

**The ACCC's Draft Decision and Proposed Class Exemption on
Telstra local carriage service and wholesale line rental exemption applications.**

Submission by Chime

PUBLIC VERSION

1. Introduction

We refer to the ACCC's *Draft Decision and Proposed Class Exemption on Telstra's local carriage service and wholesale line rental exemption applications*, dated April 2008 ('the draft decision'). Though we consider that the draft decision will not achieve its objectives, we appreciate the opportunity to comment. Our view is that the proposed exemption makes fundamental errors and will significantly damage the long term interests of end-users of declared services in both voice and broadband products.

These fundamental errors include the following assumptions:

- That DSLAMs have the ability to provide a standard telephone service (STS);
- That DSLAMs have the ability to support a wholesale LSS;
- Failing to identify WLR as a prerequisite for LSS.
- Existing deployments of DSLAMs have the spare capacity required to accommodate large numbers of customers migrating away from a Telstra provided WLR;
- Existing deployments of DSLAMs somehow equates to a competitive capability to deliver an equivalent WLR in competition to Telstra's WLR;
- That there is no impediment to further deployments of DSLAM or MSAN in the current environment;
- That acquiring ULLS equates to the deployment of STS;
- That existing DSLAMs deployed to utilise LSS access can practically and readily be reconfigured to MSAN utilising ULLS;
- That 12 months is a reasonable expectation for the development and adoption of a LSS to ULLS migration process;

We consider the exemptions should not be granted. In the alternative that in spite of the obvious errors of analysis, the ACCC does proceed with granting the proposed exemption, we urge the ACCC to apply further limitations in order to protect the interests of end-users by ensuring some level of competition remains in the relevant markets affected by the draft decision.

These further limitations are as follows:

- The exemption only applies in ESAs where the ACCC has independently verified there are four or more ULLS based competitors (including Telstra)

that have the technical ability to provide standard telephone services at a wholesale level;

- The exemption will cease immediately in an ESA if the number of ULLS based competitors (including Telstra) in that ESA with the technical ability to provide standard telephone services drops below four;
- The exemption only applies until 31 December 2010;
- The exemption does not apply until after a 12 month transition period commencing from the date that the ACCC accepts that a satisfactory LSS to ULLS transfer and mass migration process is in place;
- The exemption does not apply in any ESA where there is a queue to install ULLS related equipment; or the average wait time for ULLS competitors that have requested to install DSLAMs or MSANs exceeds two months; or the access seeker that is first in line has been in the queue for more than two months;
- The exemption does not apply in any ESA where more than 5% of SIOs are affected by any equipment that prevents ULLS based services being provided;
- The exemption does not apply in any ESA where Telstra is granted an exemption from its obligation to provide DCTS;
- The exemption does not apply in any ESA in which the ACCC considers ULLS competitors' ability to obtain competitive transmission services is negatively affected by Telstra having been granted an exemption from its obligation to provide DCTS; and
- The exemption does not apply in any ESA where Telstra is granted an exemption from its obligation to provide any declared services to Optus.

2. Effect on the competitive environment of LSS and broadband services.

As pointed out by the ACCC, the promotion of competition test requires the ACCC to have regard to whether granting Telstra's exemption applications will create the conditions or environment for improving competition from what it would otherwise be.¹ It is important however to note that this test does not refer to competition for fixed voice services alone, but to *all* listed services. As such, the ACCC must consider the effect of granting the exemption upon all carriage services and all services supplied by means of carriage services and not just the effect on fixed voice services.² The clear potential effect of the proposed exemption is its negative effect on the LSS and the broadband and other services provided via the LSS.

Of the competitive offerings provided by means of DSLAM equipment, roughly half³ are provided by the LSS (377,000) rather than by the ULLS (391,000). A large proportion of the ULLS services are used to provide business grade, large group telephony services (as provided to iiNet by Primus for their call centres). To a significant extent, it is the LSS that has driven broad DSLAM deployment, not ULLS.

¹ ACCC, *Telstra local carriage service and wholesale line rental exemption applications, Draft Decision and Proposed Class Exemption*, April 2008, p 22.

² Refer to TPA, s 152AB(2)

³ Telstra Ltd Half Year Report, 21 February 2008

Though we are aware that the ACCC supports a ladder of investment strategy in which access seekers initially provide services via LSSs, and climb the ladder to provide services via ULLS, and perhaps eventually invest in infrastructure to provide full facilities based competition, it remains a fact that today most infrastructure based broadband competition is conducted via the LSS. The proposed WLR exception will remove two vital steps from the telecommunications ladder of investment, i.e. the WLR and LSS. New entrants, and existing competitors of Telstra looking to secure new geographic areas, need the WLR and LSS to compete.

