THE ACCC'S DRAFT PRICING PRINCIPLES AND INDICATIVE PRICES FOR LCS, WLR, PSTN OTA, ULLS AND LSS, AUGUST 2009

SUBMISSIONS IN RESPONSE FROM:

ADAM INTERNET PTY LTD;
AGILE PTY LTD / INTERNODE PTY LTD;
AMCOM PTY LTD;
CHIME COMMUNICATIONS PTY LTD / IINET LIMITED;
EFTEL LIMITED;
NETSPACE NETWORKS PTY LTD;
NETWORK TECHNOLOGY (AUSTRALIA) PTY LTD;
SAUNDERS PROPERTIES / TSN COMMUNICATIONS; AND
WIDEBAND NETWORKS PTY LTD
("THE ACCESS SEEKERS")

1. INTRODUCTION AND EXECUTIVE SUMMARY

The Access Seekers all acquire access to declared services provided via Telstra's fixed network. They have each undertaken extensive negotiation with Telstra over several years in attempts to obtain reasonable terms of access to declared services and have all been involved in access disputes that have been or are currently being arbitrated by the ACCC. The ACCC's pricing principles and indicative prices are vitally important to the Access Seekers' business models and their ability to provide competitive and innovative services to consumers.

The Access Seekers welcome the opportunity to comment on the August 2009 ACCC paper entitled "Draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS and LSS" (**the Discussion Paper**). The Discussion Paper included as attachments draft pricing principle determinations which contain indicative prices (**the Draft Determinations**). This submission comments on the Draft Determinations.

In summary, the Access Seekers:

- Support the ACCC's decision to base WLR and LCS charges upon a cost based model rather than RMRC.
- Agree with the ACCC's approach in basing LSS charges on an updated specific costs model.
- Consider that the TSLRIC+ has been proven to be an inappropriate cost methodology for assessing charges to access Telstra's fixed network.
- Encourage the ACCC to assess how a Regulated Asset Base (***RAB***) model can be implemented to replace TSLRIC+, and to do so in the context of the proposed Telecommunications Reform Laws.
- Submits that ULLS monthly charges should remain set at the current rate to avoid multiple price shocks when RAB costing is implemented.

2. THE DRAFT DETERMINATIONS

The following summarises the Access Seekers' view of the salient aspects of the Draft Determinations.

The Draft Determinations set indicative prices for LCS, WLR, PSTN OTA, ULLS and LSS for the years 2009-10, 2010-11 and 2011-12. With the exception of LSS, the Draft Determinations involve material changes to the ACCC's current approach by either adopting a new pricing methodology or applying a new cost model to an existing pricing approach. These changes are as follows:

1. Changing the pricing methodology for LCS and WLR from RMRC to TSLRIC+.
2. Refining the application of the TSLRIC+ pricing methodology relating to PSTN OA and ULLS by basing prices for those services on the results of the Analysys cost model.
3. Altering Telstra's four geographic Bands to two Zones.

(**the Proposed Changes**).

the Access Seekers note that the Proposed Changes result in significant price changes for ULLS monthly charges, LCS and PSTN OA. The Access Seekers note that the ACCC is proposing to adopt an adjustment path in order to avoid price shocks occurring in relation to those services.

As regards LSS, although the indicative monthly rental charge falls from $2.50 to $1.00 this fall in price is not the result of a change in pricing principle or the application of a new costs model. The ACCC has adopted an annual approach to the levelisation of costs for future LSS pricing while maintaining the pooling and allocation approach. Within the "Specific cost" cost model, the ACCC has also included an additional $10 million in the capital base for operation support systems enhancements. The ACCC stated that even with this allowance for this prospective capital expenditure, the Specific Costs model results in an LSS price below $1 per month, which declines through time. However, the ACCC considers that the price should be rounded up to $1 to be of a form of a minimum monthly charge now and in the future. The ACCC stated that it does not regard the decrease from $2.50 to $1.00 to result in a price shock.

