

28 August 2013

Australian Competition and Consumer Commission

jessica.wicks@accc.gov.au

fixedservices@accc.gov.au

annette.weier@accc.gov.au

Fixed Services Review

Your Reference

Our Reference IP 081302

Macquarie Telecom Pty Limited ("**Macquarie**") welcomes the opportunity to make this submission to the Australian Competition and Consumer Commission ("**ACCC**") in response to the ACCC's discussion paper concerning the above.¹ Macquarie considers that the re-declaration of the six fixed-line services which are the subject of the ACCC's inquiry is essential to protect and promote competition as the telecommunications sector transitions to the NBN. While significant changes are already beginning to take place in the industry they are in their early stages and have not yet diluted the significance of Telstra's fixed network to the delivery of services to end-users. As such, on-going regulated access to Telstra's fixed network through the declaration of the fixed-line services is in Macquarie's view necessary and must be the outcome of this inquiry.

Macquarie is strongly of the view that the removal of the CBD geographic exemptions which currently apply to the wholesale line rental ("**WLR**") service and the local carriage service ("**LCS**") must be a further outcome of this review. Macquarie considers that the ACCC's rationale for the removal of other geographic exemptions in respect of declared fixed-line services as a result of its 2011 inquiry² apply equally to the exemptions which remain and therefore they should be removed.

In this submission, Macquarie has responded to each of the ACCC's questions as set out in the Discussion Paper. For ease of reference, each consultation question is reproduced in a text box and is followed by Macquarie's response.

¹ ACCC, Fixed Services Review, Discussion Paper on the Declaration Inquiry, July 2013, ("**Discussion Paper**")

² ACCC, Inquiry into varying the exemption provisions in the final access determinations for the WLR, LCS and PSTN OA services, Final Report, December 2011, ("**2011 Inquiry**")

Consultation Questions

1. Do you consider the ACCC's proposed assessment framework is appropriate for assessing whether declaring certain fixed line services would promote the LTIE? That is, will the proposed assessment framework assist the ACCC in assessing whether declaring a service will promote competition in markets for telecommunications services, achieve any-to-any connectivity and encourage efficient use and investment in infrastructure by which the service is supplied?

Macquarie is satisfied that the ACCC's proposed assessment framework is appropriate for assessing whether declaring certain fixed-line services would promote the LTIE. Macquarie notes that the ACCC's assessment framework is essentially defined in Part XIC of the *Competition and Consumer Act 2010*. In particular, the LTIE assessment requires the ACCC to consider the extent to which objectives concerning the following are achieved by the declaration of a given service:

- promoting competition;
- achieving any-to-any connectivity; and
- economically efficient use of, and investment in, infrastructure.

In forming its view that the ACCC's proposed assessment framework is appropriate, Macquarie notes that the framework is consistent with the legislative requirement. Moreover, it is also noted that the ACCC has applied this assessment framework in previous declaration inquiries that it has undertaken. This provides comfort to Macquarie that the LTIE assessment framework is appropriate and that the ACCC can be expected to apply it appropriately.

2. How should the ACCC define the markets relevant to network access services for the purposes of this review?

Macquarie notes that in its 2009 Declaration Inquiry³, the ACCC determined that the relevant markets for the fixed-line services were the national markets for:

- the retail and wholesale provision of fixed voice services;
- the retail and wholesale provision of fixed broadband services; and
- the retail and wholesale provision of bundled fixed voice and bundled fixed broadband services.

It is appropriate to consider whether this definition of markets is relevant to network access services for this current review. The relevant network access services are the unconditioned local loop service ("ULLS") and the line sharing service ("LSS"). Access seekers use the ULLS as an input to provide retail voice and broadband services and use the LSS as an input to provide retail broadband services. On this basis, Macquarie considers that the ACCC's views on market definition from the 2009 Declaration Inquiry are relevant to network access services for this current review. That is, the ULLS and LSS are used by access

³ ACCC, Fixed services review declaration inquiry for the ULLS, LSS, PSTN OA, PSTN TA, LCS and WLR - Final Decision, July 2009, ("2009 Declaration Inquiry")

seekers to provide retail voice and broadband services.