The LSS requires an underlying WLR service. As the ACCC is aware, Telstra has loudly disputed the ACCC's view that line costs should not be included in LSS monthly charges on the basis that they are recovered via the WLR. Telstra has previously taken active steps to financially discriminate against LSS end-users by ensuring that they do not have access to Telstra's lowest price retail fixed line service, but rather must pay the higher charges of alternative retail plans.⁴ Telstra argued that LSS customers use VoIP and are less likely to make calls via the PSTN, so they must pay higher line rental to ensure Telstra recovers line costs. It is a dubious argument to use VoIP as the sole substitute for telephone traffic when mobile penetration has exceeded 100% and VoIP take-up is negligible. Of course, Telstra's move was solely designed to push up the costs associated with using a competitor's LSS product and as such discourage end-users from purchasing a rival's ADSL product.

We consider it highly likely that once relieved from standard access obligations in relation to WLR/LCS, Telstra will quickly instigate similar steps that will negatively impact the competitive environment and conditions in which LSS is provided. Telstra could either refuse to supply WLR/LCS to competitors on lines with an LSS service or push the price up to uneconomic levels. Similarly, Telstra can again push up the price of its retail WLR product for consumers that are obtaining LSS from a competitor. This means an LSS product from one of Telstra's competitors becomes either unavailable or extremely unattractive, because the end-user cannot obtain a WLR/LCS/LSS bundle or the inflated price of the associated and requisite voice product pushes the price of the two services together to an uncompetitively high level. As such, granting a class exemption on one carriage service (WLR) can have a profound effect on the competitive environment in which another service (LSS) operates, therefore the exemption should not be granted.

3. Standard telephone services cannot necessarily be provided via the ULLS

The ACCC appears to assume that all acquirers of the ULLS are able to provide standard telephone services (STS) and hence an alternative wholesale service to LSS access seekers. This fundamental error is crucial to the ACCC's draft decision. In order to provide the features expected of either a retail or wholesale standard telephone service, the ULLS must be accessed via a Multi Service Access Node (MSAN). DSLAMs are not technically capable of providing features of a standard telephone services. A ULLS provided by a DSLAM is only capable of providing telephony via VoIP as an application on an ADSL service. Though VoIP provides a means to make cheap calls that are acceptable to a lot of customers, it is not widely regarded as a substitute to a fixed telephone service. As a wholesale service it cannot be used as the basis for an LSS. For instance, the quality of VoIP is dependent on available bandwidth. In contrast, a ULLS provided via an MSAN can be regarded as capable of including a standard telephone service. For instance,

⁴ On 21 February 2007, Telstra informed LSS access seekers that its cheapest residential WLR service, 'homeline budget', would no longer be available to customer that also have a broadband service using the LSS. See also http://www.telstra.com.au/homephoneservices/plans/homeline_budget.htm - "Things you need to know."

unlike a DSLAM enabled service, an MSAN sends a 50v signal down the line, which means that an end-user does not lose their telephone service during a power loss at their premises.

Chime uses DSLAMs to deliver broadband services via ULLS and has invested approximately \$55 million capex in DSLAM equipment. We have investigated the cost of purchasing MSAN equipment and retrofitting this into our exchange racks to augment our current DSLAMs. We estimate the required capex would be approximately \$21 to \$30 million. This is the amount we would need to invest in order to provide a voice service that is truly comparable to that provided by the WLR/LCS. Chime is currently in the process of re-evaluating these costs and is willing to provide the ACCC with evidence of these costs if it will assist the ACCC's decision. Our investigations indicate that approximately 18% of our customers would buy (STS) voice services from us if we added MSANs to our DSLAMs.

Given the current high level of uncertainty regarding the future supply of the ULLS when FTTN is rolled out, Chime has serious doubts about the commercial sense in investing such a large amount of money, even if it can be raised, in order to augment DSLAMs with MSANs. In fact, this uncertainty makes any further investment in the ULLS a very risky venture as future returns can in no way be assured. This concern is heightened by the limitations that Telstra places on LSS/ULLS competitors, particularly its network modernisation provisions that allow Telstra to roll out FTTN and disconnect the LSS or ULLS on only 15 weeks notice.

