

15 March 2007

Ms Nicole Hardy
Australian Competition and Consumer Commission
Level 35, The Tower
360 Elizabeth Street
MELBOURNE VIC 3000

Dear Ms Hardy

Request for amendment to the ULLS service description

We are writing to formally request that the Commission amend the service description of the declared Unconditioned Local Loop Service (ULLS) in order to clarify that access to the ULLS is available at all potential points of interconnection on the communications wire comprising the ULLS and to ensure that the declaration has continuing application in the event of a network modernisation, such as a fibre-to-the-node (FTTN) deployment.

The current ULLS service description refers to use of the communications wire between an end user's premises and a *'potential point of interconnection located at or associated with a customer access module*'. Currently ULLS interconnection is generally requested and provided at the location of Telstra's customer access module, which is generally located at the Telstra exchange building. It is currently unclear whether Telstra accepts that the service declaration extends to the provision of access at all other points on the communications wire.

The primary reason for this request to vary the service description for the declared ULLS is to put beyond any doubt that the declared service is technology neutral and able to apply in the event of network modernisation. In particular, it is our view that amendment is necessary to ensure that:

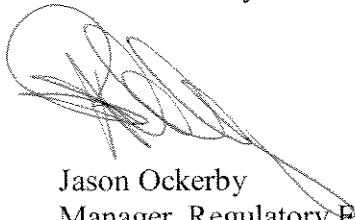
- if any carrier other than Telstra is to pursue the deployment of a fibre to the node network it will have certainty regarding its right to require interconnection to the communications wire at the node; and
- no cessation of use of "customer access modules" (as technically defined in the service declaration) would cause Telstra to cease to have an obligation to provide access to communications wires in the customer access network.

We note that section 152AO of the Trade Practices Act 1974 (TPA) provides that the Commission must not vary or revoke a declaration under subsection 152AL(2) unless the Commission has held a public inquiry under Part 25 of the Telecommunications Act, except where the variation is of a minor nature.

Therefore, to the extent that the Commission does not consider the proposed variation to be of a minor nature, we request that the Commission hold a public inquiry in response to this request, in accordance with section 152AM(2)(b).

A brief submission providing further details in relation to the requested amendment is attached, including a draft of a proposed amendment to the service description.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jason Ockerby', written over a faint circular stamp or watermark.

Jason Ockerby
Manager, Regulatory Economics

Request for an inquiry to vary the ULLS service description under section 152AM(2)(B)

The Commission declared the Unconditioned Local Loop Service (ULLS) by declaration dated 4 August 1999. On 28 July 2006, this declaration was extended to 31 July 2009. The declared ULLS is currently described as follows:

Service description

The unconditioned local loop service is the use of unconditioned communications wire between the boundary of a telecommunications network at an end-user's premises and a point on a telecommunications network that is a potential point of interconnection located at or associated with a customer access module and located on the end user side of the customer access module.

Definitions

Where words or phrases used in this declaration are defined in the Trade Practices Act 1974 or the Telecommunications Act 1997, they have the meaning given in the relevant Act.

In this Appendix:

boundary of a telecommunications network is the point ascertained in accordance with section 22 of the Telecommunications Act 1997;

communications wire is a copper or aluminium based wire forming part of a public switched telephone network;

customer access module is a device that provides ring tone, ring current and battery feed to customers' equipment. Examples are Remote Subscriber Stages, Remote Subscriber Units, Integrated Remote Integrated Multiplexers, Non-integrated Remote Integrated Multiplexers and the customer line module of a Local Access Switch;

public switched telephone network is a telephone network accessible by the public providing switching and transmission facilities utilising analogue and digital technologies.

We request that the Commission amend the service description in order to ensure that access to the ULLS is available at all points of interconnection on the communications wire comprising the ULLS, including in circumstances where:

- the communications wire terminates at a point remote from the location of any customer access module provided by the access provider;
- the communications wire forms part of an IP based next generation network that does not use 'customer access modules' as defined in the service description (i.e. they are not

associated with a device that provides ring tone, ring current or battery feed to customer equipment).

