

07 December 2007

Percy Bell
Assistant Director
Regulatory Policy and Coordination
Communications Group
The Australian Competition and Consumer Commission
GPO Box 520
MELBOURNE VIC 3001

Via email: Percy.Bell@accc.gov.au

Dear Ms Bell,

ACCC Telecommunications Infrastructure Audit

Introduction

Following the consultation period on the “*Proposed Audit of Telecommunications Infrastructure Assets*” in March 2007, the Australian Competition and Consumer Commission (ACCC) has released a draft record keeping rule (RKR) that would require relevant telecommunications infrastructure owners to reveal their infrastructure assets. Optus is pleased to be given the opportunity to provide comments.

Optus continues to express considerable concern regarding the compliance burden the proposed infrastructure audit will impose on the telecommunications industry as well as questioning the benefit to be derived from it.

The draft RKR covers a wide range of networks and Optus continues to question whether the information the ACCC is seeking will provide any meaningful benefit over and above that which it already has or could obtain through existing sources. Optus continues to hold the view that at this stage of industry development, the ACCC should look to wind back reporting obligations rather than extending them through more intrusive RKRs. Optus anticipates that this RKR will provide the ACCC with a mountain of largely meaningless data and is likely to go the way of the internet RKR – to be quietly scrapped.

General concerns with the draft RKR

Value of the information

Optus continues to question the value of the proposed information gathered by the ACCC. The draft RKR requires individual respondents to supply information on:

- each of the customer access equipment (CAN) owned and specifying the geographic extent of each of the access medium deployed. Access media include:

- Copper;
- Fibre (point to multipoint);
- Fibre (point to point);
- Fibre to the node (FTTN);
- HFC;
- Radio (fixed);
- Radio (mobile); and;
- Other.

and

- each core network owned and specifying the geographic extent of any optical fibre core network, microwave radio core network and any other core network.

The draft RKR covers a wide range of networks including the copper, mobile and backhaul networks. As indicated in our submission in April 2007, Optus continues to question the ACCC's assumption that an annual telecommunication infrastructure audit in the proposed form will be of particular benefit to the ACCC's decision making process. Optus continues to believe the existence of an alternative piece of infrastructure may not be determinative in itself of the nature of competition and alternate infrastructure such as HFC, mobile and WiMAX only act as a limited substitute in promoting competition. A DSLAM that has been deployed at a Telstra local exchange is only likely to be able to serve a sub-set of customers in that exchange area and these restrictions will not be captured by the draft RKR:

- i) DSLAMs might face capacity constraints where Telstra Exchange Building Access space (TEBA) is capped by Telstra;
- ii) Telstra might have deployed pair gain systems or a RIM between the exchange and the customer premises resulting in a proportion of customers not being serviceable via the ULLS; and/or
- iii) Telstra can announce plans to upgrade or otherwise augment its network in ways that could prevent access seekers from accessing the ULLS.

These issues were raised by Optus in respect of Telstra's exemption request for Wholesale Line Rental and the Local Call Service. The ACCC is still likely to need to request further information before it can make firm conclusions about the nature of competition in a particular exchange area. Furthermore, the likely roll out of an FTTN in the near future will render much of the information requested about the deployment of current CAN technology redundant. This will impose an unreasonable cost burden to collate the data when it does not serve any meaningful purpose.

Costs

Optus believes the cost burden imposed in complying with this draft RKR will be substantial. We indicated in our previous submission in April that as part of an ongoing obligation, Optus anticipates it will need to develop new reporting tools in complying with the RKR. At that time, Optus estimated the expenditure would be \$100k – \$250k on external IT vendors, excluding internal costs related to staff time associated with systems development and compiling the reports.

However, we note that since its draft proposal the ACCC extended the scope of the RKR to include fibre (point to multipoint), fibre (point to point), FTTN and radio (fixed) in the draft RKR.

Optus has undertaken further analysis of its requirements to comply with the RKR. We now believe that it will cost in the order of \$1.2 – \$1.5 million to develop new and/or upgraded systems to record and report this data..

In addition to this, there will be substantial ongoing costs involved in running, reviewing and editing the reports..