Some ULLS acquirers do utilise MSANs. However, no other ULLS acquirers offer an LSS service coupled with a WLR. Therefore, it is a mistake to suggest that the removal of regulation on Telstra will naturally result in a competitive wholesale market. We consider it imperative that the ACCC ascertain whether or not adequate amounts of this equipment exist in each ESA where it is considering Telstra's exemption application. It is all very well to say that the existence of four ULLS-based competitors establishes a sufficient level of competition, but it may not alter the fact that Telstra remains the only one of those companies that is actually capable of providing a standard telephone service at the wholesale level without the considerable expense and delay (caused by Telstra's enforced queuing process for exchange access) of competitors having to replace all of their exchange equipment. If the ACCC wants to achieve an objective of creating an environment that will promote competition in the wholesale and retail markets for telephony, the exemption must be varied to only apply in ESAs that have four or more ULLS-based competitors (including Telstra) within the ESA *that have the ability to provide the wholesale standard telephone service*. As it currently stands, the limitation provides no guarantee that the ULLS-based competitors are capable of providing competitive voice services.

For these reasons, we strongly recommend that the exemption only applies in ESAs where the ACCC has independently verified there are four or more ULLS based competitors (including Telstra) that have the technical ability to provide standard telephone services. As stated, this requires that the ULLS based competitors utilise MSANs.

4. Accuracy of Telstra's data needs independent verification

We consider it absolutely necessary that the ACCC implement an independent audit of the exchanges included in the proposed exemption to ensure that it is relying upon accurate information regarding DSLAMs/MSANs installed in those exchanges. Chime is willing to supply this information to the ACCC. [Start C-I-C . Section

removed from public version of submission as contains commercially sensitive information **End C-I-C]** This could be as simple an exercise as an ACCC staff member contacting each ULLS access seeker to confirm that they have equipment in the exchanges named by Telstra and included in the ACCC's exemption list. In the longer term, this information can be collected via an amendment to the Telstra CAN RKR. Our assessment of Telstra's statistics in regards to previous matters is that their accuracy is frequently open to question. Given that it is clearly in Telstra's interests to claim higher levels of ULLS based competitors, this information must be verified before it is relied upon by the ACCC in stating the names of ESAs where it considers there to be an adequate level of competition to exempt Telstra from its obligations under the WLR/LCS declarations. As verification will be a simple and quick process, this is not too much to ask, given the effect that the exemption could have on access seekers' investments and the downstream choices of consumers.

We recommend that the ACCC independently verify the reliability of exchange data prior to granting the proposed exemptions.

5. Capacity and level of competition

Further to this, the basis of the ACCC's proposed limitation that the exemption will be provided in ESAs with the presence of at least 4 ULLS based competitors (including Telstra) does not, in many cases, provide any indication of the degree of competition. The existence of an alternative to Telstra does not mean that the alternative has the capacity to actually offer any competition if Telstra pushes its prices up. For instance, if 3 ISPs have one rack each in an exchange and Telstra has the rest, the ISPs simply will not have any excess capacity or available ports to offer WLR services to customers wanting to avoid a Telstra price hike. The ACCC's assessment of ULLS based competition must also assess the capacity of the competitors and their ability to offer further services, both on a retail and wholesale basis. We anticipate that the ACCC could be disappointed with the results, as the reality is that competition in ULLS based services and products remains immature.

It is also important to note that an access seeker's ability to increase capacity is totally dependent on Telstra's queuing process and not just its exchange capping policy.

We recommend that at the same time as verifying the number of ULLS based competitors in each ESA, that the ACCC obtain data regarding the competitors' current available capacity (of racks, power, air conditioning, MSAN ports and TEBA space) and ability to increase capacity if faced with additional demand. This would involve details of whether the competitor had lodged an application to install further equipment in the exchange and if so, its place in Telstra's queue and the related works involved (for power, air-conditioning, civil works etc).

6. Reduction in number of ULLS providers in an ESA

The proposed exemption provides no explanation regarding the following situations:

- A ULLS-based competitor in an ESA goes out of business, reducing the number of ULLS-based competitors (including Telstra) in the ESA to below four; or
- Two or more ULLS access seekers with DSLAM/MSANs in an ESA merge, bringing the number of ULLS-based competitors (including Telstra) in the ESA to below four.

- ULLS based competitor(s) in an ESA not deploying MSAN in association with their DSLAM equipment, providing only 'naked' DSL services and no STS.