The current service description refers to use of a communications wire between an end-user's premises and a potential point of interconnect 'located at or associated with a customer access module'. A customer access module is defined as a device that provides ring tone, ring current and battery feed to customer equipment.

Access to the ULLS has traditionally been requested and provided at the location of the Telstra's customer access module, which is generally at the Telstra exchange building. That is, the prevailing form of interconnect has been for access seekers to install their own customer access module at the same location as the Telstra customer access module.. Therefore it has not been necessary to determine whether interconnect at other points on the communications wire falls within the current service description.

The ability to acquire access to the ULLS at locations other than the location of the Telstra customer access module will be significant in the context of a roll out of 'fibre-to-the-node' (FTTN) network. If an FTTN roll out were to occur, whether by Telstra or another entity such as the G9, then the communications wire would be removed and replaced with fibre between the location of the existing customer access module and a location closer to the end users' premises (the 'node'). That is, the 'local loop' would be truncated and communications wire from the end users' premises would terminate at the node.

If an FTTN deployment were to be undertaken by Telstra then, it is our understanding that some form of Telstra "customer access module" (as that term is commonly understood) would be installed at the node. Although it is unclear whether that "customer access module" would provide "ring tone, ring current and battery feed to customer equipment" (as required by the current declared service description). For example, if Telstra were to provide an entirely IP based service then the relevant customer access module at the node may not provide ring tone, ring current and battery feed to customer equipment.

It is arguable that the current service description is not sufficiently technology neutral to adapt to new forms of networks that use the communications wire, but not devices that are customer access modules as defined in the service description. This is because the definition of customer access module in the current service description is based on an assumption that the communications wire is being used to provide traditional telephony services that incorporate ring tone, ring current and battery feed to customers' equipment. In a purely IP based next generation network, voice services would be provided by VoIP, and therefore the customer access modules used in such a next generation network may not provide ring tone, ring current and battery feed to customer equipment¹.

If a party other than Telstra (such as an entity established by the G9) were to seek to deploy an FTTN network then nodes would be built at locations closer to the end user's premises than the location of the existing Telstra customer access module (most likely next to a pillar, cabinet or other concentration point for communications wires) and that party would

¹ VoIP handsets are generally powered by the end user's power supply, and although the handset may emit a sound similar to a ring tone, it is not a function of the telecommunications network.

install their own customer access module at the node . The FTTN network owner would then need to interconnect with the communication wires (or bundles of those wires) at that location, which would not be the location of a Telstra customer access module.

Telstra would be likely to argue that the declared ULLS does not require the provision of access at locations such as at a cabinet or pillar. A cabinet or pillar is a passive device that does not provide ring tone, ring current and battery feed to customer equipment and it is not 'located at' a Telstra customer access module. Therefore, whether or not the provision of access at a location such as a pillar or cabinet is required under the current service description depends on whether or not:

- it is accepted that a pillar or cabinet is 'associated with' a Telstra customer access module;
- this continues to be the case if the communications wire from the Telstra exchange to the pillar or cabinet is replaced by fibre, so that the communications wire terminates prior to the location of the Telstra customer access module;
- the installation of a node at the location of the pillar or cabinet which includes a customer access module provided by the access seeker means the pillar or cabinet then falls within the service description as being a potential point of interconnection located at or associated with a customer access module; and
- this continues to be the case if the customer access module installed by the access provider is a module suitable for a purely IP based network and which would not provide ring tone, ring current and battery feed to customer equipment

It is not conceded that the current service description does not require the provision of access to the sub-loop to an FTTN network owner other than Telstra. However, the matter is sufficiently important to ULLS access and competition as to make it necessary to put it beyond doubt.

