.

Views of other interested parties

The CCC contends that it is not generally a technical necessity for Telstra to immediately disconnect upon cancellation of either a ULLS or the LSS, and that jumpers can and should be left in place.[95] At a later time, disconnection should be coordinated with a process of re-connection to such an extent that the process becomes a single process with a single (connection) charge levied on the 'gaining'

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[94] Telstra, *Telstra's submission in support of the ULLS connection charges undertaking dated 13 December 2004*, February 2005, p. 5.

[95] GQAAS, p. 13

access seeker covering all the costs of the process with no charge levied on the 'losing' access seeker for disconnecting the 'old' LSS. In short, jumpers can be left in place pending notification for (re)use of the copper pair by another provider.

In the CCC's view, the principle of only the 'gaining' service provider paying promotes the more efficient management of connections and disconnections. The CCC argues that a separate charging regime encourages Telstra to inefficiently separate the two processes with ultimately higher costs being passed on to the consumer.

ACCC's draft view

ULLS disconnection

In relation to the need for the physical removal of a jumper with respect to ULLS disconnections, albeit at a time later than when cancellation of the service has been notified, Telstra state that:[96]

> If Telstra were to leave the ULLS in place:
>
> (a) Access Seeker would be able to continue to use it without Telstra's knowledge. In that regard, it would be very difficult for Telstra to check such use by the Access Seeker;
>
> (b) Telstra's systems would not identify the copper pair as being available, which means that the relevant copper pairs would not be available for use by another customer

The ACCC notes that Consultel concludes these contentions cannot be supported.

In regard to the first point made by Telstra above, Consultel concludes that, while technically possible, it would be unreasonable to expect an access seeker to continue to use a 'cancelled' ULLS to support its services to customers because faults could not be repaired and cancellation would permit Telstra to reallocate use of the copper pair without notification being given to the access seeker, thus, undermining the services provided by the access seeker using the 'cancelled' ULLS.

On the second point, Consultel considers it implausible that Telstra's systems could not use the act of cancellation, as distinct from the act of physical disconnection, to establish the availability of a copper pair for use by other customers or Telstra. Consultel notes that a cancelled PSTN service, and not physical disconnection of jumpers, is sufficient to mark the line as being available for re-supply. Moreover, leaving the jumper in place in the context of a ULLS cancellation would permit the provision of 'soft' dial tone, as occurs when a PSTN service is cancelled, thus enabling use of the line for emergencies.[97]

On the issue of whether physical disconnection of a ULLS is required for a copper pair, other than as part of a process of establishing a new ULLS connection for that pair, Consultel concluded that

> …we concur with the various Access Seekers that there is no compelling reason to physically disconnect a ULLS jumper after the ULLS has been cancelled, and that the costs of performing this disconnection and removal of the jumper will be incurred when a new service

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96 **[c-i-c]**, *Statement of **[c-i-c]***, 26 May 2005, p.2

97 Consultel p. 42.

> is provisioned to one of the terminations, in which case the costs will be recovered by Telstra within the connection charge of the new service.[98]

In relation to the costs of performing connections in the context of a new ULLS connection performed on the same copper pair (a re-connection), Consultel agrees with the CCC estimate of only 1.5 minutes to perform this work.[99] The ACCC notes that such a cost would be negligible and would not require explicit recognition in the ULLS connection cost model.

The ACCC's draft view is that it is not appropriate for Telstra to include disconnection costs of the order of **[c-i-c]** (in present value terms) per ULLS connection, as claimed by Telstra. Rather, the costs incurred by Telstra in physically disconnecting a ULLS from a particular copper pair, following its cancellation by an access seeker, could be subsumed and recovered in connection charges intended to recover costs involved in the re-use of the copper pair for the supply of new services. This could involve a ULLS re-connection process involving another access seeker or a re-connection of a PSTN-based service where Telstra's wholesale or retail customers could be expected to carry the minor incidental costs of removing jumpers performed as part of re-connections of PSTN services.

LSS disconnection

Consultel commented in its Interim Report on the need, as claimed by Telstra, for immediate physical disconnection of the jumpers required for a LSS upon cancellation of that LSS.

On the technical argument that the quality of the PSTN voice service could be adversely impacted by a failure on the part of Telstra to remove jumpers, Consultel commented that, in practice, there is virtually no likelihood of any degradation of voice quality occurring through a fault developing in the access seeker's equipment because of the nature of the access seeker's equipment.[100] In any event, Consultel comments that such a potential fault developing and causing voice quality problems could be addressed by a variation to clause 4.1 of the LSS undertaking to extend the period under which the access seeker has an obligation not to interfere with the PSTN voice service to beyond cancellation of the LSS to when physical disconnection occurs. Consultel also points to other contractual arrangements which Telstra could conceivably rely upon to prevent access seekers from doing anything to its equipment which might adversely impair the PSTN voice service.

On the argument that an access seeker could continue to use the LSS after cancellation, and that immediate disconnection should occur to prevent this, Consultel notes that Telstra has made the same claim with respect to the ULLS but it has not argued for immediate disconnection. Rather, Telstra has argued that physical ULLS disconnection occur at some later time when the ULLS disconnection work can be scheduled with other work performed at the relevant exchange. As discussed below, Consultel suggests this same process could also occur where it is necessary to physically disconnect a LSS, such as in more limited circumstances where

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98 Consultel p. 43

99 Consultel p. 50

100 Consultel, p. 57.

disconnection is occasioned by reasons other than where a customer is seeking to churn from one access seeker to another.

Finally, with respect to a churn process that would enable one access seeker's LSS disconnection to be another access seeker's LSS connection, and thereby allow for incidental and negligible disconnection costs to be recovered in a single connection charge, Consultel considers that Telstra has a model and precedent it can use to readily develop such a process. 'One-step DSL transfers' were introduced in 2003 whereby the transfer of Telstra's wholesale DSL services could occur as a single process rather than two separate processes – a disconnection and reconnection. The ACCC notes that this has meant that there is no separate disconnection and connection charge for wholesale ADSL. The process would also minimise service disruptions as customers transfer from one service provider to another. The ACCC notes that wholesale DSL transfers do not require jumpering work to occur and that as such additional exchange work is required in a LSS disconnection or connection. However the ACCC considers that the process of co-ordinating the notifications from the gaining and losing access seeker for LSS would be likely to be fairly similar to that for wholesale DSL.

The ACCC notes that disconnection of a LSS, albeit at a time after cancellation (as with the ULLS), would be required in the event that the disconnection was not occasioned by a customer wishing to churn from one access seeker to another. This might occur if a pre-existing end user customer no longer required any service. However, the ACCC notes Consultel's advice that this disconnection can be delayed in the same way Telstra proposes for ULLS disconnections, thus creating travel cost economies. The ACCC notes that Telstra has not sought to recover a travel cost for ULLS connections and it therefore considers this should also apply for LSS disconnections when these are performed separately from connections—that is, for other than the LSS transfer scenario.

It is the ACCC's draft view that a disconnection charge should only apply in limited circumstances. These circumstances have not been limited in the LSS undertaking. Furthermore, where it is appropriate for a disconnection charge to levied, the ACCC considers this charge should be discounted from the $90 proposed by Telstra, reflecting the view that travel costs would not need to be assigned to such disconnections because these disconnections do not require an exchange visit for this purpose alone.

For the purpose of this undertaking assessment, the ACCC is not required to determine what it would consider an appropriate disconnection charge. However it considers that, taking into account Consultel's recommendations on certain costs, its preliminary view is that a charge of around **[c-i-c]** may likely be justified.

6.6. Application of proposed charges to 'Managed Network Migrations'

The ACCC is concerned that the undertakings do not sufficiently give effect to Telstra's purported intention to restrict coverage of the proposed connection charges to 'single' connections and not "Managed Network Migrations" (MNMs).

Telstra makes ULLS and LSS connections for access seekers in two main contexts. Firstly, an access seeker may simply put in a request for a particular individual or 'single' service to be connected. These can be thought of as 'single event' connections. These connections would include individual stand alone connections,

that is, connections performed as a result of a dedicated trip to an exchange for that connection alone, and connections performed as part of a number of other connections or work performed in batches and not requiring a single dedicated trip to an exchange.

Alternatively, connections may be made in the context of what Telstra calls MNMs. MNMs involve the connection of a number of ULLSs at a particular exchange at a particular time, as agreed between Telstra and the access seeker and requiring a management cost over and above the management of single connections. The ACCC understands that Telstra currently limits MNMs by reference to the number of connections made in one exchange and that the minimum number of connections for an MNM is currently 50 connections.

The ACCC is aware that at least one access seeker disputes the way Telstra defines a MNM by reference to a 50 services limit. The ACCC has been asked to make a determination on this MNM definitional issue as part of an access dispute currently being arbitrated by the ACCC.

Undertakings and MNMs

The ACCC notes that the language of the undertakings does not distinguish between connections in a single event context and connections in a MNM context no matter how that latter context is defined. Rather, both undertakings state that the charges therein apply whenever a ULLS or LSS is connected and are silent as to the treatment of MNMs.

The Telstra submissions supporting the undertakings, likewise, do not explicitly state that the undertakings are limited to single event connections. The supporting submissions do make reference to connections of a single ULLS, e.g.:

> *The prices proposed by Telstra are significantly below efficient costs (being the net present value of the cost of connecting and disconnecting a single ULLS) and thus represent a generous offer on its part.*[101]

The supporting submissions do *imply* that the undertakings are limited to single event connections only. Part C4 of both supporting submissions states that:

> *The Undertaking does not preclude access seekers negotiating with Telstra regarding individually managed migration of blocks of services.*

The ACCC notes the possibility that Telstra may seek to enforce undertaking prices in the MNM context.

Telstra's submissions in response to the ACCC's discussion papers also allude to the undertakings only applying to single event connections:

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[101] Telstra, *Telstra's submission in support of the ULLS connection charges undertaking dated 13 December 2004*, p. 2.

D2.2 Multiple versus individual connections

…

Connection costs incurred in managed network migrations are different to the costs incurred in single connections. Telstra is negotiating with the access seekers as to the appropriate prices of mass network migration connections.[102]

However, the response to the ULLS discussion paper does not explicitly state that the undertakings are not meant to apply to the MNM scenario.