3. SUMMARY OF THE ACCESS SEEKERS' RESPONSE TO THE DRAFT DETERMINATIONS

3.1 LCS and WLR

The Access Seekers agree that access pricing should be cost based. Therefore, subject to particular issues that relate to WLR in Zone B, the Access Seekers believe that replacing RMRC with a cost based approach to pricing is appropriate. As discussed below, the Access Seekers submit that TSLRIC+ is not the most appropriate cost based approach and should be replaced by a RAB methodology that accounts for depreciation in the assets that make up the CAN. Nonetheless, until such an approach is implemented, the Access Seekers support the ACCC's decision to move away from RMRC costing. However, as regards WLR, the Access

Seekers support the ACCC's view that it is inappropriate to set a cost based price for WLR in Zone B at this time.

3.2 **PSTN OA**

Subject to the Access Seekers' submissions in section 3.6 below regarding the time span of the Draft Determinations, the Access Seekers are in broad agreement with the approach to PSTN OA adopted in the relevant Draft Determination.

3.3 **LSS**

Subject to the Access Seekers' submissions in section 3.6 below regarding the time span of the Draft Determinations and in section 7 below regarding the rounding up of the LSS rental charge, the Access Seekers is in broad agreement with the approach to LSS set out in the relevant Draft Determination.

3.4 **ULLS**

The Access Seekers have serious reservations as to the appropriateness of the ACCC setting the proposed indicative prices for ULLS monthly charges at this time. The Access Seekers submit that the ACCC should not implement a pricing principle in a way that leads to a price shock unless the ACCC is satisfied that the pricing principle in question will be applicable in the long term. The basis of the Access Seekers' reservations in this regard are set out below.

3.5 **The adoption of an adjustment path**

the Access Seekers agree that it is appropriate for the ACCC to adopt an adjustment path where necessary in order to avoid price shocks occurring.

3.6 **The time span of the Draft Determinations**

The *Telecommunications Legislation (Competition and Consumer Safeguards) Bill 2009* proposes considerable amendments to Part XIC of the *Trade Practices Act 1974* (***the Telecommunications Reform Laws***). Of relevance to the Draft Determinations is that within 12 months of implementation of the Telecommunications Reform Laws, the ACCC will be required to commence a public inquiry to determine up-front price and non-price terms of access to declared services, including the ULLS. Within another 6 months, the ACCC will be required to issue an access determination setting terms for a period of 3-5 years.

Accordingly, if the Telecommunications Reform Laws come into operation by early 2010, then the ACCC must commence a public inquiry about access terms for the relevant declared services by early 2011, and by mid-2011 the ACCC must make an access determination for each of the relevant declared services. In these circumstances, it seems to be clearly inappropriate for the Draft Determinations to extend beyond mid-2011.

4. ULLS MONTHLY CHARGES

The Access Seekers note the following as regards the proposed ULLS indicative prices:

1. The ULLS monthly charge requires an adjustment path to temper the effects of a price shock that results from the Proposed Changes being applied to ULLS.

2. Multiple unnecessary price shocks are not desirable and are not in the LTIE.

3. The ULLS monthly charge is based on the value of Telstra's CAN.

4. The ACCC has questioned the utility of TSLRIC+ as an appropriate methodology for valuing Telstra's CAN.

5. A departure from using TSLRIC+ methodology to value Telstra's CAN is likely to result in a further ULLS monthly charge price shock as a different cost methodology will result in different access charges.

6. The indicative price for the ULLS in Zone B is a considerable increase in instances where a SIO was in Band 3, and amounts to an unacceptable price shock.

The first three considerations above speak for themselves and do not require further elaboration. The Access Seekers will expand on the fourth, fifth and sixth considerations.

5 THE UTILITY OF TSLRIC+ FOR VALUING TELSTRA'S CAN

In the ACCC's response to the Government's discussion paper, *Regulatory Reform for 21st Century Broadband,* the ACCC stated[1]:

> *The choice of which value to attribute to sunk assets (within the range of scrap value to a value that reflects monopoly cash flows) is effectively arbitrary.*

It is submitted that the arbitrary nature of the exercise of attributing value to sunk assets makes the underlying rationale of any cost based pricing methodology of primary importance. If those rationales are misplaced or do not stand up to scrutiny, then there is no reason to maintain the methodology that they support.