While no FTTN roll out has currently commenced, proposals for an FTTN are being considered by the G9 and have previously been put forward by Telstra. Prior to any such roll out, it will be essential for both access providers and access seekers to have certainty in relation to whether access to the sub-loop at the node falls within the ULLS declaration. This is particularly the case in respect of a FTTN roll out by a provider other than Telstra, such as the G9, because the provision of service over the network would be contingent on the FTTN provider having access to the sub-loop.

It is very unlikely Telstra would provide such access unless the sub-loop were clearly a declared service. Accordingly, the ULLS declaration should be varied to provide complete certainty that such access is available. Proposed drafting of an amended ULLS service description is attached as Annexure A.

It will be important to ensure that any such amendment to the ULLS description does not in any way impact upon access seekers' continued ability to require access to the local loop at their existing points of interconnection. For this reason, as set out in the suggested attached

drafting, we suggest that a revised ULLS description clarify that there are different types of ULLS that an access seeker may request. These different types of the ULLS are not substitutable and therefore it must be clear from the service description that an access provider cannot satisfy its obligations to supply one type of ULLS by offering another type. For example, the obligation to provide ULLS at the location of the customer access module cannot be satisfied by the access provider instead offering access at the location of a pillar (and vice versa).

In the alternative, the Commission may consider separate service descriptions to deal with different points of interconnection. This may involve the existing service description being retained and a new service being declared to cover access at other interconnection points.

Another alternative would be to amend the existing service description by simply deleting the phrase 'located at or associated with a customer access module'. This would potentially allow access seekers to propose any point of interconnection that was between the customer access module and the end user's premises. However, to provide the highest degree of certainty that access to the communications wire at the pillar will be provided, we would prefer that the service description for ULLS be revised to directly refer to a potential point of interconnection at other interconnection points for communication wires.

The Commission's *"Telecommunication services - Declaration provisions: a guide to the declaration provisions of Part XIC of the Trade Practices Act 1999"* (the **Declaration Guidelines**) sets out a number of criteria the Commission will consider in determining whether or not it is appropriate and practicable to hold a public inquiry regarding a service declaration, which we have addressed briefly below.

It is our submission that it is both practicable and appropriate for the Commission to hold a public inquiry and to amend the service description for the ULLS in the manner proposed. This is not a case where a new service is being declared. Rather a variation is required to put beyond doubt the relevant points of interconnect supported by an existing declaration. To that extent, the variation proposed is supported by all of the reasons previously articulated by the Commission regarding the need to declare the ULLS. Indeed the bottleneck characteristics of the ULLS are arguably even more pronounced at the pillar than at the exchange.

However we have briefly summarised below the reasons supporting the public inquiry into the variation of the declaration.

Whether the service is an eligible service

ULLS is currently a declared service which the Commission has previously indicated satisfies the definition of an eligible service since it is an input, which when combined with xDSL technology and a competitor's own customer access network, facilitates the supply of carriage services. The proposed amendment to the service description will not alter this.

Whether the service is already subject to access obligations

The variation is necessary to ensure that it is beyond doubt that the declared service does include access at all potential points of interconnection on the communications wire, will provide access to sub-loops in the event of an FTTN roll out and will not be impacted by changes to the function of customer access modules in next generation networks.

Efforts made to obtain access to the service

The Declaration Guidelines note that it may be inappropriate for the Commission to hold a public inquiry where no efforts have been made seeking access to the service. The ULLS is currently a declared service reflecting that access would not be provided on reasonable terms in the absence of declaration. The proposed variation does not alter that position.

We are not aware of circumstances in which access to the communications wire has been sought from any location, that is not the location of a Telstra customer access module. However, we understand that access seekers have had difficulty obtaining access to RIM cabinets, which do clearly fall within the existing declaration. Telstra has also publicly opposed any G9 FTTN deployment, including one that seeks access to communications wires at a pillar.