Any of these occurrences would reduce the level of competition in the ESA. Based upon the reasoning detailed by the ACCC in its draft decision, we consider that if any of these situations occurs, the ESA should immediately be removed from the list of ESAs in which Telstra has exemptions. This would need to be specified as a condition in the ACCC's decision.

7. Period of exemption

The ACCC has proposed that the exemption commence after a 12 month transition period and that it remain in place until 31 December 2012. As such, if the ACCC's final decision is made in late June 2008, the exemption would come into effect in late June 2009 and would have a further 3 ½ years to run.

We agree that a reasonable time period is required to assess the effect of the exemption on the market and the interests of end-users, however, we consider that 3 ½ years is so long that if the exemption has a negative effect, it will be profoundly irreversible. We consider that the ACCC should closely monitor the effect of the exemption and that this should be ensured by reducing the exemption period until 31 December 2010. During this time period relevant parties that remain in the industry would have implemented any necessary changes to their business plans and the effect of these changes would be evident. Prior to the expiry of the exemption, in mid-2010, the ACCC could request submissions from interested parties in regards to whether the exemption should be revoked or extended, with a decision being made before the end of that year. We consider that the extended time period proposed by the ACCC is unnecessarily long and will not provide any degree of protection in the event that the exemption proves detrimental to the long term interests of end-users.

8. ULLS wholesale market

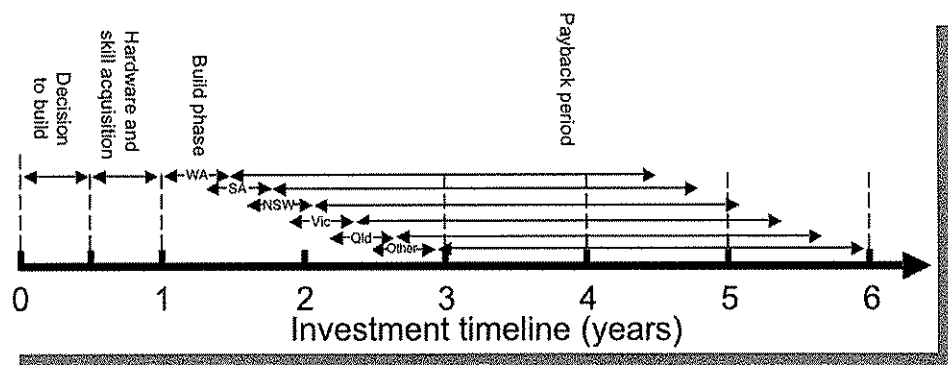
Wholesaling is not the core business of any of the ULLS based competitors in Telstra's exchanges. Though the 12 month transition period may provide adequate time to implement wholesale arrangements, it does not take into account capacity constraints. Our normal business practice is to install sufficient DSLAMs for our current requirements and anticipated requirements for a 12-month period. We do not have sufficient capacity to provide wholesale access to other service providers seeking to acquire voice services on the ULLS. We are willing to provide the ACCC with details of Chime's spare capacity and the anticipated time in which this capacity will be utilised if it will assist the ACCC's assessment of this matter. It would take considerably more than 12 months to assess the potential wholesale market that results from removal of the WLR/LCS exemption, to then raise funds for further installations to provide increased capacity in appropriate exchanges, and to apply for and commence installation of additional DSLAMs through Telstra's one at a time queuing system.

If the opportunity exists, as the ACCC hopes it does, for ULLS based wholesale competition in WLR/LCS services, then service providers will move into the market as soon as they can in order to capitalise on the opportunity. At this stage, however, this wholesale market simply does not exist and a decision that assumes it will exist in 12 months is unrealistically optimistic. ULLS access seekers will not achieve that

time frame, and if they do not, the end-users unable to be placed onto an existing service will be absorbed by Telstra as the only provider with additional capacity and possibly tied into fixed contract periods. This combined with the recognised high level of churn inertia amongst fixed telephony consumers will subsequently make it extremely difficult for ULLS based competitors to make inroads into the market after any delays in increasing their capacity. We consider that the 12 month transition period should commence from the time that alternative wholesale ULLS providers with sufficient and established capacity are shown to exist in each ESA. The importance of this is emphasised by the incredible difficulties that access seekers have experienced in attempting to negotiate commercial agreements with Telstra. Telstra simply does not want to provide wholesale services as it eats into its retail profits. This is demonstrated by the massive number of access disputes that the ACCC has had to arbitrate to set reasonable terms of access. We do not expect that Telstra will offer reasonable WLR/LCS terms when relieved of its SAOs in the exempt ESAs.