Comparatively, the Telstra response to the LSS discussion paper does explicitly state that the LSS undertaking is not meant to apply to MNMs:

E2 Multiple versus individual service connections

37 The Commission states that there are no express provisions in the Undertakings that provide access seekers with certainty that discounts may be available for connection charges as part of mass network migrations. Connection costs incurred in the context of mass network migrations are different to the costs incurred in single connections. ***The Undertakings are not intended to apply to mass network migration connections and*** *Telstra is negotiating separately with relevant access seekers as to the appropriate prices of mass network migration connections.*[103] (emphasis added)

It is not obvious to the ACCC whether the omission of the phrase "*the Undertakings are not intended to apply to mass network migration connections*" in the ULLS response was intended by Telstra.

ACCC's view

The ACCC is concerned that there is ambiguity present in the undertakings in regard to their application to MNMs. This ambiguity arises from the wording of the undertakings themselves, which are silent as to their application to MNMs.

Under s.15BV(2)(a)(ii) of the Act, the ACCC cannot accept an undertaking unless it has considered all submissions provided to the ACCC on the undertakings. The ACCC therefore considers that it is appropriate that it rely on these submissions in forming a view as to whether proposed terms of an undertaking are reasonable, and that supporting submissions are used by the ACCC to clarify the proper construction of an undertaking. However, in the ACCC's view, the potential ambiguity relating to MNMs leads to substantial and material uncertainty.

The ACCC considers that the costs to Telstra for connections in an MNM process are likely to be different to those applying in the single connection process. The ACCC would anticipate that there may be travel and jumpering efficiencies available in the process that would reduce costs but notes that there may also be additional overheads for management of the migration process. The ACCC also notes that MNMs, by definition, would involve IULLS connections, and notes its comments about the likely costs of IULLS connections compared to VULLS connections. The ACCC, therefore,

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[102] Telstra, *Telstra's submission in response to the Australian Competition and consumer Commission's discussion paper in respect of ULLS received March 2005*, May 2005, p. 35

[103] Telstra, *Telstra's submission in response to the Australian Competition and consumer Commission's discussion paper in respect of SSS received March 2005*, May 2005, p. 14

considers that it would not be appropriate that the undertaking prices are enforced in a MNM.

As such, the ACCC considers that the ambiguity relating to MNMs may mean that the undertakings could not be accepted as reasonable having regard to the matters under s152AH, given the risk that Telstra may subsequently seek to apply and enforce approved undertakings' charges to MNMs. As stated above at section 5.3.1, the ACCC considers that an undertaking does not need to state all terms and conditions relevant to the supply of a declared service. However, the ACCC does consider that an undertaking might potentially not be reasonable if it purports to deal with a particular subject matter but the terms and conditions relating to that matter are incomplete or the terms and conditions lack sufficient clarity or certainty.

The ACCC invites parties to make submissions on this matter.

Finally, the ACCC considers that the way in which MNM connections are defined is also be relevant to its consideration of the undertakings. The ACCC notes that there are currently disputes between access seekers and Telstra about the definition of MNMs. If the definition of an MNM was left open for Telstra to unilaterally determine, then this would appear to provide scope for Telstra to levy its undertakings' charges in circumstances where these were not appropriate. As part of any submissions, parties may wish to comment on the manner in which a MNM should be defined.

6.7. Assessment of total ULLS connection and disconnection costs

Table 6.7.1 includes:

- Telstra's proposed geographically de-averaged connection charges of $93-108
- Telstra's total claimed costs
- the ACCC's estimates of what it considers are more appropriate connection costs. These have been formed by making downward adjustments to Telstra's total claimed costs and are termed 'net or modified' total costs
- the ACCC's cost estimates for different types of ULLS connection, as identified previously in chapter 6
- margins between Telstra's proposed charges and the ACCC's cost estimates.

Table 6.7.1 ULLS Connection costs and charges

	VULLS				IULLS and TULLS			
	Band 1 ($)	Band 2 ($)	Band 3 ($)	Band 4 ($)	Band 1 ($)	Band 2 ($)	Band 3 ($)	Band 4 ($)
Telstra's proposed charges	**93**	**98**	**98**	**108**	**93**	**93**	**98**	**108**
Telstra's total claimed costs	159.48	158.90	173.26	193.52	159.48	158.90	173.26	193.52
Net or modified costs	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
p'posed charges less modified costs	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]

The downward adjustments made to Telstra's claimed costs for *all* types of ULLS connection include an amount of **[c-i-c]** formed and based on the following draft conclusions:

- efficient in-exchange jumpering work would more closely reflect the quotations provided by Telstra's own 3P contractors of the order of **[c-i-c]** per connection, rather than Telstra's modelling of costs of around **[c-i-c]**, thus justifying a downward adjustment of $14 per connection (see section 6.4.1)
- 'back of house' costs need to be reduced by around **[c-i-c]** to around **[c-i-c]** per connection to arrive at more reasonable and efficient cost estimates (see section 6.4.4)
- disconnection costs of the amount claimed by Telstra, namely, **[c-i-c]** per disconnection (in present value terms), are not warranted and any disconnection costs incurred as part of a (re)connection process are too small to warrant a quantum other than zero (see section 6.5)

The ACCC has not undertaken an analysis of certain cost elements relating to vehicle, material and tool costs claimed by Telstra because these costs, being of a minor nature, are not sufficiently material to impact on the ACCC's assessment. This means, for the purpose of the undertakings assessment only, that Telstra's other claimed costs of **[c-i-c]** are not considered to be problematic.

The above findings relate to all three forms of ULLS connection identified and discussed in this chapter, namely, VULLS, IULLS and TULLS connections. Thus, it can be noted that, before taking remaining relevant costs into account, the ACCC has formed a draft view that Telstra's connection charge should be reduced by around **[c-i-c]** for all geographic regions.

However, in assessing the remaining cost elements, the ACCC considers it is necessary to distinguish between the different forms of ULLS connection.

VULLS connections

From the foregoing analysis in this chapter, it can be seen that the ACCC broadly accepts the time estimates for travel and pair tagging/testing for VULLS connections. However, estimating costs for these factors requires the determination of an hourly labour cost, as well as time estimates. In regard to the former, as noted in section 6.4.1, the ACCC has not formed a definitive view on this cost factor. However, as discussed below, it is possible for it to form a view as to the reasonableness of the proposed charges without forming a view as to the appropriate hourly rate.

The ACCC notes that a presumption that Telstra's claimed travel costs, including its hourly labour cost, are appropriate, leads to the conclusion that Telstra's proposed charges for VULLS connection are reasonable because, after reducing Telstra's claimed total costs by **[c-i-c]**, as considered appropriate for the reasons outlined above, Telstra's proposed charges can be seen to still be below total (adjusted) costs.

The ACCC also notes that a presumption that a discounted hourly rate of **[c-i-c]** per hour is appropriate, as suggested by Consultel, leads to a calculation of overall total (adjusted) costs slightly in excess of Telstra's proposed charges for most bands, as shown in Table 6.7.2 below. Consultel proposed to deflate Telstra's overall claimed costs for travelling and pair tagging/testing by applying the reduced hourly labour rate to Telstra's claimed times. While the ACCC does not consider that this is necessarily an appropriate methodology, the use of Consultel's hourly labour rate still implies that Telstra's proposed charges are not excessive.

Table 6.7.2 VULLS connections, charges and adjusted costs

	Band 1 ($)	**Band 2 ($)**	**Band 3 ($)**	**Band 4 ($)**
Travel costs	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Jumpering costs	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Pair tagging/testing	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Back of house	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Other[1]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Total adjusted costs	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Proposed charges	**93**	**98**	**98**	**108**
Margins	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]

1. Telstra's claimed (unadjusted) 'Vehicle, materials and tool box costs'

Thus, it is possible to form a view that Telstra's proposed charges are appropriate compared to costs for VULLS connections without forming a view as to the appropriate hourly labour rate.

The negative margins shown in Table 6.7.1 above should not be interpreted to mean that the ACCC has formed a view that Telstra's costs are significantly above its proposed charges to the extent shown. The margins reflect the use of Telstra's hourly labour rate upon which the ACCC has not specifically assessed. It would be open to the ACCC to form a view that the hourly labour rate claimed by Telstra was excessive as suggested by Consultel, and adoption of this recommendation would imply a view that Telstra's charges for VULLS connections were more or less on par with costs. In the current arbitrations before the ACCC, the ACCC anticipates determining appropriate hourly labour rates for the purposes of determining specific connection and disconnection charges. As noted, this has not been necessary to form views on the ULLS and LSS undertakings.

However, at this point in time the ACCC forms the draft view that Telstra's proposed charges for connecting a VULLS are appropriate largely because:

- the proposed charges do not exceed connection costs and these costs form a significant part of the cost of the ULLS to the extent that it is a VULLS

- after making adjustments to the proposed charges to encourage greater efficiency with respect to how Telstra performs ULLS connections ands disconnections, the proposed connection charges do not exceed the ACCC's estimates of efficient costs.

IULLS and TULLS connections

The ACCC considers that IULLS and TULLS connections should cost Telstra significantly less than VULLS connections. Firstly, the ACCC considers that the pair tagging/testing costs of **[c-i-c]** are not required. If this consideration is added to the findings outlined above for all ULLS connections, then a total downward adjustment of **[c-i-c]** to total connection costs implies Telstra's proposed charges exceed its (adjusted) costs for all geographic bands, especially Bands 1-3.

Furthermore, the ACCC considers that a further adjustment to Telstra's claimed travel costs is warranted, to reflect the potential for performing IULLS and TULLS connection work in batches. Adopting Consultel's suggestion that travel times should be of the order of 36 per cent of those claimed by Telstra implies a further reduction in costs ranging from at least **[c-i-c]** to **[c-i-c]** (assuming Telstra's labour rate of **[c-i-c]** is reasonable). Thus, as shown in Table 6.7.1, Telstra's proposed charges can be seen to be well in excess of a reasonable estimate of the total cost to Telstra of performing a IULLS or TULLS connection, even after accepting Telstra's hourly labour rate.

