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Telstra's Domestic PSTN Originating Access Service – Exemption Application

Dear Richard

I refer to the Commission's discussion paper dated October 2007.

Soul opposes the ACCC granting the exemptions sought and submits that to do so would not promote the long-term interests of end-users.

This submission is limited to 2 issues:

- (a) the promotion of competition; and
- (b) the impact on downstream markets if the exemption application were granted.

Soul limits its comments in relation to the above issues by reference to local call override (**LCO**).

1 The promotion of competition

Soul acquires LCO from Telstra pursuant to a commercial agreement, which relates to the provision of both declared and non-declared services.

It is Soul's experience that the absence of regulatory restraint on Telstra will lead to price and non-price terms for LCO which will be anti-competitive. Soul notes that Telstra has previously argued that the Commission should 'address' the issue of LCO, on the assertion that it is an inappropriate use of PSTN OTA services to originate and terminate local calls by means of an override prefix. Soul further notes the Commission's comment that:

"This [LCO] allows access seekers to accrue charges for local calls at the PSTN OTA per minute rate instead of the higher LCS rate. As such, local call override may be attractive in the case of short duration local calls."¹

¹ ACCC, *Pricing principles and indicative prices – Local carriage service, wholesale line rental and PSTN originating and terminating access services, Final Determination and Explanatory Statement*, 29 November 2006 at page 17.

Soul submits that Telstra is currently acting in a manner in which it has assumed it is entitled to withdraw LCO at the wholesale level and unilaterally shift access seekers towards either acquiring LCS, or paying a rate for LCO which is, in its effect, equivalent to Telstra's LCS rate. In other words, Telstra is now putting into practice its opposition on the record to the provision of LCO on request.

Soul notes the Commission has previously concluded that there has been insufficient information for it to make an assessment of Telstra's claims, in relation to the alleged inappropriateness of LCO. Soul submits that Telstra's supporting submission to its exemption application is devoid of any evidence which would sustain its claims.

2 The impact on downstream markets if the exemption application were granted

The provision of local call access by means of the Soul override code is one of the fundamental ways in which Soul differentiates itself from other operators. It is a critical component of Soul's service offering as a competitive carriage services provider.

Telstra has repeatedly claimed that it does not adequately recover the costs it incurs in the supply of local calls. However, the reality in the marketplace, particularly in the corporate sector, is that Telstra is able to offer hugely reduced retail local call rates of far less than 10 cents per call, substantially less than the LCS rate.

The only way that competing operators can remain viable at the retail level is to offer local calls at a comparably low rate. LCO is the access means by which Soul can offer such rates.

Soul notes that Telstra has allocated a mere 5 sentences in its exemption application to argue its case that granting the exemption will not compromise downstream markets. Telstra concludes that,

“...the de minimus presence in the market of such [override] operators strongly suggests that **the end of override could not have a material impact on competition**”. (Telstra Supporting Submission at page 45, emphasis added).

There is absolutely no evidence in Telstra's submission to support this assertion. However, Soul submits that the impact of LCO withdrawal will have a highly detrimental impact on competition at the retail level. LCO is an integral component of our service offering. With its control of the local loop and the benefits of fixed line incumbency that Telstra continues to enjoy, competing fixed line service offerings at the retail level remain scant in Australia.

Soul therefore urges the Commission to preserve LCO in these deliberations. Telstra's long held desire to end local call override in Australia, and its attempts by stealth in the commercial environment to procure this outcome, should not be rewarded by the grant of the exemption application.

Even if the Commission determines that the statutory criteria for granting the application is satisfied, Soul urges the Commission to ensure that the terms of such grant do not include a right for Telstra to withdraw LCO. To do otherwise would be contrary to the principles of facilities-based regulation and would severely harm competition in the downstream retail market for local calls.

I would be happy to discuss any aspect of this submission and can be contacted on (02) 8220 6066.

Yours sincerely



TONY MOFFATT
General Counsel