

**TELSTRA'S SUBMISSION IN RESPONSE TO THE
AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION'S DRAFT DECISION IN RESPECT OF SSS
UNDERTAKING RELATING TO CONNECTION AND
DISCONNECTION CHARGES DATED DECEMBER 2005
(PUBLIC VERSION)**

A INTRODUCTION

1 On 13 December 2004, Telstra gave to the Australian Competition and Consumer Commission (“**the Commission**”) an undertaking pursuant to section 152BS of the Trade Practices Act 1974 in respect of the connection and disconnection charges of the High Frequency Unconditioned Local Loop Service (otherwise known as Spectrum Sharing Service) (“**SSS**”) (“**the SSS Undertaking**”). The SSS Undertaking deals with:

- (a) the connection charge that is to apply when Telstra connects a SSS; and
- (b) a disconnection charge that is to apply when Telstra disconnects a SSS;

in 2004/05 and 2005/06. Although such charges are contemplated by the SSS monthly usage charges undertaking given by Telstra to the Commission on 13 December 2004, that undertaking does not deal with those charges.

2 On 7 March 2005, Telstra provided to the Commission a submission in support of the SSS Undertaking titled, “*Submission in Support of the SSS Connection and Disconnection Charges Undertaking*” dated 13 December 2004 (“**SSS March Submission**”).

3 On 10 March 2005, the Commission published a Discussion Paper titled, “*Telstra’s Undertakings for the Line Sharing Service*”. On 15 March 2005, Telstra received a confidential version of that Discussion Paper (“**Discussion Paper**”).

4 On 27 May 2005, Telstra provided to the Commission a response to the Discussion Paper titled, “*Submission in Response to the Australian Competition and Consumer Commission’s Discussion Paper in respect of SSS*” (“**Discussion Paper Response**”).

5 On 7 July 2005, Telstra provided to the Commission a supplementary submission in support of the SSS Undertaking titled, “*Telstra’s Supplementary Submission in Support of the SSS Connection and Disconnection Charges Undertaking*” (“**SSS Supplementary Submission**”).

- 6 In December 2005 the Commission published a document titled “*Assessment of Telstra’s ULLS and LSS undertakings in relation to connection and disconnection charges*”. That document included the Commission’s draft decision in respect of the SSS Undertaking (“**SSS Draft Decision**”). On 4 January 2006 , Telstra received a confidential version of the SSS Draft Decision.
- 7 In this submission Telstra responds to the matters raised by the Commission in the SSS Draft Decision and summarises the reasons why the terms and conditions specified in the SSS Undertaking are reasonable and the Undertaking should be accepted by the Commission.
- 8 In the time available, Telstra has not responded to every issue raised by the Commission and by Consultel. To the extent that Telstra has not responded to a particular matter, this should not be inferred as Telstra’s acceptance of the Commission’s or Consultel’s position on that matter.

B CONFIDENTIALITY

- 9 This Submission has all of the confidential information deleted and thus may be disclosed publicly.
- 10 Telstra will provide the confidential version of this Submission and the confidential information contained in it to interested and approved parties subject to those parties signing confidentiality undertakings that are acceptable to Telstra.

C STATUTORY CRITERIA

- 11 There is a broad consensus that, in the long term, prices for SSS (including the price of connection and disconnection) should approximate long run efficient costs ¹. The prices proposed by Telstra are significantly below the efficient costs (being the net present value of the cost of connecting and disconnecting a single SSS) and thus should be accepted by the Commission as being reasonable.
- 12 Notwithstanding the adoption of currently commercially agreed prices in the SSS Undertaking, in Telstra’s view allowing service providers to recover efficient costs in the long run is essential if consumers are to benefit from continued investment in the

telecommunications network. Such investment is required for the supply of new and enhanced services, for the continued reduction of costs of existing services as well as to improve the quality and ensure the widest possible availability of those services. In all of these ways, allowing recovery of efficient costs in the long run is vital to promoting the long term interests of consumers of telecommunications services. For this reason, Telstra continues to believe that prices for connection and disconnection of SSS should be aligned to the level of efficient costs over the long term.