In forming this view, Macquarie considers that there remain differences between fixed and mobile voice and broadband services such that they are not substitutable for each other. In particular, key differences between fixed and mobile services are evident in network coverage, download speed and service quality. Macquarie does, however, note that such differences are becoming less evident as markets continue to develop.

3. Does Telstra's copper network continue to be a bottleneck for providing voice services to end-users? Please consider the impacts (if any) of the NBN rollout and the existence of HFC networks and give reasons for your answer.

Macquarie is of the view that Telstra's copper network continues to be a bottleneck for providing voice services to end-users. In support of its view, Macquarie notes recent findings of the ACCC:

*"The vast majority of current fixed voice services are provided via Telstra's copper customer access network (CAN)."*⁴ and

*"Telstra remains the dominant player in the provision of retail fixed voice with a market share of 66 per cent."*⁵

Telstra is currently contracted by the Government and NBN Co to decommission its copper network and to migrate its customers to the NBN. Under this agreement, Telstra's copper network will gradually become less used for the provision of voice (and other) services. However, at this time and for the purposes of the ACCC's current review, the NBN roll-out has a negligible impact on the market's reliance on Telstra's copper network for the provision of voice services. That is, the roll-out of the NBN and the take up of voice services provided over the NBN are still in their infancy.

The existence of HFC networks operated by Telstra, SingTel Optus and iiNet also has a negligible impact on the provision of voice services. The largest networks, i.e., those operated by Telstra and SingTel Optus, are understood to have a combined customer base of around 900,000 across Pay TV, broadband and voice services. Even if all 900,000 customers were voice customers this would be less than 10 per cent of the 10.4 million fixed voice SIOs reported by the ACCC.⁶ Moreover, it is understood that Telstra has primarily used its HFC network for the provision of Pay TV and broadband services. As such, the number of voice customers on these HFC networks is relatively small.

⁴ ACCC, Telecommunications communications reports 2011-12, February 2013, page 13

⁵ *ibid* p. 14

⁶ *ibid* p. 14

4. Does Telstra's copper network continue to be a bottleneck for providing broadband services to end-users? Please consider the impacts (if any) of the NBN rollout and the existence of HFC networks and give reasons for your answer.

Macquarie is of the view that Telstra's copper network continues to be a bottleneck for providing broadband services to end-users. In support of its view, Macquarie notes recent findings of the ACCC:

*"Telstra remains dominant in the provision of fixed-line data access and as a provider of internet services in Australia."*⁷ and

*"Telstra supplied around 42 per cent of the retail market in 2011-12."*⁸

As noted in Macquarie's response to the previous question, Telstra is currently contracted by the Government and NBN Co to decommission its copper network and to migrate its customers to the NBN. Under this agreement, Telstra's copper network will gradually become less used for the provision of broadband (and other) services. However, at this time and for the purposes of the ACCC's current review, the NBN roll-out has a negligible impact on the market's reliance on Telstra's copper network for the provision of broadband services. That is, the roll-out of the NBN and the take up of broadband services provided over the NBN are still in their infancy.

Macquarie is of the view that the HFC networks operated by Telstra, SingTel Optus and iiNet also have a relatively minor impact on broadband services. Data reported by the ACCC shows that there was 12 million Internet customers in Australia as at June 2012 and that just under half of these customers accessed the Internet via wireless networks.⁹ Therefore, the other six million Internet customers accessed the Internet via fixed networks. If all of the 900,000 customers on the Telstra and SingTel Optus HFC networks were broadband customers this would be 15 *per cent* of the six million fixed network broadband customers. Moreover, it is noted that the HFC networks have limited geographic coverage. Telstra's HFC network has presence in Melbourne, Sydney, Perth, Adelaide, Gold Coast and Brisbane, while SingTel Optus' HFC network is confined to Melbourne, Sydney and Brisbane. As such, the impact of the HFC networks is relatively small in terms of customer numbers and geographic coverage.