The ACCC stated that the rationale for it adopting a TSLRIC+ methodology to value sunk assets was as follows:[2]

> *In the Guide there was a particular focus on TSLRIC pricing based on the key rationale that TSLRIC+ pricing in telecommunications would better send 'build or buy' signals. This objective reflected an expectation that there was a greater potential for infrastructure-based competition in telecommunications than in other regulated infrastructure industries — that*

[1] ACCC *Submission to the Department of Broadband, Communications and the Digital Economy* June 2009, Appendix B p28
[2] Discussion Paper pp. 15, 16

is, telecommunications infrastructure may not have been an enduring bottleneck. It was expected that, in telecommunications, the least cost technology would be rapidly and continually changing, so that access seekers would, over time, be able to efficiently deploy their own infrastructure to compete with the incumbent's and provide services in downstream retail markets. It was considered that:

- *valuing sunk infrastructure at its efficient replacement cost at the time of a pricing determination would generate a price that would provide investors with correct signals concerning whether to build their own infrastructure to provide services, or to purchase access to the existing infrastructure (i.e. the build or buy signal); whereas*

- *valuing the sunk assets at their actual/historic cost would over-estimate efficient costs and encourage access seekers to build their own infrastructure, when it would actually be more efficient for them to buy access to the existing infrastructure.*

However, it appears that the ACCC has formed the view that this rationale has not been vindicated over time as regards its application to Telstra's CAN. In its draft decision the ACCC stated:[3]

However, since 1997, the costs of replacing the largest components of fixed line telecommunications networks — for example, copper cables, ducts and pipes, and trenching — have generally been increasing, rather than decreasing, as was assumed would occur when the regime began.

Over the last ten years it has become clearer that Telstra's copper customer access network (CAN), more of the character of an enduring bottleneck, rather than a network subject to bypass through technological and market developments. There has been little evidence of successful competitive infrastructure deployment.

The ACCC further stated:[4]

The enduring bottleneck nature of some telecommunications infrastructure suggests that one of the main rationales for continual re-valuation of the asset base (that of sending efficient build-or-buy signals) may no longer be appropriate.

In light of the above, it appears that there is no readily apparent rationale for the continued use of TSLRIC+ methodology to value Telstra's CAN.

In the Discussion Paper there is an acknowledgement that to move away from accepted practice may require some re-alignment and should only be done after appropriate consultation and enquiry has taken place. This is apparent from the following passage of the Discussion Paper:[5]

Accordingly, the ACCC has indicated in response to the Government's Regulatory Reform for 21st Century Broadband: discussion paper its views on the changes that could be made to the existing regulatory framework, including possible areas for reform of the current approach to pricing

[3] Ibid, p.16
[4] Ibid, p.17
[5] Ibid, p.18

> *telecommunications access services to improve the outcome for consumers, which includes setting a regulatory asset base. The ACCC considers that in light of a lack of ubiquitous deployment of fully substitutable infrastructure, locking-in a value for existing sunk assets, rather than continually re-valuing may well better promote regulatory certainty and is likely to explore this further through the release of a discussion paper.*
>
> *If the ACCC ultimately came to this view then it is recognised that there would be important issues of transition from the existing, well understood, pricing principles reaffirmed in this paper.*

In light of the above, it appears that the ACCC believes the underlying rationale for using TSLRIC+ no longer exist and that it is no longer appropriate to use this methodology to value Telstra's CAN and to set access prices. However, the ACCC believes that it should not depart from TSLRIC+ until full consideration via an appropriate public consultation has been given to the relevant issues. Therefore, at this stage, we consider it reasonable to say that:

- the ACCC has no long term commitment to value Telstra's CAN on the basis of TSLRIC+ methodology, and
- there does not appear to be any valid rationale for using TSLRIC+ which would justify adopting it to value Telstra's CAN in the longer term.

In the Discussion Paper the ACCC stated (emphasis added):[6]

> *The ACCC is concerned that immediate implementation of a cost based approach using the Analysys cost model would be likely to lead to very substantial reductions in the price of some services and rises in others within a short period of time. In turn, the ACCC is concerned that this would **be likely to generate significant and potentially harmful disruption to the operations and planning of a number of access seekers and access providers**. This may have the effect of compromising the business interests of access seekers and providers that have made business decisions on the basis of the ACCC's previous approach to pricing of the fixed services for regulatory purposes.*

The Access Seekers consider that TSLRIC+ can be characterised as the road that the ACCC has been travelling down since 1997. The particular cost models it has used can be characterised as the cars the ACCC has travelled in down that road. From the comments quoted above, the ACCC is clearly now questioning whether it is appropriate to keep travelling down the TSLRIC+ road in order to value Telstra's CAN. In light of this, the Access Seekers question whether it is appropriate for the ACCC, when seeking to attribute a value to Telstra's CAN, to use a new car (i.e. the Analysys cost model) which will take the ACCC even further down a road it is not sure it should be travelling down and which will result in the potentially harmful disruption and price shock referred to in the passage quoted immediately above, particularly in relation to the ULLS charges that result from the Analysys model.