- 13 For the reasons set out in Annexure A to the SSS March Submission, Telstra submits that efficient cost-based prices meet the criteria in sections 152BV(2) and 152AH of the TPA.

D CONNECTION CHARGES

D1 Jumpering costs

Telstra's position

- 14 A key component of the connection charge is the cost of a Telstra field technician to undertake the necessary jumpering at the relevant exchange. Telstra calculates the cost of the jumpering by multiplying the time taken to perform the jumpering by the appropriate labour rate. The labour rate is uplifted to account for relevant overheads.
- 15 The statement of "C-I-C", dated 25 May 2005 ("C-I-C" **Statement**), sets out the tasks which are performed by a Telstra technician to connect a SSS. As set out in the "C-I-C" Statement, the time taken to jumper the cable for the purposes of connecting SSS is estimated to be "C-I-C".
- 16 The calculation of the hourly uplifted labour rate is outlined in the statement of "C-I-C" dated 26 May 2005 ("C-I-C" **Statement**).
- 17 Telstra's estimation of the jumpering costs, based on its estimate of the jumpering time and labour cost, is "C-I-C".

The Commission's position

- 18 The Commission does not conclude that Telstra's uplifted hourly labour rate is inefficient nor that Telstra's estimation of jumpering time is inefficient. Rather, the Commission

¹ Australian Competition and Consumer Commission, "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 at 84 and 85

agrees with the view contained in the Interim Consultel report titled “*Analysis of ULLS and LSS Undertakings and Subsequent Submissions*” (“**Consultel Report**”) that the third party (“**3P**”) contractor rates for SSS connections are likely to more closely represent efficient rates for the jumpering necessary to facilitate an SSS connection.

- 19 Consultel concludes that “C-I-C” contractor rates (as described in Telstra’s response to the Commission’s 152BT request) should be used (“C-I-C” per SSS connection) and a 10 percent uplift should also be added to this value to account for contract management overheads.² The Commission states that having regard to 3P contractor rates, Telstra’s claimed costs for jumpering are excessive.³

Telstra’s response

- 20 In August 2005, Telstra provided to the Commission, in a letter dated 29 September 2005 and pursuant to section 152 BT of the Act, certain information regarding 3P contractor rates (“**the 152BT Response**”). That information included details in relation to 3P contractor rates for SSS Managed Network Migrations, this information was included in Annexure A to the 152BT Response, and also included rates for the performance of jumpering on an individual ticket of work basis, this information was set out in Annexure B.

- 21 By way of clarification, Telstra makes the following additional comments in relation to the details provided in Annexure B to the 152BT Response:

- The information in Annexure B included quotes for individual tickets of work, however the quotes were limited to situations where the work orders involved multiple tickets of work at the one exchange or at exchanges within a close proximity. The quotes included the contractor’s travel time, however, as they were for work to be done at the one exchange or at exchanges in a very close proximity, the associated travel time should be minimal, and is therefore not reflective of the average travel time incurred by Telstra in performing jumpering tasks.
- In the 152BT Response, Telstra described the quotes in Annexure B as being the subject of agreements recently entered with contractors for the performance of

² Draft Decision, section 6.4.1 at page 31

³ Draft Decision, section 6.4.1 at page 31-32

jumpering for a wide range of services including ULLS and SSS. By way of clarification, the quotes were not for ULLS and SSS but for similar types of jumpering activity.

- The quotes provided to the Commission in Annexure B to the 152BT response were not the subject of agreements at the time that information was provided to the Commission. Ultimately, only the “C-I-C” quotes were accepted by Telstra.
- Prior to the negotiations for multiple jumpering in mid 2005, arrangements were in place with 3P contractors for “singular” jumpering, that is, jumpering tasks which were not necessarily at the one exchange or at exchanges within a close proximity of each other. The rates for singular jumpering relevant to SSS are set out in Annexure A.