5. Would declaring network access services promote the long-term interests of end-users? Please give reasons, referring to the implications for competition, any-to-any connectivity (where relevant) and the efficient use of and investment in infrastructure.

Macquarie is of the view that re-declaring the network access services, specifically the ULLS and the LSS would promote the LTIE. Macquarie's comments in respect of the legislative considerations are discussed below.

⁷ *ibid* p. 24

⁸ *ibid* p. 24

⁹ *ibid* p. 21

Implications for Competition

As noted in Macquarie's responses to questions 3 and 4, above Telstra's copper network is the primary network on which fixed voice and broadband services are provided to end-users in Australia. As such, Telstra's copper network is a bottleneck for providing voice and broadband services to end-users. At the same time, Telstra is the major supplier of retail fixed voice and broadband services in Australia. As such, Telstra has little incentive to provide the ULLS and LSS to access seekers on reasonable terms. Therefore, declaration of the ULLS and LSS would enable access seekers to offer end-users voice and broadband services with scope for price competition and service differentiation.

Any-to-any Connectivity

Any-to-any connectivity is a concept by which customers of one network can make (and receive) calls to (and from) any other network. This concept has no particular relevance in the case of network access services because such services are not used to connect end-users of different networks. Rather, network access services enable an operator to provide services to end-users using the network of another operator. That is, there is only one network involved with network access services and there is no connection between networks. As such, it is appropriate for the ACCC to apply little or no weighting to this consideration.

Efficient use of and Investment in Infrastructure

Macquarie believes that the continued declaration of the network access services is consistent with promoting the efficient use of and investment in infrastructure. This is because declaration will result in cost-based pricing of these input services which in turn will provide appropriate build versus buy pricing signals to access seekers and access providers alike. That is, with appropriate pricing signals, access seekers would avoid making inefficient investment in duplicating infrastructure and access providers would be encouraged to provide services at their lowest cost.

6. In the event that the ULLS and LSS continue to be declared, are the service definitions for these services still appropriate? Please give reasons.

Macquarie considers that the service definitions for the ULLS and LSS are still appropriate. These services were developed and are used within a copper based, circuit switched PSTN environment which will continue to exist until it is ultimately replaced by the NBN. Moreover, these services have been used effectively by access seekers for more than a decade as services regulated by the ACCC.

7. Have developments in the industry since 2009 indicated that the ACCC should consider commencing a declaration inquiry in respect of any new or different network access services? If so, please specify the services and explain why declaring them would promote the long-term interests of end-users.

Macquarie is of the view that the developments in the industry since 2009 have not exposed a requirement for the declaration of any new fixed network access services.

8. How should the ACCC define the markets relevant to resale services for the purposes of this review?

As discussed in Macquarie's response to question 2 the ACCC in its 2009 Declaration Inquiry, determined that the relevant markets for the fixed-line services were the national markets for:

- the retail and wholesale provision of fixed voice services;
- the retail and wholesale provision of fixed broadband services; and
- the retail and wholesale provision of bundled fixed voice and bundled fixed broadband services.

It is appropriate to consider whether this definition of markets is relevant to resale services for this current review. The relevant resale services are the wholesale line rental ("WLR") service and the local carriage service ("LCS"). The WLR service allows access seekers to rent an active copper line from Telstra with a telephone number which enables end-users to make and receive standard voice calls. The LCS provides local calls on Telstra's network and is typically acquired in conjunction with the WLR service. The WLR service and the LCS do not support the provision of broadband services. Therefore, the market for the provision of broadband services from the 2009 Declaration Inquiry is not relevant for this current review. However, the bundling of broadband services with voice services is commonplace.

As discussed in its response to question 2, Macquarie considers that there remain differences between fixed and mobile voice and broadband services such that they are not substitutable for each other. In particular, key differences between fixed and mobile services are evident in network coverage, download speed and service quality. Macquarie does, however, note that such differences are becoming less evident as markets continue to develop.