As noted above, access at locations other than the location of the customer access module would be required in the event of an FTTN roll out. It is anticipated that such access would not be provided on reasonable terms unless it were free from doubt that access was required under Part XIC. Indeed, comments by Telstra in the press confirm that Telstra would not willingly provide alternative FTTN network owners with access to sub-loops on reasonable terms. An FTTN can not be built by an entity other than Telstra, until there is certainty that access to the sub-loop will be provided.

Whether the service would be an active declared service

The currently declared ULLS is an active declared service and the amended service description proposed would not alter the service in such a way that it would cease to be active. The proposed variation merely provides clarity in relation to the location of an access seekers point of interconnect with the declared service.

Whether the service is capable of being supplied

In our view, the ULLS is a service capable of being supplied between an end users' premises and any potential point of interconnect along the communications wire, including pillars and cabinets. As anticipated in the Declaration Guidelines, it would be appropriate for the issue of technical feasibility to be more fully explored in the course of a public inquiry. However, there does not, in our submission, appear to be any technical impediment to the ULLS being supplied at locations other than the location of the customer access module.

Demand for the service

The Declaration Guidelines note that 'requests for a public inquiry should not be frivolous or vexatious' and that when considering whether to hold an inquiry the Commission 'may take into account information about the likely demand for the service.'

The request for variation of the declaration is not frivolous or vexatious, as an FTTN build (or other significant network modernisation or modification) will require both access providers and access seekers to have certainty in relation to whether or not access to the local loop at the location of a proposed node would be required under Part XIC of the TPA. While no FTTN roll out has currently commenced, an FTTN roll-out is currently being considered by the G9. Telstra has also made proposals for an FTTN roll out or other network modernisation. Therefore, the likelihood of future demand for access to the sub-loop is significant.

However, an FTTN roll out by an entity other than Telstra, such as the G9, will not be able to proceed to obtain finance and commence construction while there is any degree of uncertainty in respect of Telstra being required to allow the FTTN operators access to the local loop at the position of the relevant nodes. Therefore, we request that the Commission amend the service description in the manner proposed.

Attachment A

Unconditioned local loop service

Declared service

The Australian Competition and Consumer Commission declares pursuant to section 152AL(3) of the Trade Practices Act 1974 (the Act) that the Unconditioned local loop service (ULLS) is a "declared service" for the purposes of Part XIC of the Act.

Date

The declaration takes effect on 1 August 2006 and expires on 31 July 2009.

Service description

~~An~~The unconditioned local loop service is the use of unconditioned communications wire between the boundary of a telecommunications network at an end-user's premises and a point on a telecommunications network that is a potential point of interconnection located at or associated with:

- (a) a customer access module;
- (b) a junction or concentration point for two or more communications wires; or
- (c) any other physically accessible point of interconnection on a communications wire or any section of it.

~~and located on the end-user side of the a customer access module.~~

For the avoidance of doubt a request by an access seeker for access at one point of interconnection on a communications wire is not satisfied by the provision of access at another point of interconnection on that communications wire.

Definitions

Where words or phrases used in this declaration are defined in the Trade Practices Act 1974 or the Telecommunications Act 1997, they have the meaning given in the relevant Act.

In this Appendix:

boundary of a telecommunications network is the point ascertained in accordance with section 22 of the Telecommunications Act 1997;

communications wire is a copper based wire forming part of a public switched telephone network;

customer access module is a device that provides ring tone, ring current ~~and or~~ battery feed to customers' equipment or facilitates the provision of a listed carriage service over a communications wire. Examples are Remote Subscriber Stages, Remote Subscriber Units, Integrated Remote Integrated Multiplexers, Non-integrated Remote Integrated Multiplexers, ~~and~~ the customer line module of a Local Access Switch and a Digital Subscriber Line Access Multiplexer;

public switched telephone network is a telephone network accessible by the public providing switching and transmission facilities utilising analogue and digital technologies.