29 June 2001

Professor Mike Woods
Presiding Commissioner
Telecommunications Inquiry
Productivity Commission
PO Box 80
Belconnen ACT 2616

By email telco@pc.gov.au

Dear Professor Woods

Enclosed is the Australian Communication Authority's (ACA) response to the Productivity Commissions draft report titled *Telecommunications Competition Regulation*.

In formulating the ACA submission, the ACA has focused on draft recommendations or requests for comment that touch on areas of particular relevance to the ACA and its functions under the *Telecommunications Act 1997*.

Should you wish to discuss any aspect of the response please contact me on 03 9963 6702.

Yours sincerely

Dr Roslyn Kelleher
Senior Executive Manager
Telecommunications

Australian Communications Authority

Response to the Productivity Commission (the Commission) Report on Telecommunications Competition Regulation

Chapter 8 Draft recommendation 8.2
The Commission recommends that s.152CR of Part XIC and s.3, s.389, s.384(5) and s. 485(5) of the Telecommunications Act 1997 be amended so that references to the LTIE test are to the broader objects clause in Part XIC of the TPA.

The ACA does not believe this recommended change is required, as it is of the view that the LTIE test required by the *Telecommunications Act 1997* (the Act) already calls up the broad objects of Part XIC of the TPA, without any amendment. This view is derived from the requirements of sections 3 and 389 of the Act.

It is worth noting that the use of the power under s. 384 of the Act can only be exercised by the ACA at the direction of the ACCC. It is the ACCC's responsibility to carry out the LTIE test prior to directing the ACA to develop an interconnection standard under this section.

Chapter 11 Draft recommendation 11.1
The Commission recommends that the legislative requirement for Industry Development Plans should be repealed. Existing plans should also cease.

The administration of Industry Development Plans has primarily been a matter for the *Department of Communications, Information Technology and the Arts* (DCITA). Nevertheless, in the ACA's view the IDP process as it is currently formulated does not appear to be particularly effective in encouraging industry development. The abolition of the IDP requirement would have the benefit of speeding up the issuing of carrier licences.

Chapter 11 Draft recommendation 11.2
The Commission recommends that the facilities access regimes under Parts 3 and 5 of Schedule 1 of the Telecommunications Act 1977 should be consolidated into Part XIC of the TPA.

The ACA does not have any concerns with the proposed consolidation of access arrangements under the TPA. However, as the ACA has the technical expertise in relation to network issues it should retain its role in advising on whether access is technically feasible. This may be achieved in a number of ways. For example, any consolidation under the TPA could incorporate a requirement for the ACCC to consult the ACA before making a decision about access where there is a technical issue involved. Alternatively, the ACA could retain its power under the Act for issuing technical feasibility certificates. The certificates could be issued on application from either a carrier or the ACCC.

Chapter 11 Draft recommendation 11.3
The Commission recommends that the procedures and obligations under the mandatory network information requirement should be aligned, regardless of the type of information being requested.

The ACA supports the draft recommendation, as uniform record keeping requirements and access should facilitate quicker resolution of interconnect arrangements. The ACA's only concern in this area relates to the Commission's use of the term "aligned", for which there is not a clear definition. For the recommendation to considerably improve outcomes in this area, this concern will need to be addressed.

Chapter 11 Draft recommendation 11.4
The Commission recommends that the mandatory network information provisions under Part 4 become a standard under Division 5 of Part 21 of the Telecommunications Act 1997.

The ACA supports the draft recommendation. This will enable access to network information requirements to apply to both carriers and carriage service providers.

To support industry self-management, similar requirements to those which apply currently under s. 384 of the Act could be developed for access to network information interconnection standards.

Currently an interconnection standard under Division 5 of Part 21 of the Act is made enforceable under s.152AR (5) d(ii) of the TPA. If a Division 5 of Part 21 interconnection standard covering the requirements currently provided for under Part 4 of Schedule 1 was made, there will be a need to make it enforceable in a similar manner. This could be achieved by amendment of the TPA to provide for a similar head of power to that which exists under s. 152AR (5)d(ii).

