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The Commissioner  
Telecommunications Inquiry  
PO Box 80  
Belconnen, ACT 2616

5 June, 2001

**Re: Response to Telecommunications Competition Regulation, Draft Report**

Please find enclosed Crown Castle Australia's submission to the Productivity Commission 2001, *Telecommunication Competition Regulation* Draft Report, Canberra, March for your consideration.

Crown Castle is a specialist independent telecommunications infrastructure provider headquartered in the USA but with major operational business units in the UK and Australia. In this submission we have provided an outline of the nature of our business and how this fits into the overall telecommunications industry. In particular we have demonstrated how the business plan of companies such as ours is inherently complementary to the government's competition policy and therefore does not require further regulation.

In addition to providing this written submission, Crown Castle would be keen to provide verbal input by our Australian and also overseas senior executives to the Commission on these issues and the international experience in this area.

Please note that our submission covers issues addressed in both the Telecommunications Competition Regulation Draft Report and the Review of the National Access Regime. We have therefore also sent a copy of the same submission to the Access Inquiry group.

We look forward to hearing from you on an opportunity for Crown Castle to make oral submissions to the Commission. If you have any queries on the above, please feel free to contact me on the numbers provided above.

Yours sincerely,

Stephen Broderick  
General Manager, Sales and Business Development  
Crown Castle Australia.

# CCA Submission to the Productivity Commission — Draft Report on Telecommunication Competition Regulation and Review of the National Access Regime Position Paper

## 1. Introduction

Crown Castle Australia Pty Limited (“CCA”) notes the following recommendation made by the Productivity Commission in its draft report on *Telecommunications Regulation* (“Draft Report”):

*“The Commission recommends that the facilities access regimes under Parts 3 and 5 of Schedule 1 to the Telecommunications Act 1997 should be consolidated into Part XIC of the Trade Practices Act.”* [Draft Report: 11.2]

From the Draft Report, it appears that one of the reasons the Commission favours such consolidation is based on the understanding that:

*“Parts 3 and 5 apply to carriers, whereas Part XIC applies to **all** suppliers of declared services”* [Draft Report: 11.10. Emphasis added]

In fact, standard access obligations under Part XIC are currently limited to carriers and carriage service providers. It is not clear from the Draft Report whether the Commission is proposing that the class of “access providers” under Part XIC be extended. However, in light of the Commission’s statement that:

*“Where the incidence of regulations differs depending on ownership structures, this has implications for competitive neutrality and can unduly distort ownership arrangements and corporate structures.”* [Draft Report: 11.18]

CCA takes this opportunity to outline its position in relation to the potential regulation of access to facilities of specialist infrastructure providers.

## 2. Business Profile of CCA

CCA specialises in building, acquiring and/or managing and operating wireless network infrastructure, principally towers, for its customers which mainly comprise telecommunication carriers but extends to broadcasters, emergency services organisations and radio stations. It is in the business of providing access to infrastructure on a commercial basis to anyone seeking access. CCA also provides various other services for tenants on its sites, including site and equipment maintenance services, property and estate management services. CCA is not a telecommunications carrier.

CCA began its operation in Australia by purchasing over 700 communication towers from Optus in April 2000 and expanded its portfolio in April 2001 by purchasing just under 700 Vodafone towers. CCA now maintains this portfolio using common management and technical teams thus reducing overall network operating costs and improving network efficiency over the previous arrangement. The fixed infrastructure owned by CCA can be likened to building ownership with specialist tenants.

CCA's profits are derived directly from converting under-utilised assets into fully utilised assets and passing on the consequential savings to its customers. The costs of establishing and maintaining an infrastructure site which is used by telecommunication customers are high. However, these costs are largely fixed and do not vary significantly with the number of devices attached to that site. It is therefore critical to CCA's business that it maximises the number of customers on its sites to recover its costs, boost revenue and hence drive profits.

By maximising the opportunity of sharing of wireless network infrastructure, CCA is able to offer customers a broader coverage of sites and lower site capital and operating costs than they would otherwise have been able to achieve. This in turn reduces the operating and capital costs for CCA's customers positioning them to pass on these savings to consumers. CCA's business model also reduces the barriers to entry for new retail entrants which will drive lower retail prices.

To maintain its business focus, diverse customer base, and its competitive edge, CCA has a deliberate strategy of not acquiring radio frequency spectrum, nor does it have any intention of providing retail services. Therefore CCA is not in competition with new and existing telecommunications companies in the end consumer markets for telecommunication applications. Accordingly, it has every incentive to provide equal access to all to maximise its customer base. And this is exactly what it does.

CCA's strategy to maximise co-locations on its towers has an added community benefit as it leads to a reduction in the overall number of sites (as opposed to the proliferation witnessed in recent years). Furthermore, CCA's parent company is investing in the development of stealth structures to promote more visually appealing, environmentally compatible towers.

**3. Access to infrastructure of specialist providers should not be regulated.**

As CCA is not a carrier, it is not subject to Parts 3 and 5 of Schedule 1, *Telecommunications Act* and the standard access obligations in Part XIC, *Trade Practices Act* as currently drafted.