22 As noted above, Consultel concludes that, based on the 3P contractor rates, an amount of “C-I-C” is an appropriate estimate of the jumpering cost per SSS connection. The Commission also allows a 10 percent uplift to this value to account for contract management overheads.⁴

23 Telstra submits that it is inappropriate to use the 3P multiple jumpering rates as an estimate of jumpering costs.

24 The 10 percent uplift allowed by the Commission for contract management costs is arbitrary, and wholly inadequate. Whilst the 10 percent uplift may account for the labour costs of a contractor’s immediate supervisor, it takes no account of the additional costs associated with providing connections. It is Telstra’s position that the overhead costs associated with contractor staff are largely equivalent to (if not more than) the overheads attributable to Telstra staff. As such, the overheads identified for Telstra staff should be the starting point for determining the appropriate uplift percentage to be applied to the contractor rates. Telstra considers that human resources, information technology, accounting and finance and business administration and property management are largely equivalent, and in some cases, may be higher, for contractors than Telstra staff.

25 The overheads described above are included in the Telstra uplifted labour rate to account for costs (other than labour) which have not been separately modelled. By excluding

⁴ Draft Decision, section 6.4.1 at page 31

these costs, Consultel is effectively saying that no costs other than labour are involved in providing a connection service.

- 26 Whilst some overhead costs such as property management may be less for contractors than for Telstra staff, other costs will be higher, for example, costs associated with the tendering process and the costs of managing the contracts and labour which is indirect and constantly changing.
- 27 Consultel and the Commission have completely ignored these additional (non labour) costs which make up the overall cost of providing a connection service. Telstra submits that an overhead loading of “C-I-C” is appropriate for the contractor labour rate.
- 28 Finally, Consultel assumes that the 3P contractor rates include a portion of recovery for direct IT overhead costs and for cost recovery of depots/offices and other business administration costs.⁵ On this basis, Consultel concludes that the 3P rates are directly comparable with Telstra’s fully uplifted costs. The 3P rates do not include the Telstra overheads described above which Telstra has to incur to provide SSS connections. As such, the 3P rates are not comparable to Telstra’s uplifted costs.
- 29 Telstra further notes that whilst Paul Brooks of Consultel has opined on matters such as the labour rate and uplift percentages, he does not have any expertise in matters of labour costing. This was acknowledged by Brooks himself in the Consultel Report⁶.

C2 Travel time

Telstra’s position

- 30 Telstra has estimated the average travel time to the exchange as “C-I-C” for CBD and Metropolitan areas, “C-I-C” for Regional areas and “C-I-C” for Rural areas. These travel times were compared with data in Telstra’s systems, as detailed by “C-I-C” in his statement dated 7 July 2005 (“**“C-I-C” Statement**”). The results of that review indicated the “C-I-C” was a conservative estimate for the average travel time in CBD and Metropolitan areas and the average travel time for Regional and Rural regions was consistent with Telstra’s estimates for those areas.

The Commission’s position

⁵ Consultel Report , page 9

⁶ Consultel Report, page 10

31 The Commission has stated that a discount from the average travel time cost is reasonable for SSS Connections and agrees with the discount methodology proposed in the Consultel Report.⁷ The Consultel report argues that the average travel times for all ticket of work assignments overstate the average travel costs that would or should apply for assignments involving SSS connections at exchanges only. Consultel says that these connections can be batched with other exchange work, notably ADSL connections, and therefore the SSS travel times should be less than the average travel time proposed by Telstra.⁸

Telstra's response

32 The allocation by Connect of tickets of work to field technicians or contractors is order driven. When an order is placed, an appointment date is arranged based on the required completion date and the availability of a suitable field technician to complete the work. Appointment dates are allocated as soon as the order is received. Scheduling of appointment dates for orders is not placed on hold until there is a minimum number of orders for work at the one exchange as this would cause delay and difficulties to end customers. Orders must be scheduled for completion as soon as they are received to ensure that the timeframes required by Telstra's customer service and other obligations are met. At the start of each day, Connect then optimises the travel routes for the tickets of work which have been scheduled to be completed that day. It may be the case that the nature of the appointments on a particular day are such that an SSS connection can be scheduled back to back with an ADSL connection, however, this will depend on what appointments have been scheduled for that day. Therefore, Consultel has incorrectly assumed that each SSS connection will always be performed back to back with ADSL connections. In any event, Connect would have already taken this into account when optimising the travel required between various tickets of work, and in calculating the average travel time taken.