Chapter 12 page 12.1
Continuation of the current system of industry self-regulation, backed by some regulatory power to intervene when necessary. In addition, the continuing involvement of the ACCC and ACA in the making of interconnection standards.

The ACA supports the Commission's position expressed on Page 12.1 of the draft report. As the Commission suggests, the current system of industry self-regulation constitutes a good fundamental mechanism and the ACA agrees that the safeguards are still required at this stage.

Chapter 12 page 12.5
Broadening of the long term interests of end user's test (to encompass overall economic efficiency by promoting efficient use of, and investment in, telecommunications services) should also apply to the setting of technical interconnection standards under Division 5 of Part 21 of the TA.

The ACA's comments about this recommendation are the same as those expressed in the previous comments dealing with Chapter 8 draft recommendation 8.2.

Chapter 13 page 13.20
The Commission seeks feedback on the desirability of implementing a system of transferable ownership of telephone numbers.

The ACA acknowledges that the proposal outlined by Messrs Gans, King and Woodbridge[1] (and referred to by the Commission at page 13.9 of the draft report) is intended to resolve issues associated with pricing principles for local number portability. The ACA has no wish to comment on pricing principles.

However, the ACA objects strongly to any introduction of a system of private ownership of telephone numbers. Holders of telephone numbers currently have 'rights of use' to numbers in accordance with rights, restrictions and obligations set out in the *Telecommunications Numbering Plan 1997*. This arrangement acknowledges that the usefulness of a telephone number for a customer derives from the service provided by a carriage service provider and the right to use part of a structured and well understood community numbering resource.

As custodian of the Australian numbering resource, the ACA is, from time to time, faced with the need to make changes to the Numbering Plan in order to promote the effective use of telephone numbers. For example, increasing demand for particular numbers necessitates changes from time to time to numbering in order to provide a supply of numbers capable of meeting future demand. In the mid-1990s, for example, geographic telephone numbers were changed from six or seven digits to eight digits in order to ensure sufficient supply. Further changes are likely to be necessary to various types of numbering as demand continues to increase.

The ACA's ability to manage the numbering resource would be severely compromised if a large number of other entities 'own' this resource.

The ACA also objects to proposals for ownership on the grounds that the numbering supply is a finite resource that belongs to the community. It believes that any monetary value associated with the numbering resource rightfully belongs to the Australian public.

In November 2000, the ACA introduced a number pool for the allocation of freephone and local rate numbers, which has reduced the need for external resolution of disputes about pricing principles associated with freephone and local rate number portability.

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[1] Gans, J., King, S. & Woodbridge, G. 2000, Numbers to the People: Regulation, Ownership and Local Number Portability

The ACA is also investigating the possible direct allocation of these numbers to customers.

Either of these approaches would appear to resolve difficulties with pricing principles without creating the problems associated with granting ownership rights to telephone numbers.

Chapter 14, page 14.7
The Commission seeks feedback on the desirability of giving the ACCC responsibility for determining which services, if any, should be subject to pre-selection.

The ACA does not have any concerns regarding the recommendation to shift the responsibility for determining which services should be pre-selectable to the ACCC. The ACCC has responsibility for determining which services are to be portable. The adoption of this recommendation would bring pre-selection in line with number portability.

Chapter 14, page 14.13
The Commission seeks feedback from participants on the benefits and costs of requiring multi-basket pre-selection.

The ACA agrees with the Commission that the benefits and costs of multi-basket pre-selection should be considered. The ACA released a discussion paper relating to multi-basket pre-selection in 1998, seeking comment on multi-basket pre-selection options. The responses received suggested that further discussion of these issues would have been premature at the time. In order to review the current pre-selection arrangements, a public discussion paper titled *Preselection Review: Preliminary Considerations* was released on 4 June 2001. The discussion paper addresses the following issues:

- the conditions under which certain carriage service providers should be subject to pre-selection obligations; and
- in relation to multi-basket pre-selection:
  - what would be the competitive and consumer issues which would support or oppose its introduction?
  - what would be the technical implications and cost drivers involved in its implementation?
  - what sorts of segmentation of pre-selectable call types would be desirable for creation of the multiple baskets?

