Submission to the Draft Decision on Declaration of the Line Sharing Service

September 2007

Introduction

The CCC represents the interests of non-dominant carriers in Australia. CCC members are among the most active users of WLR and LSS.

The CCC supports the Commission's draft decision to redeclare the Line Sharing Service. The LSS is an important element in the regulatory environment. A number of CCC members use the LSS to deliver competitive high speed data services to end users.

The CCC would like to take this opportunity to comment on the issue of line cost recovery "rebalancing" referred to in the draft decision.

Line Costs "Rebalancing"

The CCC does not wish to go to the merits of the underlying argument that there should be a contribution toward line costs within the LSS access price at this time except to say that it does not believe the case have been clearly made out. However, the CCC submits that the implications of any such change should not be understated given the overarching state of uncertainty in the Australian telecommunications market caused by Telstra's aggressive attitude in recent years.

In these circumstances, it is crucial that the Commission balance carefully the benefits and the risks of any fundamental change in pricing approach applied to access services, especially those services that access seekers can avail themselves of only after making substantial investments of their own.

The CCC believes it is therefore important to clearly describe and weigh up what is the mischief that requires any such change in approach, and what are the consequences of the change.

The CCC submits that, from the point of view of the access provider, any imbalance in the allocation of costs between LSS and WLR is not of great consequence of itself. This is because line costs are fully recovered, meaning the access provider suffers no overall loss.

The imperative to include line costs component is therefore based on the argument that there is a distortion in market signals that could have an effect on allocative efficiency if LSS does not include a line cost component. This assumes that there are some costs of providing the line (unspecified as far as the CCC can see) that should properly be apportioned to the LSS component of the line, and not to the voice portion. It is not clear whether this makes sense or whether there are costs that pertain to the provision of the copper and the activation of the line wholly to allow for voice to be delivered, in which case they are best apportioned to line rental. That is, these costs could not be avoided in provisioning the line for its primary purpose, delivering voice.

Assuming it is possible to identify a cost that should properly be apportioned to LSS, it must then be asked, what is the distortion in the build/buy signals? Or, what is the cost or investment being avoided by access seekers as a consequence of a "distortion" in cost signals?

If has been suggested that access seekers may not be progressing to ULLS from LSS, the question to be asked is what cost or risk access seekers are avoiding.

The CCC submits that the installation of a DSLAM is the major investment and risk hurdle that access seekers must clear in order to utilize either LSS or ULLS. That is, this investment is required equally for LSS as it is for ULLS and there is no additional significant capital cost to move from LSS to ULLS except in the costs of marketing and of service migration. The latter are largely costs controlled and paid to Telstra.

Balanced against this, it must be asked: what is the motivation for access seekers to move to ULLS and is this sufficient to suggest that any line cost distortion would be immaterial?

The primary motives for access seekers moving to ULLS from LSS are that

- it expands the palate of services available to be offered to end users,
- it allows access seekers to gain greater control over their own cost base, and
- it allows for greater product differentiation.

On all of these counts, LSS is not a substitute for ULLS, but is a stepping stone toward it.

Access seekers business plans remain committed to migrating to ULLS. As noted in the draft decision, delays in migration caused by Telstra have led to access seekers complaints to ACCC. This is evidence of a desire to migrate, not of a resistance or indifference.

Further, there is no robust, universally accepted network cost model that could be used to calculate the appropriate allocation of cost between the LSS and line rental components. In the absence of such a model, a decision by the Commission to attempt to introduce such a change in pricing methodology would undoubtedly be followed by years of disputation as to the appropriate cost changes. The burden of this uncertainty would fall on access seekers, not Telstra, because, as discussed above, the cost of lines is presently fully recovered. This is more likely to create a distortion in market signals that the present cost allocation arrangements.

Balancing regulatory risk

In a time of unprecedented uncertainty and persistent attempts at undermining of regulatory arrangements, the CCC submits that the Commission should be welcoming and encouraging the uptake of LSS. The LSS and ULLS have been the subject of an unrelenting campaign of uncertainty by Telstra for four years. This has led to material delays in the investment by competitors at the exchange level of the network. More recent increases in the use of the LSS and the investment at the exchange level by competitors, led by members of the CCC, provide some evidence that competition has not yet been paralyzed by this hostile environment.

The LSS pricing arrangements have been the earliest to move toward settlement through the various Commission and Competition Tribunal processes, and the acceleration in uptake in recent years has reflected that, as access seekers have moved to avail themselves of the service as the regulatory processes moved closer to conclusion. The migration to ULLS has been slower because the impact of the campaign of uncertainty by Telstra has made investors more risk averse, the resolution of regulatory processes engulfing ULLS has lagged the LSS, and because the migration arrangements are problematic, as discussed above.

Against this background, the Commission must consider the risk of adding costs and disrupting again the business plans of competitors relying on access to LSS that would necessarily follow a decision to reallocate costs on to the LSS.

It must also be noted that there are numerous processes presently underway, or soon to begin, that bear on this issue. These include the Commission's own fixed network review, the Government's fibre access network tender process, the USO review and the review of telecommunications legislation scheduled for 2009. Cost allocation issues cannot be resolved ahead of those processes because they will necessarily cover some of the same ground.

The disruption to the competitive industry in the past four years should be a powerful argument for the Commission to resist making changes that disrupt access seekers' business plans unless there is overwhelming evidence to the contrary. The Commission will have the opportunity to reconsider these issues in 2008/09 at which time it should be able to observe whether the migration from LSS to ULLS is operating efficiently, and other issues that will bear on the future of both services – such as proposals for deep fibre access networks – will also be closer to resolution, if not resolved.

Contact

For Further information please contact:

David Forman
Executive Director
CCC Inc
david@ccc.asn.au
02 62625821