33 As set out in the statement of "C-I-C", dated 22 June 2005 ("the "C-I-C" Statement"), if it is the case that more than one task is carried out at an exchange, the travel time is allocated across all tasks, such that each task is allocated an appropriate portion of the actual travel time to the exchange.

⁷ Draft Decision, section 6.4.3 at page 39

⁸ Consultel Report at page 20

34 Telstra submits that an estimate of the average travel time for tickets of work is the most appropriate method of estimating travel time for the various tasks performed by field technicians.

35 Telstra also wishes to clarify a reference made in the “C-I-C” Statement to 30% of the field workforce receiving 'batched' or aggregated tickets of work. This reference to batching relates to the way in which field technicians receive their work (i.e. the technician receives 30% of their work as a number of tickets at a time as opposed to one ticket at a time) and does not relate to the process of travel time optimisation or the location of the tickets of work.

C3 Back of house costs

Telstra's position

36 Back of house costs for connections are the costs associated with functions performed by the Data Activation Centre (“DAC”) and the Integrated Deployment Solutions (“IDS”) group.

37 The DAC is essential for provisioning SSS connections and Telstra incurs a significant level of cost in manning the DAC and providing the required systems for its operation. Accordingly, Telstra has calculated the DAC costs by allocating total costs (being direct labour costs plus overhead costs) associated with the DAC (“C-I-C”) amongst the total number of connections and disconnections for services which utilise the DAC (“C-I-C”). Therefore, the cost attributable to the DAC on a per connection basis is “C-I-C”.

38 Telstra notes that in the SSS Supplementary Submission a reference was made to allocating the total DAC costs amongst the total number of “tasks”. By way of clarification, as noted above, the costs are spread across the total number of connections and disconnections for services which utilise the DAC.

39 The cost of the IDS group per ticket of work has been calculated by dividing the total forecast annual cost of the IDS group, which includes direct labour costs and relevant overheads, (“C-I-C”) by the forecast tickets of work allocated by the IDS group annually, which includes SSS connections and disconnections, (“C-I-C”). This gives a cost of the IDS group per connection/disconnection of “C-I-C”.

C3.1 DAC

The Commission's position

40 The Commission considers that Consultel's approach to calculating DAC costs might be more likely to be closer to economically efficient costs than Telstra's calculation approach.⁹ The costs calculated by Consultel are based on an estimate of the time spent per connection by DAC staff whereas Telstra's estimate uses the historical cost of the DAC group.

Telstra's response

41 As set out above, Telstra has used the total cost of the DAC group and the total number of connections and disconnections for services which utilise the DAC to calculate an average cost per connection. It has used this method of calculation as it is not possible to accurately estimate, on average, how long it takes to complete DAC tasks for each connection. This is because the DAC staff action queries and tasks as they arise and do not necessarily log all activities.

42 In addition, the calculation of the average cost of the DAC group, based on historical costs, is an appropriate measure of DAC costs. Telstra has taken the approach of allocating the DAC costs equally across all services that involve the DAC in some way. Telstra has allocated the costs based on the number of connections and disconnections for each service.

43 Telstra also responds to the following specific issues raised by the Commission.

(a) Validation of the point of interconnect

Validation of the point of interconnect may require manual activity. As suggested by the Commission, Telstra's systems do automatically attempt to validate the access seeker nominated point of interconnect details. However, if automatic validation fails, manual activity is required to determine the cause of the failure so that appropriate steps can be taken to remedy the failure. The failure may be due to a number of factors. For example, the access seeker may have nominated a point of interconnect which is already in use, the nominated point of interconnect may be out of range, or there may be a misalignment between the access seeker point of interconnect records and the Telstra point of interconnect records. Where

⁹ Draft Decision, section 6.4.4 at page 42

the error is one made by the access seeker, the DAC notifies Telstra Wholesale who follow up the problem with the access seeker.

(b) Service qualification

Consultel's assessment that only minimal time is required for manual service qualification testing is based on an assumption that the "complete cable path is known ahead of time for the operational PSTN service". This is not always the case. As noted by Consultel¹⁰, it is inevitable that there will be a degree of incomplete cable records given the size and complexity of Telstra's systems.