Chapter 14, page 14.14
The Commission seeks further input on the implications of restricting pre-selection requirements to Telstra alone.

The ACA does not support, prima facie, the concept that pre-selection obligations should only apply to access services supplied by Telstra Corporation. If it were

appropriate that access providers other than Telstra should not be subject to pre-selection obligations, current legislation allows for exemptions to be granted by the ACA on a case by case basis, or as a class exemption.

Firstly, such exemptions could be granted on the basis of an access provider's market power (or lack thereof) or on the basis of market share. To date, no such exemptions have been granted, and no guidelines exist as to what thresholds of market power or market share might be used as a basis for such exemptions. Perhaps responses to the Commission report could be used to develop criteria for assessing future exemption applications rather than to create a permanent and fundamental change to pre-selection regulation.

Secondly, current regulations establish obligations for access providers to offer over-ride dial codes as well as pre-selection. These two methods of competitive access currently go hand in hand. It is appropriate, when considering exemptions on the basis of undue financial burden, that these two provisions be considered separately and together. It is possible that an obligation to provide pre-selection may be onerous on a small access provider, whereas an obligation to provider over-ride dial code functionality may not be.

Thirdly, pre-selection obligations (including both pre-selection and over-ride code arrangements) primarily allow for long distance providers to gain access to customers of access providers, and vice versa. It is not necessarily about facilitating competition between smaller and larger carriage service providers (although this may be a secondary effect) because, as noted in the draft Commission report, many industry players are able to provide long distance services before they enter the access market. Pre-selection obligations are designed to prevent any access provider from using its bottleneck power to gain an advantage in a separate market. All access providers notionally have this bottleneck power regardless of size. As noted above, any exemption from pre-selection obligations would have to be based on undue financial burden and cost benefit considerations, rather than on the basis that the access provider's market share is relevant to its bottleneck market power.

It is the ACA's view that current regulations allow for all such issues to be addressed, and that a change to the legislation for this purpose would not be appropriate.

Draft recommendation 17.1
The Commission recommends that power to determine the aggregate universal service levy lie with the ACA, rather than the Minister, with provision made for full merit review of determinations by the Australian Competition Tribunal.

At present the ACA undertakes the costing of the universal service obligation (USO) and provides a comprehensive justification of its methodology both in the reports to the Minister and, where it is able in light of commercial-in-confidence considerations, the release of documentation to the public. Consultancy reports that are used to assist in reaching any conclusions are also generally released to the public, and discussions with stakeholders are undertaken. The Minister generally releases the ACA's advice to him on costing to the public.

The ACA is therefore confident that the reasoning behind the calculation is comprehensive and justifiable. Nevertheless this will not deter stakeholders from approaching the Minister with their concerns about costing issues.

The provision of the USO is very much a public policy issue. The current arrangements allow the Minister to take account of social policy considerations, as well as costing advice from the ACA, in finally determining a USO amount for any given financial year. If the ACA were to have final responsibility for determining the universal service cost it would not be able to take due account of the Government's social policy views and other Government policy considerations unless directed to do so by the Minister.

Additionally, the imposition of the cost of funding the USO on all licensed carriers is best characterised as a tax. As such, determination of USO costs should be a matter for the Government rather than the ACA.

Chapter 17, page 17.16
The Commission seeks feedback from participants on the possible advantages and disadvantages, and practicality, of a market based tendering process for encouraging competition in the provision of universal service.

The present contestability arrangements have been put in place as a pilot program to allow both the entry of competitors, and allow for the arrangements to be evaluated and extended where appropriate. The shape and magnitude of competition is presently unknown, and will not be known until the pilots have been in place for some time.

Tendering would only be of assistance where competition develops. Where competition develops, tendering may be a process for stimulating and therefore increasing competition. However, where contestability has not encouraged competition, tendering is not likely to assist. Clearly in the early stages of the pilot program, no market price signals exist, and these will be essential before tendering could be considered as a viable option.