The ACCC forms the draft view that Telstra's proposed charges for connecting a IULLS or TULLS are not appropriate largely because:

- the proposed charges exceed connection costs and these costs form a significant part of the cost of the ULLS to the extent that it is a IULLS or TULLS

- after making adjustments to the proposed charges to encourage greater efficiency with respect to how Telstra performs IULLS and TULLS connections and disconnections, the proposed connection charges exceed the ACCC's estimates of efficient costs.

6.8. Conclusions on the reasonableness of the ULLS undertaking

In considering whether the terms and conditions set out in the undertaking are reasonable, the ACCC is required to give consideration to the matters set out in s152AH. In this section of the report, the ACCC outlines some of the key issues before summarising its conclusions with respect to each of the matters under section 152AH.

The proposal to apply a uniform charge

The ACCC has noted that the ULLS undertaking does not distinguish between the different forms of ULLS connection. Based on its understanding of these connection types, the ACCC's draft view is that different forms of connection should attract different charges. The ACCC considers that an undertaking that sets out a uniform charge for different forms of ULLS connections would not be reasonable based on a consideration of the matters set out in section 152AH. As set out above in section 6.7, the ACCC considers that there are significant differences in the costs associated with connection of a VULLS compared to an IULLS and TULLS, and that these should be reflected in different charges. This view is particularly informed by consideration of the effect of a uniform price on promoting competition and the LTIE, and by comparing the proposed charges to the direct costs of connecting an IULLS and TULLS. This is considered further below.

The take-up of IULLS and TULLS connections

The ACCC notes that IULLS and TULLS (single) connections to date have been relatively small in number compared to VULLS connections. Telstra has stated that

> Pair tagging is required for vacant ULLS. These constitute more than **[c-i-c]** of single ULLS connections at present. Telstra forecasts that this percentage is likely to remain at approximately the same level for the duration of the undertakings.[104]

This large historic percentage could be used to argue that, if a similar percentage is maintained for the course of the undertaking (until 30 June 2006), the ULLS undertaking should be considered to be reasonable since the charge for the main (historic) form of connection, VULLS, appears to be below the cost of these connections.

However, in the ACCC's view, the proportion of single IULLS connections could significantly increase if access seekers increase their migrations of end user broadband customers from a Telstra resale basis to ULLS-based broadband offerings where these connections fall below the threshold determined by Telstra for MNMs. The ACCC understands that Telstra intends to apply a threshold of 50 services per

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[104] Telstra, *Commission 152BT request in respect of Telstra's access undertakings relating to ULLS and SSS connection and disconnection charges dated 13 December 2004*, 29 September 2005, p. 4.

exchange for a migration to qualify as a MNM. However, the ACCC considers it appropriate that access seekers seeking to migrate numbers of customers less than these threshold levels should attract a discounted connection charge reflecting reduced IULLS connection costs, as indicated in Table 6.7.1. The ACCC notes that there could be an added number of IULLS connections arising from where end-users move from Telstra retail services to access seekers' ULLS-based services.

To date, the intentions of access seekers to migrate large numbers of customers has not materialised. The ACCC notes the following information provided by Telstra

> As at 30 April 2005, the total take-up of ULLS (including via MNMs) was **[c-i-c]**. The number of 'single' ULLS connections was **[c-i-c]**.[105]

It is conceivable that, at least in part, limited numbers of ULLS migrations have occurred because of an inability of the parties to agree on terms and conditions under which migrations (or multiple IULLS connections) should occur. Notwithstanding attempts to commercially negotiate terms and conditions of access for single connection and migration scenarios, disputes have been lodged by access seekers with the ACCC over connection charges and non-price matters.

The fact that disputes have arisen over connection charges and other matters may, of itself, have delayed the possibility of higher numbers of IULLS connections occurring, whether they are performed as part of an MNM or as single connections. The ACCC considers Telstra has an incentive to delay access to the ULLS for migrations. In this regard the ACCC notes the inability of parties to agree on terms and conditions under which migrations (or multiple IULLS connections) should occur. The ACCC is concerned not to unduly discourage migrations by accepting an undertaking based on the premise that (higher) pricing appropriate to VULLS connections only should, nonetheless, apply universally for the remainder of the undertaking period to all connections, albeit that this is for a relatively short period.

The ACCC has a concern that accepting the undertaking would permit Telstra to charge excessive fees for IULLS (and TULLS) connections which may assist to entrench the limited number of IULLS connections to date and serve to further delay migrations to after the expiry of the undertaking on 30 June 2006. It would be contrary to the LTIE for the ACCC to approve an undertaking which inhibited competition from access seekers seeking to use the ULLS to migrate customers from Telstra's wholesale offerings[106].

Application of the undertaking to MNMs

The ACCC's concern about inhibiting migrations and competition needs, however, to take account of Telstra's purported intention, as stated in submissions, that its charges for MNMs are beyond the scope of its undertakings and that it would levy discounted connection charges for MNMs compared to its undertaking arrangements. However, this position is not made clear in the terms of the undertakings. Rather, the charges could be read to apply to all connections, including those made in a MNM.

If MNMs were not covered by the undertaking, the ACCC still retains a concern that discounts from Telstra's undertakings charges may not apply for some valid migration scenarios. The ACCC understands that Telstra currently uses a threshold number of

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[105] Ibid, p. 6

[106] *Trade Practices Act 1974* (Cth) s. 152AH(1)(a).

50 migrated services per exchange before discounted charges would apply. The ACCC is aware that at least one access seeker has disputed this threshold and argued that smaller numbers of migrated services per exchange should attract discounted charges. The ACCC has not formed any views on what it considers to be an appropriate discount structure or when it should apply at this time.

The ACCC could conceivably approve the undertaking, on the basis of Telstra's assurances that it would not voluntarily apply the undertaking's charges to MNM scenarios. However, the lack of certainty about the application of the undertaking's charges to MNMs creates a doubt that the ACCC should accept the undertaking

In summary, there is uncertainty surrounding the definition of a MNM and whether application of discounted charges by Telstra for MNMs would be unduly restrictive and an overriding uncertainty as to whether the proposed 'single' charges in the undertakings will or will not apply to 'MNM' scenarios, however defined.

Application of the statutory criteria

In considering this matter the ACCC has had regard to the specific statutory criteria under section 152AH. The ACCC summarises its findings under those criteria below:

(a) whether the terms and conditions promote the LTIE[107]

In assessing the LTIE criterion, the ACCC considers that its analysis is facilitated by the application of the 'future with or without' test.

The ACCC's draft view on this criterion is that, to the extent that the LTIE criteria requires the ACCC to consider the objective of the promotion of competition, it would be more likely for competition to be inhibited than promoted if the undertaking was accepted than if it were not. Thus, potential benefits of lower prices and improved service quality for a range of broadband and telephony services would not be realised. The ACCC also notes that, although the undertaking only applies until 30 June 2006, the ACCC is obligated by this criterion to consider the longer term effects on end-users.

This is for two reasons. Firstly, if the undertaking was accepted, Telstra would be able to enforce excessive prices for IULLS and TULLS connections. The ACCC considers that this would inhibit access seeker's ability to churn end-user customers from Telstra or other on to their own infrastructure, thus limiting competition. Without the undertaking being accepted, the ACCC considers that competitors could achieve appropriate cost-based pricing for IULLS and TULLS connections, either through negotiation or ACCC arbitrations, and allowing them to compete appropriately for end-user customers. The ACCC considers that its views in this undertaking assessment on appropriate connection costs would inform any negotiation or ACCC arbitrated decision.

Secondly, the ACCC considers that accepting the undertakings would inhibit competition because competitors to Telstra seeking to migrate significant numbers of end users from Telstra wholesale service to ULLS-based services to better compete for broadband and telephony services could be faced with excessive connection charges, due to uncertainty over the application of the undertaking charges to MNM situations. The uncertainty arises because the undertaking is, on its face, unclear

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[107] *Trade Practices Act 1974* (Cth) s. 152AH(1)(a)

about whether the charges set out in the undertakings will apply to MNMs. Also, there is no certainty for access seekers that discounts for MNMs will always be applied for migrations where discounts are warranted because Telstra and the industry are not agreed on how MNMs should be defined. If the undertaking was not accepted, the ACCC considers that it would be open for access seekers to achieve certain and appropriate prices for MNM connections.

The ACCC does not consider that the LTIE objective of 'any-to-any connectivity' is a relevant consideration in its assessment of the ULLS connection undertakings.

To the extent that the LTIE relates to 'encouraging the efficient use of infrastructure', the ACCC considers that the undertaking charges are not commensurate with the costs for IULLS and TULLS connections and, to this extent, the undertaking discourages allocative efficiency. Without the undertaking being accepted, the ACCC considers that appropriate charges for the IULLS and TULLS connection types would mean that allocative efficiency would be better achieved.

(b) The legitimate business interests of the carrier or carriage service provider…and the carriers or providers' investment in facilities used to supply the declared service

In assessing this criterion, the ACCC considers that its analysis is facilitated by the application of the 'future with or without' test.

The ACCC notes that the charges proposed in the undertaking, if accepted, would lead to Telstra earning more than is warranted for IULLS and TULLS connections, and hence Telstra would recover more than is necessary to preserve its legitimate business interests. However, these cost over-recoveries may arguably not be significant if these forms of connection were to remain relatively small in number. As the ACCC considers that Telstra's proposed charges are appropriate for VULLS, Telstra would recover an appropriate amount for VULLS connections that would preserve its legitimate business interests. As such, if the undertaking was accepted, Telstra would recover an amount greater than that needed to preserve its legitimate business interests to the extent that it made IULLS and TULLS connections.

Were the undertaking rejected, the ACCC notes that Telstra would not be precluded from continuing to levy its undertaking charges for VULLS connections and thereby earn a reasonable commercial return on these connections. This is because the charges for VULLS connections are likely to be regarded by the ACCC as 'reasonable' in any arbitration determination. Hence, and especially if VULLS connections continue to predominate up until 30 June 2006, Telstra's 'legitimate business interests' are unlikely to be harmed by a decision to reject the current form of the ULLS undertaking. Further, without the undertaking being accepted, the ACCC considers that access seekers could be more likely to achieve appropriate cost-based pricing for IULLS and TULLS connections, either through negotiation or ACCC arbitrations. These prices would likewise not harm Telstra's legitimate business interests, as they would reflect the cost to Telstra of providing the connection service.