The need for DAC involvement in service qualification arises when the infrastructure record set for the PSTN service is incomplete. Manual service qualification requires the DAC staff member to access and retrieve the relevant information about each cable section along the path of the service. Consultel has not factored this work into the assessment of the time taken to complete a manual service qualification.

C3.2 IDS

The Commission's position

44 The Commission raises the following concerns in respect of Telstra's claim for IDS costs:

- (a) the Commission is concerned that Telstra may be seeking to over recover the IDS Group costs as they may already be recovered as part of the network costs in the PIE II model¹¹; and
- (b) the Commission accepts Consultel's opinion that the tasks carried out by the IDS group are more likely to be automated than those carried out by the DAC group and it might reasonably be expected that there would be less IDS labour cost per connection than for DAC.

Telstra's response to the Commission's concern regarding over recovery of costs

¹⁰ Consultel Report, page 34

¹¹ Draft Decision, section 6.4.4 at page 43

- 45 Telstra notes that there were no SSS connections at the time that the expense study was undertaken to determine O&M ratios (1999/00) for the PIE II model. Therefore, no IDS costs associated with SSS connections are included in any PIE II model costs.
- 46 Telstra agrees that the incremental costs of the IDS Group ought to be recovered by it and believes that the approach taken of estimating these costs on the basis of the average per connection cost of the IDS Group is appropriate and consistent with the pricing principles adopted by the Commission.
- 47 The Commission suggests that additional costs incurred as a result of the IDS group should be included in the O&M mark ups in PIE II rather than as part of connection costs. To the extent that it can be done, Telstra submits that including the IDS group costs in the SSS connection costs is preferable because it is generally consistent with the principle of recovering costs at the time and point at which they are incurred.

Telstra's response to the Commission's assessment of the level of costs for the IDS group

- 48 Consultel notes that the IDS group is claimed to cost "C-I-C" the cost of the DAC group, yet handles only "C-I-C" the number of transactions. Consultel considers that these figures indicate that the labour costs for the IDS group are over stated as it believes that the IDS group should be less labour intensive than the DAC. The Commission has accepted Consultel's conclusions.
- 49 At paragraph 39 above, Telstra clarified the reference to "tasks performed by the DAC" in the SSS Supplementary Submission. In the SSS Supplementary Submission Telstra referred to the costs of the DAC group being spread across the "tasks" performed by the DAC, however, the costs were in fact spread across the total number of connections and disconnections of services which utilise the DAC. The number of tasks does not equate to the number of connections. In light of this, it appears that Consultel has erred by stating that the IDS group only carries out "C-I-C" times the number of transactions which are undertaken by the DAC.
- 50 Consultel describes the function of IDS staff as being limited to handling the exceptions and overflows, "cleaning" and verifying tickets with insufficient information and monitoring the automated scheduling of the "Connect" software system¹².

¹² Consultel Report, page 38.

- 51 There are two key limitations to Consultel's approach. First, the activities of the IDS group are not limited to those identified by Consultel. Second, Consultel has significantly underestimated the time taken by the IDS group to undertake the activities identified by Consultel.
- 52 In relation to the first limitation, as outlined in the statement of "C-I-C", dated 7 July 2005 (**"the "C-I-C" Statement"**), the IDS Group has three key areas: the Deployment Centre; the Production Group; and the Tactical Planning Group. The activities carried out by each group were described in the "C-I-C" Statement. Consultel has only considered the activities carried out by the Deployment Centre but, as noted above, it has underestimated the labour time required by members of this team.
- 53 The Deployment Centre has approximately "C-I-C" staff. During the day, the functions of these staff include:
- reviewing those tickets of work which have failed to schedule, for example, where a technician is away on sick leave;
 - scheduling medical priority tickets of work, which often necessitates rescheduling a number of other tickets of work;
 - allocating work which has been generated over night, for example, as the result of a storm; and
 - a key function of the Deployment group involves managing variations to scheduled tickets of work. For example, where a task takes a technician longer than the allocated time, variations are required to be made to the appointments for the other tickets of work allocated to that technician. Approximately "C-I-C" of the daily tickets of work processed through Connect require manual variation.
- 54 At the conclusion of each day, for those tickets where the scheduled appointment will not be met, the Deployment Centre calls the relevant customers and re-arranges the appointment times.
- 55 The above description of the functions of the Deployment Centre highlights the fact that Consultel has only considered a subset of the activities of that group and has underestimated the costs associated with the IDS Group.