As an example of the time that it would require to increase capacity to offer wholesale services, the chart below gives an indication of the time frames experienced by Chime in its DSLAM rollout. We consider that increasing capacity to provide wholesale services via the ULLS or entering the ULLS market as a new entrant is likely to involve similar time frames.

- 6 months to investigate and approve business case and allocate capex;
- 6 months skill acquisition and development of processes;
- 2 year build program running multiple parallel builds in line with Telstra' restrictions;
- expansions and variations continue after initial build (not shown on diagram); and
- 2 to 3 year payback period for individual sites (around 300 sites).

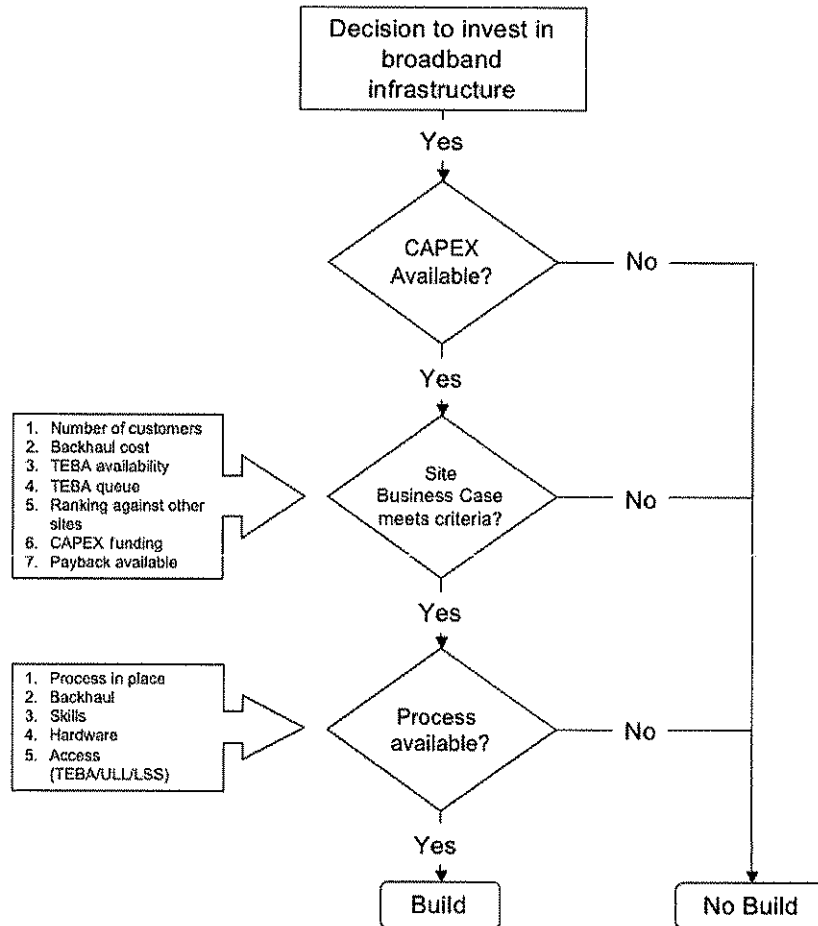


Planning DSLAM builds

All potential sites are ranked on their performance against criteria and then the maximum number of sites selected that fit within the available capex allocated. Some sites may not proceed even though they individually meet the criteria.

Sites enter and leave the program as information changes or costs, such as backhaul, alter.

The flowchart below gives an overview of the decision making process. It is greatly simplified as the various items listed to the left of the flowcharts are also incorporated in the decision making process.



9. Migration/transfer costs

There are considerable costs, such as ULLS connection charges, involved in migrating WLR/LCS customers to the ULLS. As it stands at present, this cost will be incurred by ULLS based competitors. The ACCC's draft ULLS indicative prices set ULLS single connection charges in 2008/09 at \$50.40 (Band 1), \$53.10 (Band 2), and \$57.70 (Band 3). Of course, access seekers would have to run an access dispute to even obtain these charges from Telstra or be forced to pay significantly higher connection charges. End-users, particularly those with only a telephone service, will be extremely reluctant to pay the cost of a ULLS transfer simply to obtain a service that they already have so, to compete, access seekers would most likely have to absorb this cost. This will be a considerable impediment to keeping a customer if Telstra refuses to continue to supply WLR/LCS services or increases its charges to uneconomic levels.