(c) the interests of persons who have rights to use the declared service

The ACCC considers that analysis of this criterion is facilitated by application of the 'future with or without' test.

It is the ACCC's draft view that access seekers will be significantly disadvantaged by a decision to approve the undertaking. This is because, as noted above, access seekers

seeking to migrate end users from a wholesale basis to their ULSS-based infrastructure, or acquire customers from Telstra, will be required to pay excessive charges for at least some connections, namely, IULLS connections which do not meet Telstra's requirements for MNM discounts. The ACCC considers that this means that the interests of access seekers will be harmed in that they will be paying more than the reasonably incurred costs of those connections than Telstra. This will in turn limit those competitors' ability to compete with Telstra for customers.

Without the undertaking, the ACCC considers that access seekers will be able to achieve charges that are commensurate with the actual costs of providing IULLS and TULLS connections. As such the ACCC considers that access seekers would not be disadvantaged in comparison to Telstra and the competitive process would not be distorted.

(d) the direct costs of providing access to the declared service

In relation to this criterion, the ACCC's draft view is that undertaking charges exceed efficient connection costs for certain types of ULLS connection, namely, IULLS and TULLS connections. The ACCC considers that IULLS connections could be a more significant proportion of expected ULLS connections during the undertaking period.

(e) the operational and technical requirements necessary for the safe and reliable operation of a carriage service, a telecommunications network or a facility

The ACCC's draft view is that acceptance or rejection of the proposed charges would have no material impact on the safety or reliability with which ULLS connections are performed.

(f) the economically efficient operation of a carriage service, a telecommunications network or a facility'

The ACCC considers that the 'future with or without' test facilitates analysis of this criterion.

While noting that the proposed undertaking charges exceed efficient connection costs for certain types of ULLS connection, it is not clear to the ACCC that acceptance of the undertaking would encourage Telstra to perform ULLS connections and/or disconnections much less efficiently than it otherwise might. It is not obvious to the ACCC that Telstra would institute less efficient work practices if its charges were applied to all forms of ULLS connection, even IULLS connections.

This said, the ACCC notes that third parties appear to perform jumpering work at a lower cost than Telstra estimates for itself. To the extent that access seekers could achieve efficient cost-based prices for IULLS and TULLS connections in the absence of the undertaking, the ACCC considers that Telstra would be more likely to perform jumpering work more efficiently. Were the undertaking accepted, this incentive would be reduced as Telstra would be receiving payments for ULLS and LSS connections well in excess of the efficient cost.

The ACCC's main concerns, however, are that the proposed charges are inappropriate and excessive for IULLS (and TULLS) connections and acceptance of these charges

would have adverse impacts on competition and access seekers, not that these charges would cause IULLS connections to be performed in a less efficient manner.

Full draft decision

The ACCC's draft view is that, based on its full consideration of all of the matters relevant under section 152AH, it is not satisfied that, at this time, the terms and conditions set out in the ULLS undertaking are reasonable.

6.9. Conclusions on the reasonableness of the LSS undertaking

Table 6.9.1 below includes:

- Telstra's proposed geographically averaged connection and disconnection charges of $90
- Telstra's total claimed costs
- the ACCC's estimates of what it considers are more appropriate connection and disconnection costs. These have been formed by making adjustments to Telstra's total claimed costs and are termed 'net or modified' total costs
- margins between Telstra's proposed charges and the ACCC's cost estimates.

Table 6.9.1 LSS connection and disconnection costs and charges

	LSS connections				**LSS disconnections**			
	Band 1 ($)	Band 2 ($)	Band 3 ($)	Band 4 ($)	Band 1 ($)	Band 2 ($)	Band 3 ($)	Band 4 ($)
Telstra's proposed charges	**90**	**90**	**90**	**90**	**90**	**90**	**90**	**90**
Telstra's total claimed costs	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Net or modified costs	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]
Margin between modified costs and p'posed charges	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]	[c-i-c]

LSS connections

The downward adjustments made to Telstra's claimed costs for LSS connections in Table 6.9.1 include an amount of **[c-i-c]** which can be applied across all geographic bands formed and based on the following draft conclusions:

- efficient in-exchange jumpering work would more closely reflect the quotations provided by Telstra's own 3P contractors of the order of **[c-i-c]** per connection, rather than Telstra's modelling of costs of around **[c-i-c]**, thus justifying a downward adjustment of **[c-i-c]** per connection (see section 6.4.1)
- 'back of house costs need to be reduced by around **[c-i-c]**to around **[c-i-c]** per connection to arrive at more efficient cost estimates (see section 6.4.4).

The ACCC has not undertaken an analysis of certain cost elements relating to vehicle, material and tool costs claimed by Telstra because these costs, being of a minor nature, are not material to the ACCC's assessment. This means, for the purpose of the undertakings assessment, that Telstra's claimed costs of **[c-i-c]** to **[c-i-c]** are not considered to be problematic.

On travel costs (see section 6.4.3), the ACCC indicates that it accepts, as broadly efficient, the discounted time estimates for travel suggested by Consultel. However, estimating costs for this factor requires determination of an hourly labour cost as well as time estimates. In regard to the former, as noted in section 6.4.1, the ACCC has not formed a draft view on this cost factor. However, as discussed below, it can form a view as to the reasonableness of the proposed LSS connection charge of $90 without forming a view as to the appropriate hourly rate.

In accepting Consultel's time estimates, and presuming that Telstra's hourly labour cost is reasonable, results in modified or adjusted travel costs of **[c-i-c]** for CBD and Metro areas, **[c-i-c]** for Regional areas and **[c-i-c]** for Rural areas, compared to the amounts of **[c-i-c]**, **[c-i-c]** and **[c-i-c]** claimed by Telstra for these same areas respectively. In other words, Telstra's claimed total costs could be reduced by a further **[c-i-c]**, **[c-i-c]** and **[c-i-c]** for CBD and Metro, Regional and Rural areas respectively for travel costs alone.

Hence, taking into the downward cost adjustments cited above, the ACCC's draft view is that Telstra's total claimed costs can be reduced by at least **[c-i-c]**, **[c-i-c]** and **[c-i-c]** for CBD/Metro, Regional and Rural areas respectively to levels between **[c-i-c]** and **[c-i-c]**, as shown in Table 6.9.1 above. This suggests the proposed charge of $90 for all regions is excessive for all geographic regions.

LSS disconnections

For LSS disconnections, the ACCC has formed the draft view that a disconnection charge is not warranted for most circumstances where a LSS is cancelled. More specifically, a disconnection charge is only warranted in circumstances where a physical disconnection is required, such as the cancellation of all services by an end user. The ACCC bases this view, in part, on the advice of Consultel that a physical disconnection of jumpers is not a technical necessity in the circumstances of where a customer churns from one service prover to another (see section 6.5).

Even in the more limited circumstance of where a disconnection charge is warranted, the ACCC has formed the draft view that a charge at a level of $90 is excessive. In the ACCC's view, there is scope for this charge to be discounted to a lower more reasonable level to, inter alia, reflect travel cost savings which can and should occur by batching LSS disconnections with other exchange work, in the same way that Telstra proposes that this can be done for ULLS disconnections. Indeed, the batching

and scheduling of this work could be done to the extent that no travel cost need be allocated to the LSS disconnection.

Application of the statutory criteria

In considering this matter the ACCC has had regard to the specific statutory criteria under section 152AH. The ACCC summarises its findings under those criteria as:

(a) whether the terms and conditions promote the LTIE[108]

The ACCC considers that its analysis of whether the undertakings promote the LTIE is facilitated by consideration of the 'future with or without' test.

The ACCC's draft view on this criterion is that, to the extent that the LTIE relates to competition, it would be more likely for competition to be inhibited than promoted if the undertaking's charges were accepted than if they were not. Thus, potential benefits of lower prices and improved service quality for a range of broadband and telephony services would not be realised.

This is because competitors to Telstra seeking to migrate significant numbers of end users from Telstra retail or wholesale service to LSS-based services to better compete for broadband and telephony services would be faced with having to pay excessive connection and disconnection charges. In regard to the latter, the ACCC is concerned that a disconnection charge would not be technically justified in many circumstances and its imposition further and unnecessarily raises the costs of access seekers seeking to compete with Telstra using a LSS-based platform.

These concerns are compounded by uncertainty over the application of the undertaking charges to MNM situations. The uncertainty arises because the undertaking is, on its face, unclear about whether the charges set out in the undertakings will apply to MNMs. Also, there is no certainty for access seekers that discounts for MNMs will always be applied for migrations where discounts are warranted because Telstra and the industry are not agreed on how MNMs should be defined.

As with the ULLS connection undertaking, the ACCC considers that accepting the undertaking would therefore inhibit competition. Facing excessive prices for connection and disconnection of the ULLS, access seekers would be limited in their ability to churn end-user customers from Telstra retail or wholesale broadband, or from other access seekers, on to their own infrastructure. If the undertaking was not accepted, the ACCC considers that competitors would be able to achieve appropriate efficient cost-based pricing for LSS connections (and disconnections in the limited cases this would be appropriate) through either negotiation or ACCC arbitration. This would allow access seekers to compete appropriately for end-user customers on an equal basis with Telstra.

To the extent that the LTIE relates to 'encouraging the efficient use of infrastructure', the ACCC considers that the undertaking's disconnection charge is not consistent with the productive and efficient use of Telstra's field technician workforce and the supporting infrastructure because it is technically unnecessary for immediate LSS disconnections to be performed and the apparent current practice of immediate disconnection is an inefficient use of Telstra's resources and infrastructure. Changes

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[108] *Trade Practices Act 1974* (Cth) s. 152AH(1)(a)

could readily be made to Telstra's processes to allow for the coordination of many LSS disconnections with new (re)connections of the service to thereby make better use of scarce resources by, in particular, adopting, as a model, the churn process developed for wholesale ADSL transfers. The ACCC considers that if the undertaking was accepted, the current inefficient process would effectively be supported by the pricing structure in the undertaking. In the absence of the undertaking, the ACCC considers that Telstra will have incentives to achieve an efficient co-ordination process for LSS disconnections and reconnections, as competitors would be more likely to achieve efficient cost-based prices.