56 The Commission accepts Consultel's estimate of the cost for efficient IDS group activity¹³. Consultel's cost estimate is based on an assumption that only one staff member in the IDS group is necessary to manage all ULLS or SSS tickets of work in a 12 month period. Telstra notes that an allowance of one person is wholly inadequate given the number of ULLS or SSS connections during the Undertaking period. Further, as set out above, the Commission has not taken into account all of the different activities that are undertaken by IDS group staff.

D DISCONNECTION CHARGES

Telstra's position

57 Immediate disconnection of SSS, upon cancellation of the service, is necessary and appropriate for each cancellation of a SSS.

The Commission's position

58 The Commission concludes that:

- (a) no disconnection charge should be incurred where the end user churns to another service provider; and
- (b) where disconnection is required, it could be delayed in the same way Telstra proposes for ULLS disconnections,

59 Telstra's response to each of the above issues is addressed in turn below.

D1 End user churns

60 The Commission has stated that it agrees with the conclusion reached in the Consultel Report that a physical disconnection of jumpers is not a technical necessity in circumstances where a customer churns from one service provider to another.¹⁴ The Commission has stated that an efficient operator would not separately disconnect the SSS in a separate process from connection when the end-user customer churns between providers, but would rather co-ordinate the disconnection and reconnection by adopting a

¹³ Draft Decision, section 6.4.4 at page 45

¹⁴ Draft Decision, section 6.5 and 6.9

similar process to the ‘One-step DSL transfers’.¹⁵ The Commission therefore concludes that a disconnection charge is not warranted in these circumstances.

- 61 Telstra notes that the work required to implement the ‘One-step DSL transfer’ process referred to by the Commission, is vastly different to what is required to develop a system for co-ordination of disconnections and reconnections of SSS. Contrary to Consultel’s conclusions, to implement an appropriate system for coordination of SSS disconnection and reconnections is a complicated and costly exercise because, unlike the DSL transfer process, it requires making complex and interdependent changes to Telstra’s business, work management and network systems. In addition, it requires modifying associated processes to co-ordinate exchange work flows to minimise end-user disruption. By way of comparison, the DSL transfer process simply involved updating billing and network configuration records.
- 62 Any such changes would be costly and in turn would need to be recovered from access seekers. Implementing these changes in an earlier period would not have been done by an efficient operator due to the lack of disconnections. As such, the cost of the additional functionality would have had to be born by earlier users when they did not receive the benefit of that functionality.
- 63 Until recently, there has not been sufficient demand to warrant the expense associated with the implementation of such a system, and to include such a cost in SSS charges would not have been in the interests of end users. In light of changing demand patterns, Telstra has now initiated a project to develop an automigration system for SSS and intends to trial this system in 2006. For such a system to be effective it will require that all relevant parties agree to appropriate transfer arrangements to allow end-users to move between access seekers.

D2 Immediate disconnection of SSS

- 64 There are three key reasons why the physical disconnection of a SSS must take place immediately after an access seeker notifies Telstra of the termination of a service and can not be delayed as suggested by the Commission. These are discussed below.

- (a) Telstra cannot accept an application for a new SSS on a particular line while Telstra’s systems show that a SSS service is still connected. Therefore, without

¹⁵ Draft Decision, section 6.5 at page 52.

an agreed industry process for simultaneous connection and disconnection notifications, future access seekers would be unable to order SSS until the old SSS service had been disconnected. As set out above, there has been insufficient demand to justify an efficient operator implementing a process to coordinate the simultaneous connection and disconnection of services.