[6] Ibid, p.24

5. THE NBN - A FURTHER POSSIBLE PRICE SHOCK

As discussed above, the continued use of TSLRIC+ to value Telstra's CAN is questionable. The Access Seekers submit that this of itself is sufficient reason for the ACCC to review the continued use of TSLRIC+. However, a further reason for such a review is the potential effects of the NBN. In this regard, the ACCC stated the following in the Discussion Paper[7]:

> *Consideration of pricing principles and indicative prices for the fixed services has occurred in the context of the Government's National Broadband Network (NBN). This will have a major impact on the future telecommunications regulatory environment, particularly in relation to the regulation of the fixed services. The ACCC notes that the likely eight year transition period for the NBN will be a time of significant structural and competitive change as the industry moves to an environment where an NBN operates alongside, or possibly instead of, Telstra's fixed network infrastructure. Each of these NBN operating environments could have different implications for the regulation of legacy assets and new telecommunications investments.*

The issues arising from the effect of the NBN on ULLS pricing have been considered by Europe Economics in the context of Telstra's undertaking most recent ULLS undertaking[8]. They proposed an approach which is a compromise between TSLRIC+ pricing and historic cost pricing.

The rationale for the Europe Economics approach is set out in their report, broadly speaking they suggest two adaptations to the standard use of TSLRIC+ principles:

1. in relation to those sunk assets which would be made redundant, prices should be based on costs which have been incurred by an efficient operator in the maintenance and repair of those assets for the limited time that they will remain in use plus a normal return on the investment that had been made in those assets. This return would be based upon the value of the assets as reflected in the company accounts and not upon the false assumption that the assets would be replaced; and

2. in relation to assets that would not be rendered redundant, the price would be based on long run costs of a new entrant allowed to make existing use of Telstra's ducts and trenches in return for an appropriate (that is, non-monopolistic) payment to Telstra[9].

As regards those assets that would be rendered redundant, a return on capital would be permitted based upon historical costs[10]. There would not be any incentive to "gold plate" (which is one of the most fundamental difficulties of using historical costs) because it would only relate to assets in use as at today's date[11].

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[7] Discussion Paper, p.1
[8] Pricing Principles for the Unconditioned Local Loop Service (ULLS) in Australia, the Conceptual Framework, Final Report for Optus (public version)
[9] Ibid, para 4.1, 4.9 pp. 24, 25
[10] Ibid, para 4.9 p. 25
[11] Ibid, para 4.11-4.12 pp. 25, 26

The Europe Economics approach assumes that Telstra may be able to use some or all of its copper CAN even after the NBN is introduced. Europe Economics notes that if Telstra's assets continue to have a residual value after the NBN is introduced then the value of those assets would be subtracted from the return that would be allowed[12]. In this way, Telstra would get a full and fair return on its capital investment on those assets. An asset is "redundant" in this context if it is redundant to the needs of access seekers[13]. This will be the case after the NBN is introduced. Telstra may offer its copper network to access seekers at that time at market determined rates if there is any demand for those assets (it seems unlikely that there will be a need to declare the ULLS[14]) but access seekers will no longer have to rely on regulated access to those assets.

It is relevant to note in this context that Telstra has already largely recovered the cost of the CAN. For example, although Telstra asserts the TEA is based on median life for copper of 14.5 years, Telstra itself has admitted that over 10% of the copper in the ground at the moment is over fifty years old, more than 20% is more than 30 years old and more than 50% is more than 20 years old[15]. If one assumes that the remainder of the copper network is 10 years old then the *average age* of the copper CAN is 20 years. The overall life of the copper is obviously greater than the average age.