10. DSLAM to MSAN conversion process

ULLS acquirers wishing to retrofit MSANs into the exchange racks currently housing their DSLAM equipment would be required to get into the same queue as a new ULLS installation in order to perform this work. This sort of work is not simple

maintenance, and requires the approval of construction plans, installation of new cables, jumpering, and new power and air-conditioning. As such, it would take between 6 to 24 months to commence the work based on Telstra's current queuing process. These time frames are likely to blow out considerably if several access seekers require access in order to retrofit MSANs.

11 Lack of LSS to ULLS transfer process

There is currently no process to transfer (let alone mass migrate) an LSS to a ULLS. We must currently disconnect a LSS and then connect a ULLS. This incurs an LSS disconnection fee if the access seeker is not participating in the LSS Churn process (\$38.70 in the indicative prices for 2008/09) and a ULLS connection fee (\$53.10 for Band 2 in the indicative prices for 2008/09) and leaves the end-user without a service for approximately 3 weeks. This is a considerable disincentive to consumers.

Until such time that Communications Alliance develops a code for an efficient LSS - ULLS migration process, and Telstra actively participates in implementing the code, Chime is largely limited to only offering the ULLS to new customers rather than encouraging existing LSS customers to take a ULLS-based service. Besides the fact that this transfer process is vital in providing a path for ULLS-based competition, it may have a beneficial side effect of encouraging Telstra to cooperatively participate in the Communications Alliance code development process and subsequent code implementation, i.e. because the detriment to Telstra of enhanced ULLS competition may be outweighed by the benefit it obtains through its WLR/LCS exemption.

We recommend that any exemption from the WLR/LCS declaration should not commence until at least 12 months after implementation of a satisfactory LSS to ULLS transfer process.

12. Exchange queuing

As the ACCC is aware, Telstra has imposed a serialised queuing system whereby access seekers may only access exchanges one at a time to construct or expand DSLAM infrastructure. This is combined with an excruciatingly slow process for approving access seekers' plans for the installation of equipment in Telstra exchanges. In Chime's direct experience this is causing delays that are routinely in the order of 6 - 12 months and often up to 24 months before we are able to access key exchanges in order to install equipment and provide competitive services. There is no substantive reason for this process and delay, except to create barriers to competition. As shown by Telstra when it recently rolled out ADSL2+ in 900 exchanges, it can access exchanges rapidly and is clearly not limited by the 'TEBA process' or waiting in the same queue as its competitors.

The spreadsheet below lists exchanges as of 27 May 2008 where Chime's proposed DSLAM installations are on hold in a queue. The number of exchanges has significantly increased since Telstra's recent amendment of its list of capped sites. The spreadsheet defines the date we submitted a preliminary study request ('PSR') and the current status of that request.

Start C-I-C Spreadsheet removed from public version as contains commercially sensitive information End C-I-C

The vast majority of delays to our construction are in the design and construct process. We are frequently asked by Telstra to undertake power and air conditioning audits which require dealing with third party contractors approved by

Telstra. The power audit process causes the longest delay as we can only use one Telstra approved contractor, SILCAR, and they can take months to respond.

We appreciate that the ACCC has recognised the impediment to competition presented by exchange capping and completely agree that WLR/LCS exemptions should never be granted in ESAs subject to capping, however, Telstra's queuing process places access seekers in basically the same position as capping, i.e. we simply cannot obtain access to Telstra's exchanges to install equipment. For all except the 1st carrier in a queue, the exchange is effectively capped until further notice. For the same reasons that capped exchanges are removed from ESAs in which Telstra has WLR/LCS exemptions, ESAs with queues should also be excluded from the list of exempt ESAs. A delay of any more than two months is unreasonable, as this provides more than sufficient time for preliminary construction work to be assessed and approved. We consider that this should be included as a further limitation upon Telstra's proposed exemption. For instance, the following alternative versions of the limitation are available:

- The exemption does not apply in any ESA where there is a queue for ULLS competitors that have requested to install MSANs; or
- The exemption does not apply in any ESA where the first ULLS competitor that has requested to install MSANs has been waiting in a queue to obtain access to the exchange for more than two months; or
- The exemption does not apply in any ESA where the average wait time for ULLS competitors that have requested to install MSANs exceeds two months.

