

**HEAD OFFICE:**

Level 11, 157 Walker Street North Sydney NSW 2060  
Telephone: (02) 9927 9999  
Facsimile: (02) 9925 0880  
Email: [email@atug.org.au](mailto:email@atug.org.au)  
Internet: <http://www.atug.com.au>

**CORRESPONDENCE:**

Post Office Box 1500, North Sydney NSW 2059



AUSTRALIAN  
TELECOMMUNICATIONS  
USERS GROUP  
LIMITED

ABN 46 002 703 719

**ATUG Submission**  
**ACCC Review of Telstra**  
**Price Control Arrangements**  
**August 2004**

## **Introduction**

From ATUG's perspective the Price Control Regime has three outcomes:

To encourage competition by allowing rebalancing of prices between access and usage which will encourage efficient investment and infrastructure competition

To deliver consumer protection by ensuring price increases for access are offset by price decreases for usage, and are managed over a suitable time frame

To ensure low income consumers have affordable access to a telephone service.

The Price Control Regime sits within a framework of regulation for telecommunications services, including the Trade Practices Act, Access Provisions and Anti-Competition provisions, the role of the Australian Communications Authority in regard to information and monitoring, the TIO and ACIF, the industry self-regulatory body. (Attachment - slides 4, 5 and 6)

ATUG sees parallels between recent trends in regulation to promote competition and that designed to protect consumers - pricing principles for competition /price controls for consumers; an access regime for competition /USO for consumers; accounting separation reports for non-price terms and conditions for competition/ National Reliability Framework and CSG reporting for consumers; information collection and disclosure for competitors/ACA Toolkits and ACIF Consumer Contracts Code for Consumers; XIB provisions for competitors/TIO for consumers. One of the outcomes of the Price Control Review should be to see how the provision of information to consumers whether by the ACA or the ACCC could be part of a more informed and thus more competitive market for buyers.

In terms of assessing the effectiveness of Price Controls, users look to Telstra accounting numbers, as these represent "hard currency" transactions. (See Attachment - slide 7, data for 2004, 2003, 2002, 2001 as reported by Telstra). Access (+65.5%) and Fixed to Mobile (+29.3%) revenues have underpinned total PSTN revenue growth of 13.6% from 2001 to 2004, compared to increases in overall sales revenue growth of 11% for the same period (\$18bn679 to \$20.737bn).

In 2001, each PSTN access line earned \$15.58 per month. In 2004, each PSTN access line earned \$26 per month. By the end of the current Price Control period (July 2005) the need for

rebalancing, and the associated effects of the Access Deficit Contribution on wholesale pricing, will have been met and arguably overtaken by increases in line rental charges. It is worth noting that business line rental prices already recover the costs of supplying the service.

ATUG notes the ACCC view that the need for Access Deficit recovery will be over by 2006/07 and that a TSLRIC-based price for PSTN services should be adopted. ATUG would suggest that the Telstra 2004 Financial Highlights indicate that, at an average \$312 per annum per access line for 2003/04, the beginning of 2005/06 (coincidentally the beginning of the new Price Control period) should see the end of any need for an Access Deficit Contribution for any access line. It seems to ATUG that new sources of revenue such as broadband (whether retail or wholesale) may mean that even today, there is currently no Access Deficit to be recouped.

There is no doubt that end users benefit from robust competition. There is also no doubt telecommunications is still in transition to competition, particularly in regard to "last mile" services. The real objective is to encourage strong competition in the provision of access services. This should be done via the Access and anti-Competition provisions of the Trade Practices Act. In the face of market failure or market dominance, the Price Control Regime should continue to be used to control prices, thereby protecting competition and consumers.

#### **ATUG Comments on the ACCC Price Control Review Terms of Reference**

#### **Appropriate form of future price control arrangements, including composition of baskets and the level of price caps**

##### Residential Line Rental and Local Calls

These should be retained in a Price Control basket.

##### Fixed to mobile calls

These should be the subject of a separate basket.

Given Telstra's continued dominance in local access services ATUG believes residential line rental and local calls, and fixed to mobile calls should remain under price controls, albeit with separate caps

The relevant caps should be CPI-X for local access services and the actual ACCC mandated price reduction (in cents/min) for mobile termination, for the retail fixed-to-mobile

basket. Given continued cost reductions being targeted and achieved by Telstra, users expect to see real benefits accrue to them, the "X" factor.

#### Line rental for business customers

These services could be removed from the Price Control regime, but only if the access provisions of the Trade Practices Act can be applied to deliver wholesale prices for local access which encourage further competition. Business users would welcome the opportunity to negotiate line access prices, given that the current prices are already above the recovery cost. The ACCC's ULL Indicative pricing should provide a further incentive for competitors to enter the access market.