On the basis of the preceding discussion, Macquarie considers that the markets relevant to resale services for this current review are:

- the retail and wholesale provision of fixed voice services; and
- the retail and wholesale provision of bundled fixed voice and broadband services.

9. Does Telstra's copper network represent a bottleneck for providing resale voice services to end-users? Should the ACCC continue to declare resale voice services? Please give reasons referring to the state of competition in voice markets, any-to-any connectivity and the efficient use and investment in infrastructure.

As noted in Macquarie's response to question 3 Telstra's copper network is the primary network on which fixed voice services are provided to end-users in Australia. As such, Telstra's copper network is a bottleneck for providing resale voice services to end-users.

Macquarie is strongly of the view that the ACCC should continue to declare resale voice services on the basis that to do so would promote the LTIE. Macquarie's comments in respect of the legislative considerations are discussed below.

Implications for Competition

As noted in Macquarie's response to question 3 Telstra is the major supplier of retail fixed voice services in Australia. Macquarie considers that the re-declaration of the resale services would ensure that end-users are provided with an alternative to Telstra as a service provider and therefore the provision of competitive tension in terms of price, service and service bundling.

Any-to-any Connectivity

As noted in Macquarie's response to question 5 any-to-any connectivity is a concept by which customers of one network can make (and receive) calls to (and from) any other network. This concept has no particular relevance in the case of resale services because such services are not used to connect end-users of different networks. Rather resale services enable an operator to on-sell services to end-users using the network of another operator. That is, there is only one network involved with resale services and there is no connection between networks. As such, it is appropriate for the ACCC to apply little or no weighting to this consideration.

Efficient use of and Investment in Infrastructure

Macquarie believes that the continued declaration of the resale services is consistent with promoting the efficient use of and investment in infrastructure. This is because declaration will result in cost-based pricing of these services. Cost-based pricing is appropriate for ensuring that network resources are allocated to their most productive use.

10. Will potential access seekers face significant barriers to entry in supplying services over the NBN? If so, would declaring resale services provided using NBN infrastructure promote the LTIE? Please give reasons, referring to the implications for competition, any-to-any connectivity (where relevant) and the efficient use of and investment in infrastructure.

Prima facie potential access seekers will not face significant barriers to entry in supplying services over the NBN. The establishment of NBN Co to build and operate a wholesale-only open access network was intended to ensure that access seekers would not face significant barriers to entry. That is, access seekers would be able to source wholesale network

services from a willing supplier and not have to compete with that wholesale supplier in retail markets. However, access seekers may face potential barriers to entry such as having sufficient operational scale.

Macquarie does not believe that declaring resale services, i.e., the WLR service and the LCS, to be provided using the NBN infrastructure is appropriate. Both services are essentially constructs of a copper-based, circuit-switched PSTN environment which are not relevant in the next generation fibre, IP environment. Moreover, to the extent that services supplied by NBN Co are set out in standard forms of access agreements such services are declared.

11. In the event that the WLR service and the LCS continue to be declared, are the service descriptions for these services still appropriate?

Macquarie is strongly of the view that the CBD geographic exemptions which currently apply to the WLR service and the LCS must be removed. These exemptions are provided for in the service descriptions for these services. That is, the service descriptions carve-out from regulation the WLR service and the LCS when they are supplied in CBD geographic areas.

Macquarie notes that the terms of the ACCC's 2011 Inquiry which removed other geographic exemptions applicable to certain fixed-line services including the WLR service and the LCS did not address the CBD exemptions. Having reviewed the ACCC's rationale for the removal of geographic exemptions as set out in its final report of the 2011 Inquiry, Macquarie is strongly of the view that the rationale applies equally to the CBD exemptions which remain. In particular, Macquarie notes the following conclusions reached by the ACCC:

"... there is no business case for access seeker investments in traditional copper-based voice-capability" ¹⁰;

"Telstra remains the main provider of wholesale voice-only services ..." ¹¹; and

"Telstra's continuing dominance ... limits the effectiveness of retail competition in restraining Telstra's exercise of its wholesale market power". ¹²

On the basis of these conclusions, Macquarie strongly believes that the service descriptions for the WLR service and the LCS must be amended to remove the geographic exemptions.