13. MNM timeframes and limitations

The ability of access seekers to migrate large numbers of services to the ULLS is hampered by Telstra's mass network migration ('MNM') timeframes and rules. For instance, an access seeker can only book an MNM in one exchange per state per day and access seekers are required to give Telstra 56 days advance notice of an MNM. In the event of a need to shift large numbers of SIOs to the ULLS, these time frames would need to be taken into account, particularly if the MNM process could not be instigated until after a DSLAM/MSAN build conducted through Telstra's queuing process. We do not consider that this is a strong argument against granting the proposed exemptions, but this extra time frame helps to emphasise the need to ensure that delays caused by queuing to access exchanges must be minimised if the ACCC wants to ensure a sufficient level of competition remains.

14. Technical constraints on providing the ULLS

As recognised by the ACCC in its draft decision, technological impediments to the provision of services via the ULLS include line length, sub-exchanges, RIMS, pair gains and poor cable quality. We estimate that of the addressable market serviced by the iiNet DSLAM network, at least 5% of those potential customers are prevented (by these technical constraints) from accessing an iiNet DSLAM. We do not have accurate measurements of the number of SIOs for the total market that are affected by these impediments, however, The Age suggested that as many as 1 million people may be connected via pair gain or RIM/CMUX systems.⁵ This

⁵ Helen Meredith, *The Age*, 20 May 2008, p. 7

represents a significant percentage of fixed line services that can only obtain WLR/LCS from Telstra and as such is a substantial impediment to competition. Given Telstra's existing massive market share, we recommend that the WLR/LCS exemption should not be granted in ESAs where more than 5% of SIOs are affected by equipment that prevents ULLS based services being provided.

15. Regulatory and Judicial decisions affecting the ULLS

There are several undecided regulatory matters and court proceedings closely relevant to the ULLS, these include:

- Telstra's applications to the Federal Court for review of several ACCC final determinations in ULLS arbitrations;
- The ACCC's assessment of Telstra's TEA model for evaluating ULLS network costs in Band 2;
- Telstra's revised ULLS undertaking, lodged on 3 March 2008 for the provision of the ULLS in Band 2 ESAs.
- The ACCC's development of its own ULLS network costs model;
- Finalising the ULLS pricing principles and indicative prices.

Each of these matters has the potential to significantly impact the ULLS and adds to the level of uncertainty faced by ULLS access seekers considering expansion in order to provide WLR/LCS services. We consider that this is a strong argument that that the WLR/LCS exemption should not be granted or that it is subject to tighter limitations and a shorter time frame to assess its impact in light of further legal and regulatory developments in the market.

16: Telstra's other exemption applications

The ACCC is currently considering several other applications from Telstra for exemptions from its SAOs in relation to other declared services, as follows:

- On 24 August 2007, Telstra lodged an exemption application from the SAOs of the domestic transmission capacity service ('DTCS') in 20 capital-regional routes.
- Telstra lodged four exemption applications on 21 December 2007 from the standard access obligations for the DTCS. These applications relate to Telstra's supply of:
 - inter-exchange DTCS in CBD areas of each capital city
 - tail-end transmission in CBD areas of each capital city
 - inter-exchange transmission in metropolitan areas and certain regional centres for DTCS
 - tail-end transmission in metropolitan areas and certain regional centres for DTCS up to 2 Mbps only.

- On 18 December 2007, Telstra provided the ACCC with an application for exemption from the standard access obligations in respect of supply of the ULLS, LSS, LCS, WLR, and PSTN OA to Optus in a defined geographic area of any customer premises within 75 metres of Optus' currently deployed HFC cable network in Sydney, Melbourne and Brisbane.

Each of these exemptions, if granted, is extremely relevant to a WLR/LCS exemption, for instance:

- DTCS exemptions impact ULLS based competitors' ability to obtain backhaul on regional, inter exchange and tail-end routes. If the WLR/LCS exemptions are granted as proposed, there will be significantly increased pressure on transmission services if ULLS use rises as hoped for by the ACCC. In this situation, it is imperative to ensure that sufficient competitive backhaul is available to meet any increased capacity requirements. We consider DCTS exemptions and WLR/LCS exemptions should not be granted in the same ESA. Further, to ensure ULLS based competitors can continue to obtain transmission, a WLR/LCS exemption should not be granted in ESAs next to an ESA where a DCTS exemption is (or may) be granted or in which inter-exchange and tail-end transmission is affected by the granting of a DCTS exemption. To do so will place untested limitations on the ability of ULLS based competitors' provision of services within those ESAs.
- If Telstra does not have to provide ULLS services to Optus within the footprint of its HFC network, Optus will be forced to remove its DSLAMs from those exchanges and no longer be able to provide wholesale services via the ULLS. This will have the result of both reducing the number of ULLS based competitors in an ESA and removing Telstra's largest competitor from the potential market for wholesale WLR/LCS services. Given that the ACCC's draft decision on the WLR/LCS exemption clearly contemplates Optus' continued existence as a major ULLS based competitor, we are concerned that the ACCC has totally failed to address this clear potential problem.