In addition, as the proposed charges are not commensurate with the efficient costs of making LSS connections and, where appropriate, of making disconnections, to this extent, the undertaking discourages allocative efficiency.

(b) The legitimate business interests of the carrier or carriage service provider…and the carriers or providers' investment in facilities used to supply the declared service

In assessing this criterion, the ACCC considers that its analysis is facilitated by the application of the 'future with or without' test.

If the undertaking was accepted, the ACCC considers that Telstra would be likely to recover more than necessary to protect its legitimate business interests. This is because the ACCC considers that Telstra's proposed charges are well in excess of the appropriate costs of providing LSS connections and disconnections.

If the undertaking was rejected, the ACCC considers that access seekers would be able to achieve prices more concordant with the costs of providing LSS connection and disconnections under more efficient processes. The ACCC considers that cost based pricing would ensure Telstra a normal commercial return as part of its connection and (where appropriate) disconnection charges, thus meaning that Telstra's legitimate business interests would not be harmed by rejection of the undertaking.

(c) the interests of persons who have rights to use the declared service

The ACCC considers that assessment of this criterion is facilitated by consideration of the 'future with or without' test.

It is the ACCC's draft view that access seekers will be significantly disadvantaged by a decision to approve the undertaking. This is because, as noted above, access seekers seeking to migrate end users from a wholesale basis to their LSS-based infrastructure, or acquire customers from Telstra, will be required to pay excessive charges for both connections and disconnections. If the undertaking was not approved, and access seekers were therefore more able to achieve efficient cost-based pricing for connections (and disconnections), the ACCC considers that access seekers would pay more appropriate lower prices, be better able to compete with Telstra for end-user customers and be likely to achieve benefit from co-ordinated provisioning procedures.

(d) the direct costs of providing access to the declared service

In relation to this criterion, the ACCC's draft view is that the undertaking charges exceed efficient connection and disconnection costs for the LSS. Of particular concern is that, in most instances, the $90 disconnection charge proposed in the

undertaking is far in excess of a potential trivial (near zero) cost of a LSS disconnection since the disconnection process could, potentially, be coordinated or integrated with a (re)connection process and the cost of making a disconnection can effectively be regarded as having been recovered in the connection charge.

(e) the operational and technical requirements necessary for the safe and reliable operation of a carriage service, a telecommunications network or a facility

The ACCC's draft view is that acceptance or rejection of the proposed charges would have no material impact on the safety or reliability with which LSS connections are performed.

(f) the economically efficient operation of a carriage service, a telecommunications network or a facility'

The ACCC considers that the 'future with or without' test facilitates the consideration of this criterion.

The ACCC's draft view on this criterion is that, if it were to accept the $90 disconnection charge, then it would be endorsing the process whereby immediate disconnections are made when this may not be a technically necessary process. In addition, it would be endorsing an economically less efficient or less productive use of Telstra's resources than the alternative of a coordinated or integrated disconnection/reconnection process which would be encouraged by permitting Telstra to only levy a single connection fee in all but the circumstance of where an end user cancels all services.

Where a disconnection fee is warranted, the ACCC's draft view is that a charge set at $90 would be excessive and not reflect the potential scheduling and travel efficiencies that could be achieved by scheduling LSS disconnections with other in-exchange work, in the same way that ULLS disconnections are performed. A charge at less than $90, as indicated in Table 6.9.1, would encourage Telstra to batch LSS disconnections with other in-exchange work, given that there is no technical immediacy to effect such disconnections.

The ACCC considers that if the undertaking was not accepted that it would not endorse this current process and that this would be more likely to lead to an efficient and co-ordinated process.

While noting that the proposed undertaking connection charges exceed efficient connection costs, it is not clear to the ACCC that acceptance of the undertaking's $90 connection charge would encourage Telstra to perform LSS connections and/or disconnections less efficiently than it currently does.

The ACCC considers that Telstra performs LSS connections in a largely efficient manner, employing efficient systems and facilities. The ACCC's concern is that these efficiencies are not reflected in the costs claimed by Telstra in its cost model and the charges that Telstra thereby proposes to levy recover such costs. An example of this is that Telstra would be batching LSS connections with ADSL connections, as a result of the scheduling activity performed by the Connect system, meaning the actual per unit travel costs are much less than the average exchange trip costs which Telstra has

used in its cost model. While the travel per connection costs are too high in the cost model and imply a less than efficient work practice, the ACCC considers it more likely that Telstra uses relatively efficient work practices but the costs of these practices are not accurately reflected in the cost model.

This said, the ACCC notes that third parties appear to perform jumpering work at a lower cost than Telstra estimates for itself. The difference is not so significant as to necessarily suggest that Telstra should employ more third party contracting work than it currently does. However, to the extent that Telstra's current processes are less efficient and that access seekers could achieve efficient cost-based prices for LSS connections and disconnections, the ACCC considers that Telstra would be more likely to perform jumpering work more efficiently in the absence of the undertaking. That said, the ACCC's main concerns are that the proposed charges are inappropriate and excessive for LSS connections and acceptance of these charges would have adverse impacts on competition and access seekers, not that these charges would cause LSS connections to be performed in a less efficient manner.

Averaging of LSS connection prices

The ACCC generally considers that cost-based pricing for declared services is preferable. To the extent that costs vary between different geographic regions, the proposed geographically averaged LSS connection price will not be cost-based. Telstra has justified its use of an average price on the basis that the costs are not significantly different in the different regions and that it reflects current pricing. However, the ACCC notes that the differences in costs between regions for the LSS are not significantly different to the differences in costs between regions for the ULLS, for which Telstra has proposed geographically de-averaged prices.

Overall the ACCC does not consider that the geographically averaged price for LSS is a significant problem. The ACCC considers that the geographic differences in the LSS connection price are relatively small compared to the geographic differences, for example, in ULLS monthly access costs, and therefore considers that it would not be inappropriate to continue having averaged connection prices in the interests of commercial simplicity and certainty.

Full draft decision

The ACCC's draft view is that, based on its full consideration of all of the matters relevant under section 152AH, it is not satisfied that the terms and conditions set out in the LSS undertaking are reasonable.

6.10. International comparisons

The ULLS and LSS exist in a number of overseas jurisdictions. The ACCC considers that it may, therefore, be useful to compare the connection prices for similar services in overseas jurisdictions to those proposed by Telstra. This said, the ACCC notes that the usefulness of such a comparison is likely to be limited by differences in, inter alia, the regulatory environment, the market shares of non-incumbents, the state of competition, the technical specifications of the ULLS and LSS product and the structure and configuration of the PSTN networks, especially in the numbers and location of exchanges where jumpering work is performed. The ACCC considers that the smaller the number of exchanges to support a given population, the greater the potential for the batching of connections and hence lower costs and fees.

Table 6.10.1 contains details of the monthly rental and connection charges for ULLS services in European Union countries. The data is derived from the *Tenth report on the implementation of the telecommunications regulatory package 2004* (the EU report):[109]

Table 6.10.1 EU pricing of ULLS[110]

Country	Monthly Price	Monthly Price AUD	Connection Charge	Connection Charge AUD	Monthly Average
Australia[111]	$22.00	$22.00	$98.00	$98.00	$26.08
Austria	€ 10.90	$18.53	€ 54.50	$92.67	$22.40
Belgium	€ 11.60	$19.72	€ 57.10	$97.09	$23.77
Cyprus	€ 11.70	$19.89	€ 63.30	$107.64	$24.38
Czech republic	€ 15.50	$26.36	€ 317.40	$539.71	$48.84
Denmark	€ 8.60	$14.62	€ 46.40	$78.90	$17.91
Estonia	€ 8.90	$15.13	€ 57.40	$97.60	$19.20
Finland	€ 11.30	$19.21	€ 168.40	$286.35	$31.15
France	€ 10.50	$17.85	€ 78.70	$133.82	$23.43
Germany	€ 11.80	$20.06	€ 48.00	$81.62	$23.47
Greece	€ 10.40	$17.68	€ 36.10	$61.38	$20.24
Hungary	€ 11.80	$20.06	€ 151.40	$257.44	$30.79
Ireland	€ 16.80	$28.57	€ 121.50	$206.60	$37.18
Italy	€ 8.30	$14.11	€ 37.00	$62.91	$16.73
Latvia	€ 9.00	$15.30	€ 53.50	$90.97	$19.09
Lithuania	€ 12.50	$21.26	€ 95.00	$161.54	$27.99
Luxembourg	€ 15.80	$26.87	€ 185.60	$315.60	$40.02
Netherlands	€ 9.59	$16.31	€ 28.81	$48.99	$18.35
Portugal	€ 12.00	$20.40	€ 84.10	$143.00	$26.36
Slovenia	€ 15.30	$26.02	€ 74.10	$126.00	$31.27
Spain	€ 11.40	$19.38	€ 22.40	$38.09	$20.97
Sweden	€ 11.40	$19.38	€ 167.10	$284.14	$31.22
United Kingdom	€ 13.30	$22.62	€ 133.30	$226.66	$32.06
EU average	€ 11.23	$19.10	€ 75.67	$128.67	$24.46

Table 6.10.2 contains details of the monthly rental and connection charges for LSS services in European Union countries. The data is likewise derived from the EU report:[112]

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109 Commission of the European Communities, *European electronic communications regulation and markets 2004*, COM(2004) 759, 2 Dec 2004 annex 3, p. 75

110 The exchange rate used is the RBA monthly average rate for the month prior to 13 December 2004, the date Telstra submitted its undertakings. The ACCC considers that this is an appropriate rate as it represents the information available to Telstra at the time of submitting its undertaking.