ATUG suggests introduction of a wholesale price "cap" for local access services equal to the ACCC determined cost to Telstra of providing access lines to ensure competition develops. This would be similar to the current benchmark approach to mobile termination rates - and should be introduced ahead of a full TSLRIC assessment. This can be reviewed quarterly as part of the Accounting Separation Reporting Regime.

#### Basic Residential Package

The ACCC should have ex ante approval powers for a "basic" residential local access package. This would allow competitive offers to develop but would ensure consumers who did not meet the low-income threshold but who did not want the confusion of bundled offers (see ACA Consumer Satisfaction Report, 2004) to have a clear, simple, cost based package of local access services.

#### National and Long Distance Calls

Competition seems strong in these areas and ATUG suggests these services could be removed from Price Controls, subject to development by the ACCC of new indicative prices to reflect the absence of an Access Deficit Contribution, and monitoring by the ACCC of wholesale pricing, competition and retail price developments. Competition should be stronger when the Access Deficit Contribution is eliminated from inter-connection prices and end users should benefit from this. Progress can be reviewed quarterly as part of the Accounting Separation Reporting Regime. Consideration may need to be given to adjusting the Anti Competition provisions of the Trade Practice Act to allow for swift action if there is evidence of anti-competitive behaviour in these markets.

### **The duration of any such arrangements**

The next period for Price Controls should be three years, with implementation reviews every 12 months, and rollback to previous arrangements should this prove necessary. The development of strong infrastructure based competition in local access over this time frame is highly unlikely given the reaction of the capital markets to telco sector investment at present.

The ACCC has suggested the need for an ADC contribution will end by 2006/07 and, although ATUG believes this will occur earlier than this, on that basis, there may be justification for introducing a two-year period from 1 July 2005. The issue is that the policy and regulatory instruments need to be in step to ensure that the best outcomes for end users are delivered.

### **The means of implementation of any such arrangements**

The relevant retail caps should be CPI-X for local access services and the actual ACCC mandated price reduction for mobile termination for the fixed to mobile basket.

Given continued cost reductions being achieved by Telstra, users expect to see some benefit accrue to them, the "X" factor. The price control regime could be an effective tool to ensure mandated termination reductions are passed on to consumers.

### **Whether any complementary arrangements are required to work in conjunction with the future price controls and, if so, their nature; and**

Given that services-based competition in local access services will continue for some time to come, the access provisions of the Trade Practices Act should be applied to derive wholesale prices for the line rental component of the local access service to encourage further competition. ATUG suggests an interim wholesale price cap for local access services equal to the ACCC-determined cost of \$32 inc GST per annum, until a TSLRIC-based price can be determined. Wholesale rates for interconnect pricing should be reviewed to ensure there is no longer an ADC component.

The ACCC should use its market information powers to alert the market (both suppliers and users with market power) to these prices. Progress can be reviewed quarterly as part of the Accounting Separation Reporting Regime.

On the condition that this is done, ATUG would support removal of national long distance, international long

distance services and business line rental from the price control regime. Business users would welcome the opportunity to negotiate line access prices, given that the current prices are already above the recovery cost, but they need to be sure there will be sustainable competitive offers available.

The ACA should be directed to ensure that licence and spectrum fees do not impede the development of competitive local access services.

The second issue is whether the provisions of the Trade Practices Act are strong enough to deal with anti-competitive behaviour, if competition accelerates in the local access services via wireless or broadband. ATUG was disappointed when the broadband market, which had been seen as an example of a "born competitive" market, stumbled as Telstra adjusted its own retail prices ahead of offering competitive wholesale prices to its wholesale customers. The ACCC would have to be able to move very quickly in the face of increases to wholesale prices or significant reductions to retail prices (which, we note, would make a complete mockery of the last 10 years of re-balancing).

Until mobile prices become more competitive overall, substitution between fixed and mobile remains a piece of economic theory for users who already have fixed services.

### **Mechanisms for assessing and enforcing compliance**

From a user's perspective, compliance should be assessed by reference to the prices actually paid for services. The ACCC Annual Telecommunications Reports, the ACCC Market Indicator Reports, wholesale market price monitoring through Accounting Separation Reports and monitoring of bundling, can be used to assess the impacts on competition and consumers.

ATUG understands that enforcement of price control obligations is managed via licence conditions. ATUG suggests that Part XIB powers may also be relevant given the potential impact on competitors in the face of evidence of non-compliance.

