AUSTAR Entertainment Pty Limited

Comments on the ACCC Final Draft Report on reviewing the Domestic Transmission Capacity Service

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To: Australian Competition and Consumer Commision (ACCC)

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1. Introduction

Austar United Broadband Pty Limited (**AUSTAR**) welcomes the opportunity to comment on the ACCC's draft final report on varying the Domestic Transmission Capacity Service (**DTCS**) (the **Paper**).

AUSTAR supports the variation of the DTCS to cover all commonly used interface protocols used on transmission networks in Australia. AUSTAR believes it is particularly important for the DTCS to include Ethernet interface protocols; such protocols are becoming standard in the Australian transmission network, and are likely to be the dominant protocol. This is consistent with the concept that the DTCS should be a generic service that is technologically neutral; in order for the DTCS to fulfill these objectives, then it must follow that all transmission interface protocols that are commonly used over the Australian networks must be included in the DTCS declaration.

DTCS is particularly important for regional and rural Australia, where AUSTAR and its associated companies operate its subscription television, mobile and wireless broadband services. Given the increased importance being placed on regional Australians accessing higher speed broadband services, the DTCS should be broad enough to cover all commonly used interface technologies. The establishment of the NBN by the Federal Government only increases the importance of ensuring that the long-term interests of end users (**LTIE**) are captured in the DTCS. A technology neutral DTCS is of critical importance to the LTIE in regional Australia, where Telstra dominates the competitive landscape and where, without the benefit of a neutral DTCS, smaller operators could find themselves at a significant disadvantage.

2. Background on AUSTAR

AUSTAR is a critical supplier of communications and media services to regional and rural Australia. AUSTAR, and its associated companies, provide a range of consumer products to regional Australians.

Wireless Broadband

AUSTAR is a provider of wireless broadband services in regional and rural Australia. AUSTAR owns spectrum licenses covering 98 MHz of 2.3GHz spectrum and approximately 72 MHz of 3.5GHz spectrum, which covers much of regional Australia. Currently, AUSTAR provides wireless broadband services to consumers in Tamworth and Wagga Wagga. AUSTAR has also recently conducted a trial on the Gold Coast using next generation (4G) wireless broadband technology, with a view to launching a next generation broadband wireless service in other markets.

Subscription Television

AUSTAR's associated company AUSTAR Entertainment Pty Limited is the leading provider of subscription television services in regional Australia, supplying digital television to 750,000 customers.

Mobile Telephony

AUSTAR also offers a mobile telephony service in the same coverage areas as its subscription television service.

3. Importance of the DTCS Declaration

Over the past several years, the number of people connected to fixed and wireless broadband services and 3G mobile telephony services has raised dramatically. Australia has reached the point where access to fast broadband has become an economic necessity for many businesses and consumers. Next generation wireless broadband technology, or 4G, is an essential step in ensuring that all Australians have access to the latest technologies, wherever they reside.

While there is significant competition for broadband and mobile telephony services in metropolitan areas of Australia, the position in regional and rural Australia is often significantly different. In many areas, Telstra is only provider of fibre optic cable. Due to the remoteness of some locations, and the costs involved in developing their own network infrastructures, there is little incentive for other operators to extend their services to these areas. The DTCS provides operators with the ability to provide services in these restricted areas at a cost that is competitive to the major infrastructure owners such as Telstra and, in the future, the NBN. It is an essential element of a competitive market where, in its absence, there would likely be but one provider in many areas. With the potential of significantly faster speeds available through next generation technology, the DTCS declaration becomes even more critical as more people take up new wireless services.

The current wording of the DTCS is, as the various submissions provided to the ACCC earlier this year in response to its initial report on the scope of service definition reveal, uncertain as to its application over certain popular transmission networks, in particular Ethernet protocols. Ethernet protocols are now widely used in transmission capacity services, and its availability at a wholesale level under the DTCS to service providers will increase the competitive offerings in underserved markets. AUSTAR agrees with the ACCC's conclusions in the Paper that the role and importance of Ethernet interface protocols is well established and accepted in the industry.

4. Proposed Variations to the DTCS Service Description

AUSTAR concurs with the ACCC's conclusion that the DTCS be amended so that it covers all commonly used interface protocols in the Australian network. While AUSTAR agrees that Ethernet interface protocols are amongst the most widely used interface protocols, and will continue to grow in importance, it is important that the definition of 'network interfaces'

contained in the DTCS be broad enough to capture any new protocols that may be developed or become standard. It is important that, where a new network interface is developed and used by end-users, that that interface automatically be caught by the DTCS. Otherwise, some end-users could find themselves unable to avail themselves of the DTCS due to its restrictive language, particularly in rural markets where there is one dominant participant. Rather than go through another process of public consultation and amendment of the DTCS at a point in time well after the establishment of a widely used network interface, as has been the case with the Ethernet protocols, the DTSC declaration should apply to *all* network interfaces, provided they meet the minimum speed of 2.048 Mbps. AUSTAR agrees that the proposed designated rate of 2.048 Mbps is an appropriate minimum capacity, and is in line with the minimum transmission rate set out in the current service description.

This position is consistent with the ACCC's statement in the Paper that "it is of the view that the DTSC declaration should apply to all transmission services regardless of the interface protocol used to provide the service so that regulation may effectively encourage downstream markets which would not otherwise be competitive"[1].

The draft wording provided in the definition of "network interfaces" in Appendix 2 of the Paper goes some way to providing this neutrality, however there still appears to be some ambiguity in the wording as to whether the definition applies only to Ethernet, PDH and SDH or whether it is merely inclusive of those protocols.

To avoid any such uncertainty, AUSTAR recommends that the definition of "network interfaces' be amended to read as follows:

> "**network interfaces**" means a network interface, including Ethernet, Plesiochronous Digital Hierarchy (PDH) and Synchronous Digital Hierarchy (SDH) interface protocols, used to provide a transmission rate of 2.048 Megabits per second or above which an access provider provides to itself or others.

The above definition leaves no question as to the fact that any network interface, which has a transmission rate of 2.048 Megabits per second or above, will be subject to the DTCS declaration. This is in the interests of LTIE, as it provides certainty for end-users when negotiating for access in their particular markets and will avoid protracted discussions with access providers or further steps by the ACCC to amend the DTCS to bring it into accord with the ACCC's stated views.

With respect to the introductory wording to the Declaration, AUSTAR agrees with the alteration of the wording such that it is clear that the transmission service be provided on a symmetric and permanent basis.

[1] Paper, p6.