111 Telstra's proposed Band 2 prices.

112 Commission of the European Communities, Annex 3, p. 77.

Table 6.10.2 EU pricing of LSS[113]

Country	Monthly Price	Monthly Price AUD	Connection Charge	Connection Charge AUD	Monthly Average
Australia[114]	$9.00	$9.00	$90.00	$90.00	$12.75
Austria	€ 5.50	$9.35	€ 109.00	$185.34	$17.07
Belgium	€ 1.70	$2.89	€ 57.10	$97.09	$6.94
Cyprus	€ 7.30	$12.41	€ 80.20	$136.37	$18.10
Czech republic	€ 8.70	$14.79	€ 324.10	$551.10	$37.76
Denmark	€ 4.30	$7.31	€ 36.60	$62.23	$9.90
Finland	€ 5.70	$9.69	€ 117.70	$200.14	$18.03
France	€ 2.90	$4.93	€ 78.70	$133.82	$10.51
Germany	€ 2.40	$4.08	€ 60.80	$103.38	$8.39
Greece	€ 5.20	$8.84	€ 47.00	$79.92	$12.17
Hungary	€ 4.30	$7.31	€ 151.40	$257.44	$18.04
Ireland	€ 9.00	$15.30	€ 123.40	$209.83	$24.05
Italy	€ 2.80	$4.76	€ 44.50	$75.67	$7.91
Latvia	€ 4.50	$7.65	€ 53.30	$90.63	$11.43
Lithuania	€ 6.70	$11.39	€ 121.60	$206.77	$20.01
Luxembourg	€ 7.50	$12.75	€ 196.20	$333.62	$26.65
Netherlands	€ 1.90	$3.23	€ 37.40	$63.60	$5.88
Portugal	€ 3.00	$5.10	€ 88.20	$149.98	$11.35
Slovenia	€ 7.00	$11.90	€ 68.80	$116.99	$16.78
Spain	€ 3.00	$5.10	€ 30.10	$51.18	$7.23
Sweden	€ 5.40	$9.18	€ 119.40	$203.03	$17.64
United Kingdom	€ 3.40	$5.78	€ 126.20	$214.59	$14.72
EU average	€ 3.30	$5.61	€ 79.60	$135.35	$11.25

Table 6.10.1 and Table 6.10.2 suggest that Telstra's proposed ULLS connection price (for Bands 2 and 3) is around the mid point of the charges for European ULLS connections, in August 2004, and that Telstra's proposed LSS connection price is around the lower end of charges for European LSS connections, in August 2004.

It is not known to what extent the ULLS connection fees in Table 6.10.1 reflect VULLS connections compared to IULLS and TULLS connections. It is important to note that, as outlined in section 6.7, the ACCC considers it is important to distinguish between different types of ULLS connection. Table 6.10.1 could generally reflect VULLS-type connections which incur higher costs than IULLS/TULLS connections. The ACCC notes that it appears that certain EU countries have lower fees for IULLS/TULLS-type connections.[115] This may support the ACCC's view that different charges should apply to these connections compared to VULLS connections.

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[113] The exchange rate used is the same as for the ULLS.

[114] Telstra's proposed prices

[115] For example, the ACCC notes that BT has different prices for 'Transfer" connections than for 'New Provide' connections and that eircom has different prices for connections depending on whether the access seeker wants connection of a spare path with new wire.

Also, the EU report does not categorically state which of the EU countries examined has a LSS disconnection charge and in which circumstances such a charge might apply.[116] For countries which do not charge a LSS disconnection fee, then the charges in Table 6.10.2 should be compared with Telstra's total charges of $180.

The ACCC notes that an accepted undertaking only applies from the date it is accepted by the ACCC and that it may therefore be useful to consider prices applicable at the time of this draft decision. The ACCC has obtained roughly comparable current rates applying in France, Germany, Ireland, the Netherlands and the UK. These can be compared with the prices presented in the EU report:

Table 6.10.3 Comparison of August 2004 and current prices for ULLS, using constant December 04 exchange rates

Country	Monthly Price	Monthly Price AUD	Connection Charge	Connection Charge AUD	Monthly Average
August 2004 prices (at December 2004 exchange rates)					
France	€ 10.50	$17.85	€ 78.70	$133.82	$23.43
Germany	€ 11.80	$20.06	€ 48.00	$81.62	$23.47
Ireland	€ 16.80	$28.57	€ 121.50	$206.60	$37.18
Netherlands	€ 9.59	$16.31	€ 28.81	$48.99	$18.35
United Kingdom	€ 13.30	$22.62	€ 133.30	$226.66	$32.06
November 2005 prices (at December 2004 exchange rates)					
France	€ 9.50	$16.15	€ 50.00	$85.02	$19.70
Germany	€ 10.65	$18.11	€ 43.10	$73.29	$21.16
Ireland	€ 14.65	$24.91	€ 58.00	$98.62	$29.02
Netherlands	€ 9.59	$16.31	€ 28.81	$48.99	$18.35
United Kingdom	£6.66	$16.25	£34.86	$85.05	$19.79
% change in prices					
France		-9.5%		-36.5%	-15.9%
Germany		-9.7%		-10.2%	-9.8%
Ireland		-12.8%		-52.3%	-21.9%
Netherlands		0.0%		0.0%	0.0%
United Kingdom		-28.2%		-62.5%	-38.3%

The ACCC notes that, although a limited sample, these results indicate that ULLS connection prices have fallen in four of the five countries examined. The ACCC particularly notes the significant drop in the price of ULLS connection in Ireland and the UK. As such, the comparison of Telstra's proposed prices to the prices in the EU report shown in Table 6.10.1 should perhaps be treated with caution.

The same five countries can be examined for changes in LSS prices:

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[116] The EU report says that Belgium does charge a disconnection fee of €28.33, but does not identify a charge for any of the other countries. The ACCC is aware that other countries do have disconnection charges additional to the connection charge listed in the EU report. The ACCC understands that for the line sharing services available in Ireland and the UK, the disconnection charge only applies when there is no gaining operator.

Table 6.10.4 Comparison of August 2004 and current prices for LSS, using constant December 04 exchange rates

Country	Monthly Price	Monthly Price AUD	Connection Charge	Connection Charge AUD	Monthly Average
August 2004 prices (at December 2004 exchange rates)					
France	€ 2.90	$4.93	€ 78.70	$133.82	$10.51
Germany	€ 2.40	$4.08	€ 60.80	$103.38	$8.39
Ireland	€ 9.00	$15.30	€ 123.40	$209.83	$24.05
Netherlands	€ 1.90	$3.23	€ 37.40	$63.60	$5.88
United Kingdom	£3.40	$5.78	£126.20	$214.59	$14.72
November 2005 prices (at December 2004 exchange rates)					
France	€ 1.80	$3.06	€ 55.00	$93.52	$6.96
Germany	€ 2.31	$3.93	€ 51.43	$87.45	$7.57
Ireland	€ 7.52	$12.79	€ 58.00	$98.62	$16.90
Netherlands	€ 1.90	$3.23	€ 37.40	$63.60	$5.88
United Kingdom	£1.30	$3.17	£34.86	$85.05	$6.72
% change in prices					
France		-37.9%		-30.1%	-33.8%
Germany		-3.7%		-15.4%	-9.8%
Ireland		-16.4%		-53.0%	-29.7%
Netherlands		0.0%		0.0%	0.0%
United Kingdom		-45.1%		-60.4%	-54.4%

It can be seen that significant price decreases for LSS connections were experienced in the same four countries as decreases in ULLS connections, and of similar magnitudes. Again, these results suggest that caution should be exercised in comparing August 2004 figures from the EU report to Telstra's proposed prices.

In conclusion, the foregoing discussion of international connection rates suggests it is relevant to note that

- precedents exist for discounted ULLS connection fees to apply to IULLS/TULLS connections
- explicit disconnection fees may not generally be levied on LSS connections, or may only apply where there is no gaining operator
- ULLS connection fees in overseas countries suggest Telstra's proposed charges for VULLS connections would not be especially unreasonable
- LSS connection fees in overseas countries suggest Telstra's proposed charges for LSS connections would not be especially unreasonable

The ACCC considers that it is difficult to draw definite conclusions based on comparisons to overseas jurisdictions because of possible differences in a host of factors, such as the regulatory environment, market shares of non-incumbents, state of competition, technical specifications of the ULLS and LSS products and structure and configuration of PSTN networks. These differences may be significant enough that no conclusions should be drawn from simple comparisons. Also, these charges

may be trending downwards, although a more definite conclusion on this trend will depend on the release of more updated data.

As far as the undertakings assessment function is concerned, the ACCC considers that the overseas benchmark data it has gathered cannot be used in preference to the conclusions the ACCC has drawn from applying the statutory criteria in its detailed analysis of ULLS and LSS connections in Australia. In regard to ULLS connections, the overseas data does not detract from the conclusions the ACCC has made. However, the overseas data appears to suggest that Telstra's LSS connection (without added disconnection) charges are not unreasonable. In order for this information to impact on the ACCC's views on this aspect of the LSS undertaking, the ACCC would need to know more about how the LSS charges in relevant overseas countries were based.

Appendix A. Assessment of hourly labour cost

While the ACCC ultimately considers that it is more appropriate to assess the efficient hourly labour rate for jumpering work by reference to quotes from third-party contractors for ULLS and LSS connection work, it has also assessed the inputs into Telstra's hourly labour rate calculations. The assessment is contained below.

Telstra's model

Telstra's exchange technicians are paid a salary of **[c-i-c]** to which Telstra has added **[c-i-c]** for the cost of a field supervisor, leading to a total of **[c-i-c]** direct wage costs.

Telstra has added four direct loadings for superannuation (9%), payroll tax (6.3%), workers compensation (1%) and leave bonus (1.30%). This leads to a total of **[c-i-c]** for wages and direct loadings, which applies to both ULLS and LSS.