Parliament should formally respond to ACCC concerns, expressed in its Annual Reports on Telecommunications, about the adequacy of industry market structure where this is adversely affecting competition and consumers. For a number of years now, the ACCC has been highlighting its concerns about the effectiveness of competition in telecommunications. In the 2002-2003 reports, the impact of this on consumers was demonstrated clearly- consumers with market power (corporate users) are in a position to exercise

some influence on the market, but small business and residential consumers have no such power and are at present reliant on regulation as a proxy for effective competition. When the ACCC identifies market structure problems, and evidence emerges of negative impacts on consumers, the Government needs to respond with appropriate policy and, where needed, legislation.

The ACA also has an important role in monitoring consumer satisfaction and compliance with industry codes such as the Consumer Contracts Code. **See Attachment - slides 8-16**

### **The current state of competition**

The ACCC's Market Indicator Report 2002-2003 paints the picture - Telstra has 87% of access revenues; 77% of local call revenues; 71% of domestic long distance revenues; 62% of international long distance revenues; 74% of fixed to mobile revenues.

The ACCC's Annual Reports into Price Changes for Telecommunications Services, 2002-2003, show an unwelcome trend of price increases for some services and some customer groups, during the period of a more relaxed Price Control Regime. **See Attachment - slides 17-26.**

ATUG's own assessment of competition in the corporate sector (May 2003) is also summarised at Attachment - slides 26-30. Discussions at ATUG Board level confirm continued concerns about pricing for fixed line access and fixed to mobile calls. **See Attachment - slides 27-31.**

One of the objectives of reform to telecommunications was the international competitiveness of the telecommunications industry and, indeed, Australian businesses in general. The OECD's Communications Outlook 2003, especially Chapter 6, Pricing Trends, indicates that Australian users, both residential and business, pay more for telecommunications on a US\$ PPP basis than relevant comparisons such as Canada, major trading partners such as Japan and Korea, and most of the G7 countries. **See Attachment - slides 32-45.**

ATUG refers also to the ACA's 7<sup>th</sup> Annual Consumer Satisfaction Survey. ATUG regards this as an important contribution to the Price Control debate, adding as it does, an objective perspective from end users on competition and prices. At page 10, the report states,

"As in all previous years, fixed phone line rental was the areas in which respondents were most likely to say

the price they paid was too high. Although the proportion of respondents who thought fixed line prices were too high was slightly lower than in 2003, it still represented the majority of both household respondents and small business customers - 67% and 65%, respectively. This finding was made before the April 2004 announcement that Telstra would be increasing fixed line rental costs." **Attachment - slides 9-12.**

The ACA report also contains useful information on the end user experience with bundling. At page 22,

"Overall satisfaction was a medium level among small business respondents (81%) and a low level among household respondents (78%).

Among small business respondents, the main reason by far for dissatisfaction was confusion over which discounts apply to which services. However, as a cause of dissatisfaction among household respondents this was second to little reduction in costs, closely followed by inflexible packaging of service in bundles."

On satisfaction with competition, the report says at page 29,

"In general satisfaction with the current level of competition in fixed line telephone services and the price competition for both fixed line and mobile phone services decreased in 2004. As in previous years, respondents in 2004 were more satisfied with the current level of competition for fixed line services than with price competition for either fixed line or mobile phone services.

While 69% of household respondents were satisfied with the current level of competition for fixed line services, only 50% were satisfied with the level of price competition for these services. Among small business respondents, 64% indicated satisfaction with the current level of competition for fixed line services, whereas only 54% were satisfied with the level of price competition for these services."

The ACA concludes, at page 31,

"Both small businesses and households continue to have low satisfaction with the information that telecommunications companies generate about their fixed line and mobile service offerings. Consumers find this information hard to access and understand.



Many of the areas in which low satisfaction was recorded are subject to ongoing work by industry regulators and forums. The survey revealed low to very low consumer satisfaction with notification of changes to contract terms and conditions. At present ACIF is developing a code aimed at developing a balanced contractual environment for both consumers and service providers.

Another area where consistently low levels of consumer satisfaction have been recorded is in the level of price competition for telecommunications services."

#### **The impact of price control arrangements on -**

##### Competition and the future development of competition, XIC and XIB

The Access Regime will become more important to end users than price controls in developing competition. Core services pricing principles, monitoring and disclosure are essential to effective competition.

The anti-competition provisions are essential to encourage innovation and the development of alternative infrastructure.

##### **Availability, choice, quality and prices of services to consumers and any other impacts on consumers**

Price control regulation has delivered price increases in Telstra's fixed network access services, with very little competition to provide choice to end-users. Mobiles do not provide an effective substitute given the current 'per minute' prices.

ACCC reports show prices going up for certain groups of users, which raises doubts about the effectiveness of the telecommunications policy and regulation framework.