CCA sees no need for regulated access to infrastructure of independent specialist providers as:

- a. there is no evidence that current arrangements are not working efficiently
- b. there is no motivation for specialist infrastructure providers to deny access or provide discriminatory access. In fact, to do so would undermine their business.
- c. should any problems arise in the future there are many reasons to believe the market will regulate itself as evidenced by the experience in international markets

These issues are explained further below.

There are no examples of failure in the Australian specialist wireless network infrastructure provider market to justify regulation of it. As discussed previously, such providers have no incentive to restrict access given they

have no presence in downstream markets (by definition). In fact it would be against the business interests of such providers to restrict access as their profitability is often largely based on maximising co-locations.

CCA's main competitors in the specialist wireless network infrastructure provider market are NTL and Vertel. However CCA's customers also have access to non-specialist infrastructure provider's assets which are suitable for mounting antennas — eg. Telstra, Hutchison, AAPT, Lucent/OneTel, the Electricity Commission, the Water Board. Additionally, Crown Castle International's (CCA's parent company) experience globally shows an increased propensity, with technological advances, for carriers to utilise rooftop facilities besides towers in their networks.

CCA's intention to offer access to as many players as possible is clearly demonstrable. It has already agreed pricing and access policies with most carriers and is well advanced in negotiations with the remaining companies. For those companies seeking access on a "one-off" basis CCA offers "cafeteria pricing" (a price list with standard prices for each antenna or dish type that applies to all customers) and single site license arrangements. In its first year CCA has approved over 500 co-locations and it currently has over 300 additional applications being processed.

Since purchasing Optus' and Vodafone's towers, CCA has undertaken an extensive audit and analysis of the capacity of these towers. This project revealed that many of these towers are at or near capacity. As a result, during the last year, CCA's customers have experienced temporary delays in co-locating on some CCA sites. In order to remedy this situation and deliver speedy access to customers, CCA is currently planning an extensive tower modification and rebuild campaign to increase the capacity of its sites. CCA's plans for the next five years include provisions for minor modifications (such as tower strengthening or extensions) on over 400 sites and direct structure replacement at over 200 other sites. This will lead to substantial reductions in co-location waiting times. In addition to upgrading capacity, CCA is also heavily focussed on streamlining its co-location application process. To this end, it is developing and upgrading specialised IT systems to support this process and provide speed to market for our customers. CCA sees speed to market as fundamental to our business competitiveness.

In the unlikely event that some infrastructure providers restrict access to their sites, CCA believes that the market will automatically adjust to correct this problem. The Commission should note that there is vigorous competition already in the infrastructure sector with over 47,000 transmission sites in Australia (CCA owns approximately 1500 towers) and the barriers to entry for building new towers are low. In addition, most of the companies seeking access to infrastructure have the capacity to build wireless infrastructure of their own should they consider the pricing or access policies of infrastructure providers are unfair. Furthermore, carriers are able to exercise carrier powers to install low impact facilities if they cannot reach commercial agreement with the infrastructure provider. With the move to third generation systems, the cell sizes of mobile networks will reduce thus reducing the height requirement for the supporting structures. This in turn will increase the opportunity for carriers to install their antennas on lower level structures such as rooftops, water tanks.

4. **Adverse consequences will flow from unwarranted regulation of specialist infrastructure providers**

CCA considers that regulation of specialist infrastructure providers would be detrimental to the industry and to government competition policy in the telecommunications infrastructure sector for the following reasons:

- a. the presence of specialist infrastructure providers offers the opportunity for all retail carriers to reduce their operational costs and reduces barriers to entry for new retail carriers ; regulating these infrastructure providers will undermine these gains by increasing the administrative and compliance costs for infrastructure providers. These costs will have to be passed onto retail carriers and ultimately onto consumers.
- b. the additional administrative overheads created by regulation will increase the likelihood for access to infrastructure to be delayed thus hindering speed to market for carriers seeking to set up or improve their network. This will particularly impact on new entrants.
- c. by limiting facilities access obligations to carriers (Parts 3 and 5) or to carriers and carriage service providers (Part XIC), both of the current facilities access regimes positively encourage independent infrastructure owners not to be involved in upstream or downstream activities that might detract them from facilitating co-location.
- d. regulation would represent an unnecessary cost to the Government and the industry; such costs would inevitably be passed onto taxpayers.

5. **Conclusions**

For the reasons set out above, CCA recommends that the specialist infrastructure providers, to be distinguished from infrastructure owner-operators who are also involved in retail activities, should continue to be excluded from access regulation. If the Commission's objective is to ensure maximum competition in the retail telecommunications market one of the best ways to achieve this is to set up an environment that encourages infrastructure providers to enter. Unwarranted over-regulation of the specialist infrastructure provider sector can only work against this goal.

Given there is:

1. no evidence of any anti-competitive practices in this sector
2. there is no motivation for anti-competitive practices to occur for independent infrastructure providers
3. there are adverse consequences for the retail service market should regulation of infrastructure providers be introduced

CCA strongly recommends that the Government not introduce regulation of specialist infrastructure providers.

6. **Follow Up Discussions**

CCA would welcome the opportunity to provide the Commission with an oral presentation on its views above, its Australian operations and its overseas experience particularly regulatory models employed in the relevant offshore jurisdictions.