[CiC]

¹⁰ ACCC, ACCC removes geographic exemptions for declared fixed line services, Media Release, 16 December 2011

¹¹ *ibid*

¹² *ibid*

Accordingly, the CBD exemptions must be removed. Macquarie intends to make further representations to the ACCC on this matter.

12. Have developments in the industry since 2009 indicated that the ACCC should consider commencing a declaration inquiry in respect of any new or different resale services? If so, please specify the services and explain why declaring them would promote the LTIE.

Macquarie is of the view that the developments in the industry since 2009 have not exposed a requirement for the declaration of any new fixed network access services.

13. How should the ACCC define the market relevant to interconnection services for the purposes of this review?

The relevant interconnection services for the ACCC's current review are the PSTN OA and the PSTN TA. These services are used by access seekers to allow the carriage of fixed voice services across different networks. With reference to the discussion in its response to question 8, Macquarie is of the view that the relevant markets for interconnection services for this current review are:

- the retail and wholesale provision of fixed voice services; and
- the retail and wholesale provision of bundled fixed voice and broadband services.

14. Would extending the declarations for the PSTN OA and PSTN TA services promote the long-term interests of end-users? Please give reasons, referring to the implications for competition, any-to-any connectivity and the efficient use of and investment in infrastructure.

Macquarie is of the view that extending the declarations for the PSTN OA and PSTN TA services would promote the LTIE. Macquarie's comments in respect of the legislative considerations are discussed below.

Implications for Competition

As noted in Macquarie's responses to questions 3 and 4, above Telstra's copper network is the primary network on which fixed voice services are provided to end-users in Australia. The PSTN TA service is essential to enable customers of one network to connect with customers of another network. Access to the PSTN TA service is necessary for operators of other fixed and mobile networks to be able to terminate calls to end-users on Telstra's fixed network. In addition, the PSTN OA is used by access seekers as an essential input enabling them to provide a range of calling services, such as long-distance, international and toll-free services. As such, continued access to the PSTN TA and OA services are fundamental for ensuring continued competition and that end-users are offered a choice of service provider for voice services.



Any-to-any Connectivity

As noted in Macquarie's response to question 5 any-to-any connectivity is a concept by which customers of one network can make (and receive) calls to (and from) any other network. The PSTN TA and OA services are essential for promoting any-to-any connectivity. These are the services which enable end-users of one network to connect with end-users and services of another network.

Efficient use of and Investment in Infrastructure

The continued declaration of the PSTN TA and OA services is consistent with promoting the efficient use of and investment in infrastructure. This is because declaration will result in access seekers making use of existing network infrastructure on cost-based prices which in turn will provide appropriate build versus buy pricing signals to access seekers and access providers alike. That is, with appropriate pricing signals, access seekers would avoid making inefficient investment in duplicating infrastructure and access providers would be encouraged to provide services at their lowest cost.

15. What implications do end-users' growing use of mobile- and VoIP-based voice services, and growth in the use of the ULLS and access seekers' own equipment, have for declaration of the PSTN OTA services?

Macquarie considers that the growth in mobile, VoIP based and ULLS based services underlies the importance of the continued declaration of PSTN OTA services to effective competition. Growth in such services effectively displaces telecommunications traffic which would otherwise have been carried on Telstra's fixed network. Where users of one network wish to connect to users of other networks or wish to use the services of another network PSTN OTA services are essential. That is, PSTN OTA services are necessary where users of mobile, VoIP based and ULLS based services wish to connect with users or services provided on Telstra's fixed network. As mobile, VoIP based and ULLS based services grow the need for connectivity with Telstra's fixed network will also grow.

16. Are the service descriptions for the PSTN OA and PSTN TA services still appropriate? Should service descriptions for voice interconnection services be technology-neutral? Please give reasons for your answer.