Because the Europe Economics report predated the Federal Government's April 2009 announcement in relation to the NBN, it assumed that the NBN would adopt a fibre-to-the-node ("**FTTN**") approach. That is, the Europe Economics report assumed that the copper line between the pillar and the end-user premises would continue to be used. It was largely that piece of copper that Europe Economics assumed would not be rendered redundant[16]. However, because the NBN announced in April 2009 will be fibre-to-the-home (**FTTH**) more of Telstra's assets will be rendered redundant. This does not impact in any way upon the validity of the finding of Europe Economics – it simply means more assets will fall under the category of those that will be rendered redundant. Indeed, the approach advocated by Europe Economics applies with even greater force because the problems that arise with traditional TSLRIC methodologies particularly affect the assets that are likely to be made redundant.

Of course, even under a FTTH approach some of Telstra's ducts and trenches may have value to the NBN. If the fibre can be placed in the duct or trench this will avoid the need to dig new trenches. Hence, if access seekers continue to need access to those ducts and trenches as part of the NBN then, as Europe Economics note, a forward looking approach should apply[17]. However, that approach should more closely approximate what would actually occur in a competitive environment; that is, it

[12] Ibid, para 4.8 p. 25
[13] Ibid, para 4.14-4.15 p. 26
[14] Ibid, para 4.25 p. 27,
[15] *Telstra, Productivity Commission's Draft Report on Telecommunications Competition Regulation, Final Submission* (July 2001), p.21
[16] Pricing Principles for the Unconditioned Local Loop Service (ULLS) in Australia, the Conceptual Framework, Final Report for Optus (public version), para 4.14 p. 25
[17] Ibid, para 4.14-4.15 p. 26

should be based on the assumption that Telstra would give access to its ducts and trenches because, in a competitive environment that would be offered at competitive rates, such an approach would be cheaper than requiring access seekers to dig all the trenches themselves[18].

the Access Seekers submits that the approach adopted by Europe Economics takes into account all of the legislative criteria and it satisfies them better than does a traditional TSLRIC+ approach[19]. the Access Seekers submits that such an approach, even though it draws heavily on traditional TSLRIC+ principles, if adopted by the ACCC would likely result in a significantly different valuation of Telstra's CAN than the valuation on which the proposed ULLS monthly charge indicative prices is based. Therefore, in the event that the ACCC moves away from its traditional TSLRIC+ approach as regards valuing the CAN, it is likely that a further price shock will result.

6. SETTING A REGULATED ASSET BASE FOR TELSTRA'S NETWORK

The ACCC's June 2009 Submission to the Department of Broadband, Communications and the Digital Economy's discussion paper on 'National Broadband Network: Regulatory Reform for 21st Century Broadband' recommends locking-in the value of assets in the form of a Regulated Asset Base (***RAB***) rather than continually revaluing them, stating that this would promote regulatory certainty.[20] The Access Seekers agree with the Commission's proposals and comments, particularly that:

- Since 1997, the costs of replacing the largest components of fixed line telecommunications networks — for example, copper cables, ducts and pipes, and trenching — have been increasing, rather than decreasing, as was assumed would occur when the regime began.[21]

- The CAN has proved to be an enduring bottleneck because alternative networks have not proved to be a strong substitute for fixed line services provided via the CAN.[22]

- The enduring bottleneck nature of some telecommunications infrastructure suggests that one of the main rationales for continual re-valuation of the asset base (that of sending efficient build-or-buy signals) may no longer be appropriate. Promoting the 'build' option in this environment could be at the expense of more vigorous service based competition.[23]

- Re-valuing the RAB also creates considerable uncertainty for both access providers and access seekers over the path of access prices

[18] Ibid, para 4.15 p. 25
[19] Ibid, para's 5.1 to 5.32 – pp. 30-35,
[20] ACCC, Submission to the Department of Broadband, Communications and the Digital Economy '*National Broadband Network: Regulatory Reform for 21st Century Broadband*', June 2009, p.11
[21] Ibid, p.53 referring to ABS, 6345.0, 'Labour Price Indexes June 2008', Table 22 (construction & communications services, private and public, excluding bonuses); and ABS 6427.0, 'Producer Price Indexes, September 2008', Table 10, indexes 2562 and 2852.
[22] Ibid, p.53
[23] Ibid, p.54

over time, and a risk that the access provider's costs will be over or under recovered.[24] In the Access Seekers' opinion, it has allowed Telstra to over-recover its costs.

- If the value of the RAB was locked-in, this debate would occur when establishing the opening RAB, but would no longer need to take place each time a pricing arbitration or undertaking decision is made. Locking-in the value of the RAB would provide greater long term certainty for access providers and access seekers over access prices.