Telstra is already taking active steps to put in place measures in contemplation of being granted exemptions from its current SAOs in relation to these services. It has provided access seekers with variations to its General Access Service Terms that allow Telstra to terminate supply of a declared service covered by an exemption. Though it would be pleasant to think that Telstra will enter into good faith negotiations to continue to supply these services on reasonable commercial terms, we consider that this would be naive. Our experience to date, gained through years of attempting to negotiate access terms with Telstra along with being involved in a large number of access disputes and Telstra instigated court proceedings appealing ACCC decisions, is that Telstra views its wholesale business and will do everything it can to limit its wholesale customers from taking a slice of Telstra's massive retail market pie.

Given the substantial amount of telecommunications work currently before the ACCC, which goes beyond access disputes and consideration of Telstra's raft of exemption applications, we are concerned that the ACCC's resources are stretched such that there may not be sufficient synergy between different teams working on different exemption applications. If this is correct, the effect of each exemption on another will not be fully addressed. This could lead to a significant adverse effect

on competition, as it provides Telstra with the opportunity to leverage its exemption in one area against its obligations in another.

In light of the above, we recommend that:

- The exemption requests be denied until such time as the issues referred to above are fully investigated and taken into account by the ACCC;

In the event that the ACCC ignores the obvious errors pointed out in its draft comments and proceeds to an exemption regardless, then:

- The WLR/LCS exemption does not apply in any ESA where Telstra is granted an exemption from its obligation to provide DCTS;
- The WLR/LCS exemption does not apply in any ESA in which the ACCC considers ULLS competitors' ability to obtain competitive transmission services is negatively affected by Telstra having been granted an exemption from its obligation to provide DCTS (e.g. where a neighbouring ESA has a DCTS exemption); and
- The exemption does not apply in any ESA where Telstra is granted an exemption from its obligation to provide any declared services to Optus.

17. Conclusion

Though we consider that these exemptions should not be granted for the reasons outlined in this submission, we are also aware that the ACCC is unlikely to substantially change its position at this stage. The ACCC is clearly aware that market realities exist, such as exchange capping and fibre rollout, which have the potential to mean that the proposed exemptions will damage the LTIE. We have used this submission to point out that there are other important market realities that may have the same impact. With this in mind, we urge the ACCC to place the following additional limitations on any WLR/LCS exemption that it grants to Telstra:

- The exemption only applies in ESAs where the ACCC has independently verified there are four or more ULLS based competitors (including Telstra) that have the technical ability to provide standard telephone services;
- The exemption will cease immediately in an ESA if the number of ULLS based competitors (including Telstra) in that ESA with the technical ability to provide standard telephone services drops below four;
- The exemption only applies until 31 December 2010;
- The exemption does not apply until after a 12 month transition period commencing from the date that the ACCC accepts that a satisfactory LSS to ULLS transfer and mass migration process is in place;
- The exemption does not apply in any ESA where there is a queue to install ULLS equipment; or the average wait time for ULLS competitors that have requested to install DSLAMs or MSANs exceeds two months; or the access seeker that is first in line has been in the queue for more than two months;
- The exemption does not apply in any ESA where more than 5% of SIOs are affected by any equipment that prevents ULLS based services being provided;

- The exemption does not apply in any ESA where Telstra is granted an exemption from its obligation to provide DCTS;
- The exemption does not apply in any ESA in which the ACCC considers ULLS competitors' ability to obtain competitive transmission services is negatively affected by Telstra having been granted an exemption from its obligation to provide DCTS; and
- The exemption does not apply in any ESA where Telstra is granted an exemption from its obligation to provide any declared services to Optus.

I am happy to discuss any aspect of this submission further or provide the ACCC with further information to assist its decision.

Yours sincerely

Steve Dalby
Chime