Macquarie considers that the service descriptions for the PSTN OA and PSTN TA services may no longer be appropriate. This is because the service descriptions incorporate very specific technical requirements which may no longer be appropriate for connectivity between Telstra's fixed network and other advanced IP networks, e.g., NBN Co's fibre network, 4G mobile networks operated by Telstra, SingTel Optus and Vodafone Hutchison Australia. In particular, there are some specific aspects of the service descriptions for the PSTN OA and PSTN TA services which appear to be outdated, including:

- the specification of 2.048Mbit/sec switchports; and
- the specification of CCS#7 signalling.

Macquarie prefers technology neutral service descriptions for the PSTN OA and PSTN TA services which would cater for connectivity between different network platforms, including copper, fibre, LTE, satellite, fixed wireless etc. The basis of this view is to ensure any-to-any connectivity, i.e., that users of any network are assured connectivity with users and services provided on any other network and that such connectivity is carried out on a technically efficient basis.

17. What does the expected change in the fixed line network - from a copper network carrying an analogue signal to a fibre network carrying VoIP - mean for the declaration of interconnection services?

In line with Macquarie's response to the previous question, technical developments are advancing such that network interconnection increasingly involves at least one IP based network. While the transition to all IP networks is underway with the roll-out of the NBN, Telstra's legacy copper network remains the largest single network and is most likely to remain so for at least the next five years. As such, Telstra's circuit-switched analogue network will co-exist with IP networks and will need to be interconnected. This in turn means that service descriptions for the declared PSTN OA and PSTN TA services should be expressed in technology-neutral terms in order to ensure any-to-any connectivity between fundamentally different types of network with regard to technology.

18. Do developments in the industry or in interconnection arrangements since 2009 indicate that the ACCC should consider commencing a declaration inquiry in respect of any new or different interconnection services?

Macquarie is of the view that the developments in the industry since 2009 have not exposed a requirement for the declaration of any new fixed-line network access services. However, Macquarie remains of the view that the scope of declared interconnection services is not complete.¹³

Macquarie is concerned that there is a misalignment between the construct of the ACCC's declared services and the construct of the services provided by access providers and sought by access seekers. In particular, Macquarie seeks and is provided a fixed to mobile service. That is, a service which originates on a fixed network and terminates on a mobile network and is provided and priced by its suppliers as a single service. On the other hand, the ACCC has declared a fixed origination service and has provided a price for that service and has declared the mobile terminating access service ("**MTAS**") and provided a price for that service. This means that Macquarie does not have a regulated price which matches the service that it actually seeks. Inevitably, because of the imbalances in bargaining strength, Macquarie pays more for a fixed to mobile service than the sum of charges for a fixed originating service and a MTAS. To address this matter Macquarie considers that the ACCC should declare a fixed originating to mobile terminating access service.

¹³ Macquarie has previously raised this matter with the ACCC in Macquarie Telecom's Submission in relation to the ACCC's Review of Domestic Mobile Termination Access Service (MTAS) – June 2011 – Discussion Paper, 27 July 2011 (Reference RG 071103)

19. What facilities access services do you currently use? Please describe how you use these services and why they are needed by your business.

Macquarie acquires two types of facilities access service from Telstra, i.e., the Telstra Exchange Building Access (“**TEBA**”) service and duct access. The TEBA service is used by Macquarie to enable it to house DSLAM equipment within certain Telstra exchanges. This in turn supports the provision of ADSL services to end-users. Macquarie uses Telstra’s duct access service to run fibre cable which forms Macquarie’s metro access network (“**MAN**”) in the CBDs of both Melbourne and Sydney. In turn, the MAN supports the provision of voice, data and broadband services to end-users.

20. Have you experienced any unreasonable difficulties in obtaining facilities access? If so, please describe the nature of the difficulties, their significance to your business, and whether they were resolved. For any difficulties that were resolved, please explain how they were resolved and how long it took to reach a solution. If they were not resolved, please describe the impact on your business.

As noted in its response to the following question, Macquarie is of the view that difficulties arising in respect of acquiring facilities access services lie in the absence of regulated charges.