The Access Seekers submit that TSLRIC+ should be replaced with a locked-in RAB that allows for depreciation. The Access Seekers recognise that it is not possible to quickly alter the current network costing methodology but nonetheless urge the Commission to implement a more appropriate methodology as early as possible. To do otherwise will further entrench Telstra's competitive advantage and hinder the development of the telecommunications industry in the lead up to the NBN.

In regards to the ULLS, which will experience significant price shock under the new indicative prices, the Access Seekers submits that the Commission should retain access prices at the current level to avoid the detrimental effect that the price rise, particularly in Zone B, will have on ULLS-based competition.

7. METHODS TO VALUE TELSTRA'S CAN

The ACCC summarised the different methods that could be used to value the CAN in the Discussion Paper. These are:

- historic cost/actual cost — the original cost of acquiring or building the asset;
- depreciated historic/actual cost (DHC/DAC) — adjusts the historic cost of an asset by the proportion of these costs that have been recovered;
- optimised replacement cost (ORC) — values the asset at the cost of replacing it with a modern equivalent available asset (MEA);
- current replacement cost — how much it would cost to replace the asset in substantially the same form at today's prices (current costs may also be depreciated), and
- depreciated optimised replacement cost (DORC) — values the asset at the cost of replacing it with an asset that is both a) adjusted for the proportion of the service potential of the existing asset that has expired and b) optimised to provide the required service potential in the most efficient way possible.
- Alternatively, the value of network assets could be derived as the net present value of existing prices for services.

Though the ACCC intends continuing to use TSLRIC+ to price fixed services until 2012, the introduction of the Telecommunications Reform Laws provide the ACCC with an appropriate opportunity to reassess which methodology to use in the lead up to the NBN. As mentioned above, the Telecommunications Reform Laws will require the ACCC to make access determinations for each declared service. These access determinations will include fixed pricing principles that may not be altered

[24] Ibid

between regulatory periods, and as such may include a locked-in RAB for the CAN to promote regulatory certainty. The ACCC's decision on which valuation method to use will require an assessment of how best to achieve the objectives of Part XIC of the *Trade Practices Act*, and in particular how to promote the long-term interests of end-users. This requires assessment on whether the valuation method will:

- promote competition;
- achieve any-to-any connectivity; and
- encourage the economically efficient use of, and the economically efficient investment in, infrastructure. [25]

The Access Seekers consider that the promotion of competition in telecommunications markets is best achieved where the costs access seekers' incur to provide a retail service align with Telstra's own costs. Encouraging efficiency in the use of the CAN is best achieved by ensuring access costs reflect the high percentage of sunk assets in the CAN, which has an opportunity cost of close to zero. Encouraging economic investment in the CAN is achieved under a RAB costing methodology if the CAN is valued at least at scrap value (or the net realisable value of the asset) and Telstra is able to recover the cost of new infrastructure that it invests in. This suggests that an initial RAB value based on scrap value would best promote the LTIE.

The Access Seekers understand, however, that other issues will be relevant to the ACCC in choosing how to set a RAB. These include investor confidence and views on whether the ACCC's prior costing methodology can be regarded as being a precedent to be relied upon; price shock; Telstra's financial viability; and the introduction of the NBN.

The Access Seekers submit that DHC or DORC methodologies are most consistent with the relevant criteria and able to be most easily implemented by the ACCC.

A DHC RAB is relatively non-subjective, with cost information available from Telstra's records and relevant ACCC records. It may, however, allow for the recovery of inefficient investment.

A DORC RAB is inline with the ACCC's current ORC approach to valuation but allows new capital investment to be included as it occurs. It does however retain ORC's highly subjective asset valuation approach which can lead to significant variances in what may be considered as a reasonable asset value.

8. THE APPLICABILITY OF THE ARGUMENTS IN SECTIONS 4 TO 7 ON THE PRICING OF SERVICES OTHER THAN THE ULLS

The Access Seekers respectfully submit that it is only in the case of ULLS monthly charges that the ACCC's implementation of its pricing principles gives rise to the likelihood of multiple price shocks. As regards the other services that are subject to the Draft Determinations, either there is no immediate price shock (as in the case of WLR in Zone A[26]) or their pricing is not directly based on the value of the CAN (as in the case of LCS, PSTN OA and LSS). Therefore, the indicative prices in the Draft Determinations, other than in relation to ULLS monthly charges, do not raise the

[25] Discussion Paper, p.5

[26] The Access Seekers note that the ACCC has decided not to set cost based prices for WLR in Zone B

obvious prospect of a multiple price shock occurring in the same way as with ULLS monthly charges.