If line rentals increase much further and users move to mobiles, there may be a need to consider bringing mobile charges back into a Price Control regime to ensure prices for end users are reasonable. The future trend in fixed-mobile call rates will provide a litmus test for end users on the likely approach of operators.

##### **The telecommunications industry, including economically efficient investment decisions,**

A key objective of government policy over the next five years in ATUG's view must be the fostering of infrastructure competition in local access services. The ACCC, the ACA, the Department and ACIF must all be focused on achieving increased competition in local access.

Users have supported this direction by paying for rebalancing, hopefully looking after their long-term interests in doing so. Recent discussions about tweaking the Access Regime to support Telstra's rollout of Optic Fibre local access, miss the point, in ATUG's view. The real issue is what do we need to do to encourage the development of competitive local access, whether by fibre, broadband or wireless. ATUG would not want to see another "cable rollout" where access is denied and no real infrastructure (commercially independent) competition is achieved.

ATUG understands that within a two-year period the costs of laying fibre and copper will be similar. Thus for greenfields sites and brownfields sites that require replacement or upgrading for business reasons (such as to meet the CSG or NRF requirements), costs will be essentially the same. The vision we expect to see is fibre being used to create an alternative network, not an up to date local access bottleneck.

The other problem with "tweaking" the access regime in the way suggested (i.e., through an access holiday), on the basis of technology, is that we could wind up with parts of the network subject to Trade Practices Act access provisions and parts which were not. The FCC has dealt with this issue already in the IP context saying that simply installing IP in parts of the network does not avoid regulatory obligations. Australia should follow this lead.

**Distribution of benefits and costs, including impacts on different types of households and business consumers, and geographic areas...in particular relating to any re-balancing of line rentals and call charges**

The Accounting Separation Reports from the ACCC (June 2004 for the March 2004 Quarter) indicate surprising disparities between user groups e.g., Table 2.3 shows a higher margin on domestic long distance calls for business customers than for residential customers, a higher margin on international long distance calls for business customers, a higher margin for fixed to mobile calls for residential customers. **Attachment, slide 61.**

The impacts of rebalancing during the life of the current Price Control Regime can be seen in the following table:

Telstra Corporation

Full year 03/04 Financial Highlights 2004, Table 5, for 2004 numbers - some difference in mobile minutes cf 2003 Reported Annual Report 2003, Table 2, for 2003, 2002, 2001 numbers

2001-2004 %	2004	2003	2002	2001
Access +65.5%	3237 (15.6%)	3083	2880	1955 (10.5%)
SIOs -8.6%	10.37m (\$312 pa)	10.31m	10.40m	10.46m (\$187 pa)
Local Calls \$ -19.6%	1504	1567	1643	1915
Calls -12%	9397	9794	10269	10696
NLD \$ -11.5%	1121	1162	1216	1267
Minutes -6.2%	8520	9161	9170	9082
IDD \$ - 21%	266	307	336	338
Minutes -6%	651	740	781	693
F2M \$ +24%	1597 (7.7%)	1517	1419	1287 (6.8%)
Minutes +29.3%	4226 37.79c/m	3944	3691	3268 39.38c/m
Total PSTN \$ 13.6%	7984	7916	7755	7025
Total Sales \$ 11%	20737	20495	20196	18679
Mobile Serv \$ 19%	3455	3227	3242	2906
SIO 47%	7604	6569	5942	5176
Minutes 16%	6145 56c	6335	5780	5277 55c

#### **Implications of new and emerging technologies on price control arrangements and of price controls on new and emerging technologies**

There is no doubt that new services, both reliable and reasonably priced, have the potential to change the competitive landscape in telecommunications.

As we head into the Information Age (slides 46, 47,48), user goals keep moving (slide 49). Broadband (including wireless) is part of the story (slide 50), IP networks (slides 52,53) and VoIP (slides 54,55,56) will be among the choices facing users over the next five years. Any-to-any connectivity and reasonably priced access will be as important in this new world as they are now. A focus on promoting competition and swift action to deal with anti-competitive behaviour will be needed for some years ahead.

The OECD's assessment of broadband development suggests that action must focus on ensuring markets are competitive. **Attachment slides 57-60.**

**Appropriateness of price controls for the protection of potentially disadvantaged residential and business customers in both metropolitan and rural areas**

Low Income assistance measures will be required in both metropolitan and rural areas.

The ACA reports on its areas of regulatory responsibility against geographic categories of customers (slides 13-16).

ATUG policy on regional users is that regional users should have access to the same range of services, at the same prices and levels of service as urban-based users (slide 51). Recent policy and regulatory initiatives have supported this direction. The Price Control regime should ensure parity between geographic groups of consumers.