- (b) Telstra must disconnect the jumper in order to prevent the loss or degradation of any voice service that is provided by Telstra to a wholesale or retail customer. Unless the cable is jumpered, that voice service is rendered through the access seeker's equipment. Telstra has no control over the access seeker's equipment but is subject to obligations in respect of the voice services provided over it.

Telstra notes Consultel's opinion that there is no likelihood of 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. Telstra disagrees with this opinion as there is a possibility that the access seeker's equipment may have a fault which causes a PSTN difficulty. For example, it is possible that the ADSL exchange (DSLAM) modems could have a "soft dial tone". This may result in problems with the PSTN service if the end user does not have appropriate filters fitted at its premises.

Telstra also notes that Consultel's conclusion that access seekers must provide prior written notice of any access to the exchange is incorrect. Prior written notice is only required for planned works.

Consultel further states that, in any event, the possibility of voice degradation occurring because of a fault in the access seeker's equipment could be addressed by a variation of the SSS 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 SSS to when physical disconnection occurs. Consultel also suggests that similar obligations could be included in the relevant contractual arrangements between the parties.¹⁶

In response to the above, Telstra notes that an obligation on one party, Party A, to maintain its equipment in circumstances where both Party A and another party, Party B, are relying on that equipment is very different to a situation where Party

A is not using the equipment but is obliged to maintain it so that Party B can provide a service over the equipment. The latter scenario is clearly a riskier proposition for Party B. Telstra is not prepared to take on that risk in circumstances where it has an obligation to continue to provide a wholesale or retail voice service to the end user.

Further, Telstra is unsure as to the access seeker's readiness to accede to such a condition. It may be that the access seeker would prefer to use relevant equipment for other customers instead of leaving it connected to Telstra's end user customer.

Consultel also notes that the access seeker "would not remove the relevant module unless the service being cancelled is the only remaining service on the module"¹⁷. Telstra disagrees with this conclusion. The access seeker's systems and record keeping practices may not recognise that a voice service is still being provided over these services following the nominal disconnection of the SSS by Telstra. As such, the access seeker may proceed to reconfigure the module, and in the process, interrupt the voice services. Telstra does not have any visibility or control over these processes or systems and therefore runs the full risk of service interruption and the ensuing liabilities. Such a proposition is unreasonable.

- (c) If Telstra does not disconnect the SSS jumpering the access seeker would be able to continue to use the service without Telstra's knowledge. Consultel dismisses this argument on the basis that Telstra has made the same claim with respect to ULLS but has not argued for immediate disconnection of ULLS¹⁸. In its discussion of ULLS disconnection, Consultel comments 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."

Telstra notes that these comments do not apply to SSS¹⁹. In the case of SSS, there is a requirement for the underlying PSTN service to be maintained by Telstra. As such, Consultel's argument regarding the unlikelihood of an access seeker

¹⁶ Draft Decision, section 6.5 at page 51

¹⁷ Consultel Report, page 59

¹⁸ Consultel Report, page 52

¹⁹ Telstra reserves its position in respect of Consultel's argument in relation to ULLS.

continuing to use the service is significantly weakened. Further, Telstra disagrees with Consultel's position that the "uncertainty in timeframe (but certainty that disconnection will nonetheless occur) before actual disconnection" will be sufficient to prevent providers from attempting to continue to use the service. Telstra submits that the uncertainty regarding the timeframe for disconnection would not necessarily be a deterrent to continuing to use the service without charge.

Consultel suggests that the more common scenario would be for "the access seeker to attempt to re-use the ports on its equipment for a new service, before Telstra has had an opportunity to re-jumper and free up the splitters."²⁰ Consultel notes that this scenario is already dealt with under the current process because the Telstra technician, in carrying out the order for the new service, would see that a PSTN service was connected and would notify the DAC to resolve the issue with the access seeker. Telstra notes that the additional time spent by Telstra technicians and the DAC attempting to process orders which ultimately cannot be processed has the potential to increase the costs associated with connections. Consultel suggests that the access seeker could avoid this scenario by quarantining a cancelled port for a month or two. Telstra considers that this adds an unnecessary layer of complexity and cost to the process as it means that the access seeker would need to introduce record keeping methods to identify that the cancelled SSS service is in quarantine and Telstra would need to introduce an additional step to the process of notifying the access seeker that the SSS service had been physically disconnected and could be removed from quarantine. In addition, if the access seeker had unsatisfied demand it would be forced to wait until cancelled ports were released from quarantine in order to satisfy that demand. Telstra submits that these issues can be avoided by the immediate physical disconnection of the SSS.