9 ROUNDING UP OF LSS RENTAL CHARGES

According to the Discussion Paper[27], the Specific Costs cost model results for the LSS (being the same as the ULLS) over the next three years produced the following unit costs:

	2009-10	2010-11	2011-12
Unit costs	$0.95	$0.94	$0.92

Using the 2009-10 figure of $0.95 and multiplying the difference of $0.05 to the most recently recorded data of 577, 225 LSS SIOs[28] , over a 12 month period, results in an additional cost to access seekers of $346,355.00. This figure is likely to be conservative. The Access Seekers contend that, to accord with s.152CR(1)(a),(c),(d) and (g) of the TPA, the monthly charge should reflect the ACCC's actual cost estimates. If the ACCC deems it necessary to round the charge, normal accounting practice would be to round it to $0.95 and $0.90 rather than $1. Given that the ACCC's pricing practice is conservative, in favour of Telstra, the Access Seekers submit that it is more appropriate to round this figure down rather than up.

If, conversely, the ACCC has rounded up the unit cost to $1 in order to provide Telstra with part of the $10 million allowance to be included in the capital base to cover operation support systems investments[29], the Access Seekers urge the ACCC to closely monitor Telstra to ensure that such investments are made. Especially in light of the fact that, contrary to s.152CR(1)(b) of the TPA, investments in Telstra's Business Support System that Telstra previously proposed and which were admitted into the specific cost pool have never been built[30]. The Access Seekers identify an LSS to ULLS migration process as an investment of significant importance in this respect, and submits that Telstra should be made to refund pro rata the $10 million allocation provided to it from the pooled costs if this process is not implemented.

In support of the ACCC's decision not to adopt a transition price path for the LSS monthly charge, the Access Seekers submit that when one compares the SIO data provided by Telstra pursuant to the Telstra *Customer Access Network Record Keeping and Reporting Rules* (**CAN RKR**) since 30 September 2007, one can see that while the rate of quarterly growth for LSS SIOs has remained relatively steady, the rate of quarterly growth for LSS, ULLS and ADSL SIOs overall has been decreasing since March 2008. This means that the market has matured to the point where the Commission's forecast in December 2007 has now been realised. That is, there is no longer a strong basis to continue to levelise costs over multiple years:

> *While the demand for the LSS itself may not mature for some time after 30 June 2008, the approach to cost allocation that has been adopted means that it is total demand for LSS, ULLS and downstream DSL services that informs incremental unit costs. While this total demand base is likely to*

[27] Ibid, p.79
[28] ACCC, Snapshot of Telstra's customer access network as at 30 June 2009
[29] Discussion Paper, p.43
[30] Discussion Paper, p.84

> *continue to grow beyond 30 June 2008, these services as a whole have reached a significant level of penetration, and it is likely that the rate of growth in this total demand base will reduce. In these circumstances, there would be less reason to continue to levelise costs over multiple years.*[31]

However, as this also means that based on the ACCC's projected figures, the unit cost will continue to decline in the years ahead, and therefore should also be reflected in the LSS monthly charge. While the Access Seekers understand the ACCC's motivation for including an allowance in the 'specific cost' pool (so long as those investments are actually made by Telstra), this allowance should be adjusted in line with the decline in the unit cost through time, and not 'rounded up' one decimal point to $1 as a "form of minimum monthly charge now and in the future".[32] As submitted above, it is more appropriate to round to half a decimal point, or 5 cents.

Adam Internet Pty Ltd, Agile Pty Ltd / Internode Pty Ltd, Amcom Pty Ltd, Chime Communications Pty Ltd / iiNet Limited, EFTel Limited, Netspace Networks Pty Ltd, Network Technology (Australia) Pty Ltd, TSN Communications / Saunders Properties and Wideband Networks Pty Ltd.

9 October 2009

[31] ACCC, *LSS access dispute between Telstra and Adam Internet - Statement of reasons*, December 2007, p.69.
[32] Discussion Paper, p.43