21. Should the ACCC consider whether any facilities access services be declared? If so, please specify the service(s) and give reasons. In explaining your reasons, please comment on the expected impact of declaring the service(s), referring to any effects on competition, any-to-any connectivity, efficient use of infrastructure, and infrastructure investment.

Macquarie believes that the ACCC should commence an inquiry to consider whether certain facilities access services should be declared. While the scope of relevant services should form part of such an inquiry, the services that appear appropriate for the ACCC to consider declaring are:

- the Telstra Exchange Building Access (“**TEBA**”) service;
- the duct access service; and
- the External Interconnect Cable (“**EIC**”) access service;

Macquarie acknowledges that there already exists a regime for the regulation of access to facilities. In particular:

- pursuant to Schedule 1 of the *Telecommunications Act 1997*, carriers are obliged to provide other carriers with access to “supplementary facilities”, “telecommunications transmission towers” and to “underground facilities”; and
- the ACCC has developed the Facilities Access Code¹⁴ pursuant to Schedule 1 of the *Telecommunications Act 1997*.

¹⁴ ACCC, *A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities*, October 1999, (“**Facilities Access Code**”)

However, the shortcomings of this regime drive the need for facilities access services to be properly and appropriately regulated by the ACCC through the declaration process. Such shortcomings include:

- the absence of any regulated charges for facilities access services; and
- the limited scope of services covered by the Facilities Access Code.

Macquarie's comments in respect of the legislative considerations for the declaration of services are discussed below.

Implications for Competition

Telstra is the dominant owner of telecommunications facilities which are sought by access seekers to enable them to provide services to end-users. Macquarie notes that there have been many disputes in which access seekers have sought reasonable terms of access to Telstra's facilities. Macquarie believes that Telstra is effectively able to set terms (including price) of access to its facilities on a "take it or leave it" basis.

The declaration of facilities access services would result in the ACCC setting terms (including price) of access to such facilities through a final access determination ("**FAD**"). This would result in regulated cost-based pricing for facilities access services which is conducive to effective competition.

Any-to-any Connectivity

Refer to Macquarie's response to question 5 on this point. Any-to-any connectivity has no particular relevance to facilities access services because these services are not used to connect end-users of different networks.

Efficient use of and Investment in Infrastructure

Refer to Macquarie's response to question 5 on this point.

22. Would regulating facilities access services through the FADs of any declared fixed line services be more or less effective in promoting the LTIE than declaring facilities access services in their own right? Please give reasons for your view.

Macquarie does not believe that regulating facilities access services through the FADs of other (related) declared fixed line services is appropriate. That is, the making of a FAD for a given service is a consequence of that service being declared. Accordingly, Macquarie would prefer to see certain facilities access services declared and then the making of a corresponding FAD. This ensures that there is a consistent framework within which all access services are regulated by the ACCC.

23. What is an appropriate duration for the declarations? Please give reasons.

Macquarie is of the view that an appropriate duration for the declarations of the fixed-line services is five years. Macquarie bases its view on consideration of the following:

- the need to provide operators and investors with a more certain operating environment;
- that it is unlikely that changes which are occurring in the telecommunications sector such as the roll-out of the NBN and the growth in VoIP services will materially affect Telstra's control of bottleneck services over the next five years; and
- the precedent that the ACCC has set in relation to the wholesale ADSL service where the duration of the declaration is five years.

Macquarie is also of the view that with five year fixed-line service declarations, the duration of corresponding FADs should be two years. This reflects the timeframes on which commercial agreements are typically made.

Closing

Macquarie welcomes the opportunity to make this submission in response to the ACCC's Discussion Paper. Macquarie's key views as set out in this submission are as follows:

- each of the six fixed-line services must continue to be declared;
- the CBD geographic exemptions must be removed from the service descriptions for the WLR service and the LCS;
- the ACCC should commence an inquiry to consider whether certain facilities access services should be declared; and
- the duration of the fixed-line service declarations should be five years.

Please do not hesitate to contact me should you have any queries in relation to this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read "Chris Zull".

Chris Zull
Senior Manager, Industry & Policy

Phone 03 9206 6848
Email czull@macquarietelecom.com