Definitional issue

Optus indicated in its previous submission that requiring different carriers / service providers to provide data would inevitably raise definitional issues. Since the release of the draft RKR, Optus still has concerns about the precision of the ACCC's guidelines on the data it proposed to gather. For example, clauses 5 and 6 of the draft RKR requires carriers / service providers to provide information on the 'geographic extent' of each access medium deployed in the CAN and in the backhaul network. Although 'geographic extent' is defined in clause 3 of the draft RKR, Optus still believes the definition carries the risk that the data may not be provided by different carriers on a like for like basis. Geographic extent was defined as the '*physical location of infrastructure as well as the predicted propagation of wireless infrastructure*'. However, different carriers are likely to have different interpretation of '*predicted propagation of wireless infrastructure*' .

Timing

If the ACCC chooses to proceed with the RKR, Optus proposes that the RKR commence at least 12 months after the ACCC has set a decision. As mentioned elsewhere, Optus anticipates that it will need to develop new reporting tools in complying with this RKR. Optus believes it would require at least 6 to 12 months to plan and develop our systems.

Optus further observes carriers / service providers are to supply information as at 31 January each year and provide it to the ACCC on or before 1 March each year. In other words, the ACCC has only given 1 month for carriers/service providers to compile the report¹. Optus does not consider the ACCC has given carriers / service providers sufficient time to compile the report. The scope of the report is extensive as it covers fibre, mobile, HFC, radio (fixed) and backhaul network. Even if a new reporting system is developed, more than a month will be required to enable all the relevant business units to review the reports and make any edits or changes for the new network types. Optus therefore proposes the ACCC should allow carriers / service providers at least 2 months before submitting the report.

Commercial in confidence issue

If the ACCC chooses to proceed with the draft RKR, Optus would request all information be treated as commercial-in-confidence. The information the ACCC requested is company sensitive as network coverage plays a significant role in the competitive dynamics between carriers / service providers.

¹ Stated in Clause 8 of the draft RKR

The Customer Access Network

HFC, Fibre (point to multipoint), Fibre (point to point)

Optus continues to question the need to provide the ACCC with information on our CANs. Optus considers the coverage maps on our HFC network do not provide the ACCC with a determinative view of the nature of competition in the area.

Our HFC network passes approximately 2.2 million addresses in Australia but of which only 1.4 million are serviceable. Geographic areas that are served by our HFC network might not necessarily mean our customers can be served by HFC since multi dwelling units are not serviceable via our HFC.

Optus observes the ACCC has further included fibre (point to multipoint), fibre (point to point), FTTN and radio (fixed) in the draft RKR. Optus currently provides fibre (point to multipoint) over our HFC network and as such it will be of limited use in assessing the level of competition as it will not be available in multi dwelling units.

With respect to fibre (point to point) service, Optus currently provides the service via our fibre network. Optus currently collects records on the extent and location of our fibre network but only on a state boundary level. If reporting is required to post code boundary or similar, it would impose an onerous burden on Optus as it would require a substantial effort for Optus to collate the relevant information.

Radio (fixed)

Optus notes that the ACCC has further included OPEL in the list of record keepers in Schedule 1 of the draft RKR. The OPEL network is currently under construction and is not expected to be completed until 2009. Accordingly, OPEL should be exempted from any reporting requirements.

Optus also doubts if the OPEL WiMAX coverage map will be of a particular value to the ACCC's decision making process as it will focus primarily on service provision in rural and regional areas.

Radio (mobile)

As previously submitted by Optus, we already provide a return to the Australian Communications and Media Authority (ACMA) under s105 of the Telecommunications Act. Optus continues to believe the ACCC should avoid any unnecessary duplication and to consider if the existing report meets the ACCC's requirements.

Core network

Optus continues to question the usefulness of providing routine data on the transmission network. As Optus submitted previously, the ACCC had stated in its latest declaration review of transmission capacity that, "*despite the existence of several optical fibre rings in the CBDs of the main capitals, it is not clear to the Commission that these interconnect with all of Telstra's CBD exchanges and would be readily available to use on a wholesale basis*".² It is

² ACCC, Transmission Capacity Service, Review of the declaration for the domestic transmission capacity service Final Report, April 2004, p28

therefore likely that the ACCC will require further information before it can make definitive assessments about the nature and extent of competition.

Should you have any further questions regarding this matter please do not hesitate to contact me directly on (02) 8082 8437.

Yours sincerely

A handwritten signature in black ink, appearing to be 'AS', with a long horizontal line extending to the right.

Andrew Sheridan
General Manager,
Interconnect and Economic Regulation