D3 Cancellation where there is no end user churn

65 The Commission acknowledges that physical disconnection would be required in the event that the disconnection was not occasioned by a customer wishing to churn from one access seeker to another.²¹ The Commission specifically refers to the situation where a

²⁰ Consultel Report, page 59

²¹ Draft Decision, section 6.5, at page 52.

pre-existing end user customer no longer required any service. Telstra notes that the situation where a pre-existing end user customer cancelled SSS but retained its PSTN service would also fall within the above category identified by the Commission.

66 For the reasons identified at paragraph 65 (a) and (b) above, not only is physical disconnection necessary, it is necessary for the disconnection to be performed immediately.

E MANAGED NETWORK MIGRATIONS

E1 Application of SSS Undertaking prices to Managed Network Migrations (“MNM’s”)

67 The Commission has stated that it is concerned that there is a possibility that Telstra may seek to enforce undertaking prices in the MNM context because MNMs are not specifically referred to in the SSS Undertaking.²²

68 As noted by the Commission, Telstra has previously stated that the connection costs incurred in the context of MNMs are different to the costs incurred in single connections. The Undertakings are not intended to apply to managed network migration connections and Telstra is negotiating separately with the relevant access seeker as to the appropriate prices of MNM’s.²³

69 Such negotiations take account of factors such as the number of services to be migrated in specific exchanges over a specific timeframe and the timeframe over which access seekers seek to complete bulk migrations.

70 Telstra submits that commercial negotiations between the access seeker and the access provider are the most appropriate to deal with charges for SSS MNMs.

71 If the SSS Undertaking were accepted by the Commission, Telstra would continue to negotiate the terms and conditions for the supply of SSS on an MNM basis. Further, Telstra would not argue that, in the context of an access dispute, the Commission is bound to make an arbitral determination in relation to MNM connection charges for SSS that is consistent with the accepted SSS Undertaking.

F INTERNATIONAL COMPARISONS

²² Draft Decision, section 6.6.

²³ Discussion Paper Response, page 14.

72 The Commission has stated that it may be useful to compare connection prices for similar SSS services in overseas jurisdictions to those proposed by Telstra.

73 Whilst Telstra has not had an adequate opportunity to review the overseas data in relation to SSS connection costs, Telstra notes that the SSS connection fees in overseas countries suggest that Telstra's proposed charges for SSS connections are not unreasonable.²⁴ Accordingly, Telstra submits that this is a further reason for the Commission to accept the SSS Undertaking.

G CONCLUSION

74 For all of the reasons set out above, Telstra considers that the Undertaking is reasonable and ought to be accepted by the Commission.

DATED: 8 February 2006

²⁴ Draft Decision, section 6.10 at page 73

**ANNEXURE A TO TELSTRA'S CONFIDENTIAL SUBMISSION IN RESPONSE TO
THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION'S DRAFT
DECISION IN RESPECT OF SSS UNDERTAKING RELATING TO CONNECTION AND
DISCONNECTION CHARGES DATED DECEMBER 2005**

Item Desc		Metro						Regional			
		(BRIS) C1	(SYD) C1	(BRIS) C2	(SYD) C2	(MEL) C3	(SW) C2	(QLD) C4	(NSW) C5	(VIC/TAS) C6	(WA/SA/NT) C6
Run Jumpers Exchange MDF for ADSL (Complex)	Each	"c-i-c"	"c-i-c"	"c-i-c"	"c-i-c"	"c-i-c"	"c-i-c"	"c-i-c"	"c-i-c"	"c-i-c"	"c-i-c"

Abbreviations

C1: Contractor 1

C2: Contractor 2

C3: Contractor 3

C4: Contractor 4

C5: Contractor 5

C6: Contractor 6

Description of work activity: Run 2 jumpers and remove 1 jumper.