The overhead cost mark-ups over the direct wages and direct loadings are derived from Telstra's Regulatory Accounting Framework (RAF) accounts. Telstra has obtained these by dividing the various line item costs for the two services by the total labour costs for the service to obtain a percentage mark-up.[117] The resulting percentage mark-ups are:

Table A.1 Overhead cost items, Telstra

Overhead cost item	**ULLS % mark-up**	**LSS % mark-up**
Human resource management	[c-i-c]	[c-i-c]
Information technology	[c-i-c]	[c-i-c]
Accounting and finance	[c-i-c]	[c-i-c]
Business administration	[c-i-c]	[c-i-c]
Property management	[c-i-c]	[c-i-c]
Total overhead mark-ups	[c-i-c]	[c-i-c]

The sum of the wages, direct loadings and overhead mark-ups leads to the following annual labour cost being claimed by Telstra for its exchange technicians:

Table A.2 Overall annual labour cost, Telstra

	ULLS	**LSS**
Annual labour cost	[c-i-c]	[c-i-c]

Telstra then derives the number of hours worked by technicians in a year. It starts from the 7 hours 21 minutes worked per day in Telstra's Enterprise agreement and

[117] As there is no RAF item for the LSS, Telstra has derived these mark-ups from the costs for the ADSL service. The ACCC understands that the ADSL connection process is the same as that for the LSS connection process.

then accounts for weekends, public holidays, recreation leave, sick leave and long service leave. It then removes 28% of time spent on non-field work tasks to derive the effective hours of an exchange technician as 1145.69 per year. This leads to these effective hourly rates:

Table A.3 Hourly labour rate, Telstra

	ULLS	**LSS**
Hourly labour rate	[c-i-c]	[c-i-c]

The ACCC's discussion paper asked a series of questions about the calculations of these hourly rates. The ACCC considered that as the overhead cost percentages were based on historical costs, they were not necessarily efficient or forward looking. Telstra in response stated that it believed any inefficiency in direct costs would counter any inefficiency in overhead costs and that the percentage mark-ups would be efficient.[118] Telstra also stated that

- the IT overheads could be directly allocated to labour involved in connection, due to technicians using computers as outlined in the statement of **[c-i-c]**.[119]
- the property administration costs claimed by Telstra represent support and training facilities for technicians
- the business administration costs were not double-counted in ULLS-specific costs, as they were administrative costs, not the cost of the front of house connection group claimed in ULLS-specific costs.[120]

Finally, Telstra submitted in response to the ACCC's questioning of the size of Telstra's indirect cost loadings compared to those claimed for the ULLS- and LSS-specific costs in support of its monthly charge undertakings.[121] The ACCC had noted that the indirect cost loadings for the connection undertakings were both in the order of **[c-i-c]** per cent, which was significantly more than the indirect cost loadings for the monthly charge undertakings. Telstra submitted that the modelling approaches were different for the monthly charges and connection charges and that the loadings for monthly charges were an attempt to capture all charges associated with connection but not model them explicitly.

Views of interested parties

Overheads

Macquarie Telecom submitted that it did not believe that Telstra's claimed labour costs in the ULLS connection undertaking were reasonable.[122] Macquarie submitted in

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118 Telstra, *Submission in response to the ACCC's discussion paper in respect of ULLS received March 2005*, p. 32 and Telstra, *Submission in response to the ACCC's discussion paper in respect of SSS dated March 2005*, p.12.

119 **[c-i-c]**, *Statement of **[c-i-c]***, 25 May 2005, pp. 8-10, 13-14.

120 Ibid, p. 33 and ibid, p. 13

121 Ibid, p. 34 and ibid, p. 13

122 Macquarie Telecom, *Macquarie Telecom's response to Telstra's undertakings on the unconditioned local loop service*, June 05, p. 11.

particular that it believed that the **[c-i-c]** per cent overhead cost loading for information technology costs appeared unreasonable, and that it believed these costs were being double counted as they were also included in Telstra's ULLS specific costs. Macquarie also submitted that the **[c-i-c]** per cent overhead cost loading for business administration seemed to be wildly out of kilter with accepted standards.[123]

Macquarie concluded that an appropriate level of overheads would be in the order of **[c-i-c]** per cent above salary rather than the **[c-i-c]** per cent over wages and direct loadings claimed by Telstra.

The Gibson Quai AAS (GQAAS) report prepared on behalf of the Competitive Carriers Coalition (CCC) also questioned the **[c-i-c]** per cent overhead mark-ups claimed by Telstra.[124] The CCC said that it considered the claimed mark-ups for Information Technology and Business Administration were excessive. The CCC stated that it considered that these mark-ups would be likely to be inaccurate as they would reflect Telstra's internal cost allocation procedures which in GQAAS' experience have difficulty achieving apportionment in circumstances where staff perform jumpering tasks for many different products.[125]

The CCC also said that in its opinion these were likely to be inefficient mark-ups and that it would be more appropriate to use international best practice mark-ups instead. It cited the use of mark-ups in the order of 30% used by the ACCC in assessing PSTN originating and terminating access as being appropriate.[126] [127]

Finally, the CCC questioned the reliability of Telstra's accounting cost allocations which lead to differences in overhead mark-up percentages between ULLS and LSS when the connection staff would be performing essentially the same tasks. Instead it submitted that the same mark-ups should be used for both the ULLS and LSS.

Hours of work

Macquarie Telecom rejected Telstra's estimate of 1145.69 effective field hours per technician per year. Instead, Macquarie argued that 1642 hours would be a more appropriate number of hours.[128] The ACCC considers that this appears to mean that Macquarie has rejected Telstra's view that there should be allowance made for time not spent on field work, and instead argues that the annual wage cost should be spread over all hours worked, both field work and non-field work.

ACCC's view

The hourly labour rate is a significant input into the costs associated with connection of the ULLS and LSS. In conjunction with the time taken for each step, the hourly

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123 Ibid, p. 12.

124 Gibson Quai AAS, *Competitive Carriers Coalition response to the ACCC discussion papers on ULLs and LSS undertakings report*, May 2005, p.21

125 GQAAS, p.22

126 GQAAS, p.22

127 While GQAAS does not cite a particular report, it appears that GQAAS is referring to modelling as discussed in ACCC, *A report on the assessment of Telstra's undertaking for the Domestic PSTN originating and terminating access services*, July 2000, p. 54

128 Macquarie Telecom, p.12.

labour rate determines Telstra's claimed costs for jumpering, travel and pair tagging and testing.

While the ACCC makes observations about the wages, direct loadings, overheads and conversion to hourly costs cited by Telstra, the ACCC believes that a more appropriate way to infer a reasonable labour rate is by the use of third party contractor quotes for jumpering work.

Wages and direct loadings

The ACCC generally considers that the direct wage contained in Telstra's supporting submissions is likely to be reasonable given that it reflects the actual amount paid to Telstra technicians according to the Telstra Infrastructure Services Enterprise Agreement attached to the Briggs statement. The ACCC also considers it appropriate that there is an amount allocated for the supervision of staff and therefore does not dispute Telstra's allocation of the wage of a supervising team leader.

The ACCC considers that Telstra's claimed direct loadings for payroll tax of 6.3% seems high given that only the ACT has a payroll tax higher than this rate. The ACCC considers that a more appropriate payroll tax rate might be around 5.6% given the actual payroll tax rates in the various states of Australia.[129] However adjusting for this has a minor effect on the hourly labour rates, which reduces by about 0.6%.

Overheads

The CCC submitted that the differing percentage mark-ups for ULLS and LSS connections might signify that Telstra's cost allocations were unreliable, given that the work done by technicians in connecting ULLS and LSS was very similar and involved very similar processes. A similar concern was raised by the ACCC's consultant, Consultel, who stated that it was unclear why the uplift factors should be so different for the two services. Consultel also stated that it found it "difficult to accept that a rate of '3.1 times salary' reflects only cost-recovery, and does not include any profit margin" or that a company claiming that rate could be operating efficiently.[130]

The ACCC agrees that the significant differences in the mark-ups for a technician connecting ULLS and LSS have not been adequately justified by Telstra. Based on the two connection processes (as outlined in the Luscombe statement), the process followed and equipment used in ULLS and LSS connections should incur similar overheads. As such, the differences in overheads between ULLS and LSS, particularly for information technology and property management, do not seem to represent likely actual or efficient overhead costs incurred.

The ACCC notes that this can perhaps be partially explained by the fact that the RAF costs used to derive these mark-ups are not unique to the connection and disconnection processes. Rather, the RAF items for ULLS and ADSL (which is used to proxy the mark-ups for LSS) reflect all costs associated with the service. As such the mark-ups will be calculated by reference to costs associated with the ongoing

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[129] The ACCC derived this value by weighting the payroll tax rates of each state by the populations in each state according to ABS data, as a proxy for the likely distribution of Telstra staff.

[130] Consultel, *Analysis of ULLS and LSS undertakings and subsequent submissions*, October 05, p. 11

provision of the services. This may explain why there is some significant variability in the percentage mark-ups—they are not unique to connection and may reflect differences in the costs associated with the ongoing running of the service. As such it might not be appropriate for Telstra to use them as proxies to provide mark-ups for connection and disconnection processes.

The ACCC considers that certain of the costs claimed seem to be significantly larger than might reasonably be expected to be allocated to one exchange technician. For example, the **[c-i-c]** of information technology expense associated with ULLS connection seems excessive given the description of exchange technician's use of computers as outlined in the Luscombe statement. Similarly, the **[c-i-c]** of IT expense for LSS connection seems excessive. The ACCC considers that the cost of a laptop and connectivity would not generate IT costs of this level and that this is unlikely to be an efficient amount. Similarly, the allocated business administration costs of **[c-i-c]** and **[c-i-c]** seem to be well in excess of efficient costs, especially as these have only been described by Telstra as 'general administration costs'.

The ACCC also considers that Telstra's argument that its mark-ups must be efficient cannot be sustained. While it is possible that the direct wage costs and overheads might contain the same amount of efficiency, leading to 'efficient' overhead percentages, in the absence of any particular information, the ACCC does not consider it reasonable to draw the same conclusion that Telstra draws that the overhead percentage mark-ups are reasonable. Rather, the ACCC considers that this would simply be a possible outcome, but that no particular conclusion can be drawn at this time.

The ACCC notes the CCC recommended a 33% mark-up, based on the mark-ups accepted by the ACCC in modelling prices for the PSTN. While the ACCC agrees that international benchmarks can be useful, it is reluctant to necessarily employ the same benchmarks as used for the PSTN model given the different nature of the modelling. In particular, the ACCC notes that those mark-ups were over direct capital costs and direct network operating costs—which are different bases to the direct labour expense presented by Telstra. As such the ACCC is not convinced that it would be appropriate to necessarily use the same international benchmark mark-ups as employed in the PSTN case.

Given the difficulties in acquiring reliable overhead figures for the ULLS and LSS connection rates, the ACCC considers that at this stage it would be more beneficial to infer the appropriate hourly rates by reference to the third party contractor information provided by Telstra in response to an ACCC information request. This is discussed further in section 6.4.1 of the report.

Conversion to hourly rates

The ACCC considers that there are two major considerations in Telstra's conversion from the annualised figure it obtains from using wages, direct loadings and overhead mark-ups to an hourly rate. The first of these is the number of days worked in a year, whilst the second is the effective field work hours of an employee.

The Briggs statement shows that Telstra has derived a figure of 217 working days per year.[131] The ACCC accepts the Briggs statement in this derivation except for its calculation of long service leave. As long service leave is only available to employees who work with Telstra for more than ten years, the ACCC does not consider it appropriate to allocate a tenth of the three months to each employee each year. The amount of leave should be adjusted by the number of employees who stay with Telstra for ten years. The ACCC considers that the allocation of 6.5 days of long service leave should be reduced by 73%.[132] Such an adjustment would reduce the hourly cost claimed by Telstra by around 2.14%.

The ACCC notes that Macquarie Telecom has effectively argued that technicians should spend all of the 7.35 hours per day throughout a year working on installation.[133] The ACCC agrees with Consultel that this is an unrealistic assumption.[134] It also notes Consultel's assessment that 72% of time working on field work is unlikely to be optimally efficient. The ACCC concurs with Consultel that it is not instructive to compare the prices charged by hot water system, washing machine, roof, lock and television repair companies to the sort of work done by Telstra's exchange technicians, given the different industries and the recurring and bulk nature of the ULLS and LSS connection work.

The ACCC notes, however, that it is difficult to obtain an estimate of the efficient time spent on field work by exchange technicians. As such, the ACCC considers at this stage that it would be more beneficial to infer the appropriate hourly rates from third party contractor information.

The ACCC's discussion of third party contractor information is contained in section 6.4.1 of the report.

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131 **[c-i-c]**, *Statement of **[c-i-c]***, 26 May 2005, p. 5

132 This number reflects ABS data that says 27% of employees in the construction industry (which includes units who install telephone equipment) have been in their current job for 10 years or more: ABS, *Labour Mobility, 6209.0*, Feb 2004, p. 12

133 Macquarie, p. 13

134 Consultel, p. 11

Appendix B. Section 152CGA specification of documents

For the purposes of section 152CGA, the documents that the Commission examined in the course of making its decision are specified in this section.

This section lists the submissions that have been submitted to the ACCC as part of this undertaking assessment. This draft report or these submissions may refer to submissions to earlier core services undertaking assessments or model price determinations—if so, those earlier submissions are not listed here but public versions are available on the ACCC's website.

Many of these submissions have confidential content according to the following key:

- **(1)** confidentiality claim made over entire submission
- **(2)** confidentiality claim made over parts of submission
- **(3)** no confidentiality claim made

Submissions marked (*) relate largely to connection and disconnection charges.

B.1. Telstra submissions in support of the undertakings

Confidential versions of these submissions were received by the ACCC on 7 February 2005. Public versions were not received until 2 March 2005.

Telstra, *Telstra's submission in support of the ULLS monthly charges undertaking dated 13 December 2004*, February 2005. **(2)**

NECG, *Appendix 1 to Annexure D of Telstra's submission in support of the ULLS monthly charges undertaking*, November 2004. **(2)**

NECG, *Appendix 1 to Annexure L of Telstra's submission in support of the ULLS monthly charges undertaking*, November 2004. **(2)**

Telstra, *Telstra's submission in support of the ULLS connection charges undertaking dated 13 December 2004*, February 2005. **(2) (*)**

Telstra, *Telstra's submission in support of the SSS monthly charges undertaking dated 13 December 2004*, February 2005. **(2)**

Telstra, *Telstra's submission in support of the SSS connection and disconnection charges undertaking dated 13 December 2004*, February 2005. **(2) (*)**

B.2. Submissions in response to the ACCC's discussion papers

The following submissions were received in response to the ACCC's discussion paper which was released on 9 March 2005.

B.2.1. ACCC discussion papers

ACCC, *Telstra's undertakings for the Unconditioned local loop service—Discussion paper*, March 2005.

ACCC, *Telstra's undertakings for the Line sharing service—Discussion paper*, March 2005.

B.2.2. AAPT

AAPT, *Submission by AAPT Limited to the Australian Competition and Consumer Commission in response to* Telstra's undertakings for the unconditioned local loop

service & Telstra's undertakings for the line sharing service *discussion papers, March 2005*, May 2005. **(3)**

B.2.3. Competitive Carriers Coalition

Gibson Quai–AAS, *Competitive Carriers Coalition response to the ACCC discussion papers on ULLS and LSS undertakings*, May 2005. **(2)**

B.2.4. Macquarie Telecom

Macquarie Telecom, *Macquarie Telecom's response to Telstra's undertakings on the unconditioned local loop service*, 1 June 2005. **(2)**

B.2.5. Optus

Optus, *Optus submission to Australian Competition and Consumer Commission on Telstra's ULLS undertakings*, May 2005. **(2)**

B.2.6. Telstra

Axiom Forensics, *Telstra Corporation Ltd report on appropriateness of demand assumptions*, 15 April 2005. **(2)**

Bowman, Robert, *Report on WACC for ULLS and LSS*, 26 May 2005. **(2)**

CRA International, *Commentary on PIE II model assumptions*, May 2005. **(1)**

CRA International, *Expert report on access deficit*, May 2005. **(2)**

CRA International, *Expert report on recovery of ULLS-specific costs*, May 2005. **(2)**

CRA International, *Expert report on ULLS and SSS prices—IEN costs*, May 2005. **(2)**

CRA International, *Expert report on ULLS and SSS specific cost models—levelisation*, May 2005. **(2)**

Telstra, *Telstra's submission in response to the Australian Competition and Consumer Commission's discussion paper in respect of ULLS received March 2005*, 27 May 2005. **(2)**

Telstra, *Telstra's supplementary submission in support of the ULLS connection charges undertaking dated 13 December 2004*, 7 July 2005. **(2) (*)**

Telstra, *Telstra's submission in response to the Australian Competition and Consumer Commission's discussion paper in respect of SSS dated March 2005*, 27 May 2005. **(2)**

Telstra, *Telstra's supplementary submission in support of the SSS connection and disconnection charges undertaking dated 13 December 2004*, 7 July 2005. **(2) (*)**

Telstra, *Commission 152BT request in respect of Telstra's access undertakings relating to ULLS and SSS connection and disconnection charges dated 13 December 2004*, 29 September 2005. **(2) (*)**

Telstra, *Second Commission 152BT request in respect of Telstra's access undertakings relating to ULLS and SSS connection and disconnection charges dated 13 December 2004*, 14 October 2005. **(2) (*)**

[c-i-c], *Statement of **[c-i-c]***, 26 May 2005. **(2)**

[c-i-c], *Statement of **[c-i-c]***, 25 May 2005. **(2) (*)**

[c-i-c], *Statement of **[c-i-c]***, 26 May 2005. **(2) (*)**

[c-i-c], *Statement of **[c-i-c]***, 25 May 2005. **(1) (*)**

[c-i-c], *Statement of **[c-i-c]***, 7 July 2005. **(2) (*)**

[c-i-c], *Statement of **[c-i-c]***, 26 May 2005. **(2)**

[c-i-c], *Statement of **[c-i-c]***, 26 May 2005. **(2)**

[c-i-c], *Statement of **[c-i-c]***, 25 May 2005. **(2)**

[c-i-c], *Statement of **[c-i-c]***, 27 May 2005. **(2) (*)**

[c-i-c], *Supplementary statement of **[c-i-c]***, 6 July 2005. **(2) (*)**

[c-i-c], *Statement of **[c-i-c]***, 30 May 2005. **(2) (*)**

B.3. Other documents referred to or examined by the ACCC in its assessment

ABS, *Labour mobility, 6209.0*, Feb 2004, p. 12

ACCC, *A final report on the assessment of Telstra's undertaking for the Line Sharing Service*, August 2004

ACCC, *A report on the assessment of Telstra's undertaking for the Domestic PSTN originating and terminating access services*, July 2000.

ACCC, *Assessment of Telstra's undertakings for PSTN, ULLS and LCS - Draft Decision*, October 2004.

ACCC, *Collection and Use of Information*, 2000.

ACCC, *Declaration of local telecommunications services*, July 1999

ACCC, *Final Determinations for model price terms and conditions for the PSTN, ULLS and LCS services*, October 2003.

ACCC, *Line sharing service – Final decision on whether or not a line sharing service should be declared under Part XIC of the Trade Practices Act 1974*, August 2002.

ACCC, *Telecommunications services — Declaration provisions: a guide to the declaration provisions of Part XIC of the Trade Practices Act*, July 1999.

ACCC, *Telstra's 13 December 2004 access undertakings relating to ULLS and LSS connection and disconnection charges – Request for further information under section 152BT of the Trade Practices Act 1974*, 12 August 2005.

ACIF, "C569:2005 Unconditioned Local Loop Service – Ordering, Provisioning And Customer Transfer", 2005.

Consultel, *Analysis of ULLS and LSS undertakings and subsequent submissions*, November 2005.

Commission of the European Communities, *European electronic communications regulation and markets 2004*, COM(2004) 759, 2 December 2004.

Explanatory memorandum, *Telecommunications Competition Bill 2002*

iiNet media release, *iiNet expands DSL infrastructure to over 200 exchanges*, 4 March 05.

Optus media release, *Optus steps up competition with DSL rollout*, 22 September 05.

Primus media release, *Primus Telecom broadband network rollout gaining momentum*, 8 September 05.

Seven Network Ltd [2004] ACompT 11

[c-i-c], *Statement of **[c-i-c]***, 22 June 2005.

Sydney Airports Corporation Ltd (2000) 156 FLR 10

Appendix C. Consultel interim report – Analysis of ULLS and LSS undertakings and Subsequent Submissions