



11 January 2007  
Level 7  
54 Marcus Clarke St  
Canberra  
ACT 2602

**VIA E-MAIL**

Gloria Blue  
Executive Secretary  
Trade Policy Staff Committee  
ATTN: Section 1377 Comments  
Office of the United States Trade Representative  
600 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20508

Dear Ms Blue

The Competitive Carriers' Coalition represents non-dominant carriers in Australia. The CCC appreciates the opportunity to comment on telecommunications issues under the Section 1377 review. We write to support concerns raised by Comptel in its submission to this process regarding developments in the Australian telecommunications regulatory and policy environment.

The CCC notes three developments of immediate concern: Telstra's continuing efforts to force so-called average pricing of regulated access services, against the wishes of competitors and the regulator; the continuing campaign by Telstra to force the Government to make legislative changes before it will invest in upgrading its terrestrial network, and; attempts by Telstra to avoid providing any competitive access to regional

mobile networks built with taxpayer subsidies and unable to be economically replicated by competitors.

As recorded by the USTR last year, Telstra has attempted to force the regulator to change its approach to regulated pricing principles governing access to Telstra's unbundled basic terrestrial access service, the Unconditioned Local Loop. This would involve a move from cost-reflective, regionally banded pricing (as originally proposed by Telstra as consistent with the legislative requirements) to so-called national average pricing. It would have the effect of increasing the prices competitors pay for access in locations where they have already built competitive DSL networks beyond the point where those networks were economically viable.

These approaches by Telstra were rejected by the competition regulator, but Telstra subsequently convinced the Government to require the regulator to provide it with a report explaining its approach. This report has not been released, and there has not been a public response from the Government. Telstra has also challenged in the courts the regulator's decision to reject Telstra's preferred pricing approach.

Telstra is clearly still seeking to convince the Government to intervene in this issue.

As noted by Comptel in its submission of December 2006, Telstra has for the past 18 months conducted a concerted and unremitting campaign aimed at forcing the Government to repeal parts of the Trade Practices Act intended to protect and promote telecommunications competition, and/or to provide Telstra with special incentives to invest in upgrading its network to a fibre to the node architecture, an upgrade that would potentially make obsolete present access arrangements for Telstra's competitors.

This campaign has been described as a threat to "starve the country of broadband investment in order to pressure the Government into making concessions on regulation". Telstra has also embarked on a grass roots political lobbying campaign to try to force legislative changes to favor its interests ahead of competitive outcomes.<sup>1</sup>

Finally, Telstra has overbuilt the national CDMA mobile voice and data network it built with the support of about \$120 million of public subsidy with an 850 megahertz mobile voice and data network. It plans to turn off the CDMA network in 12 months, but, despite using the network infrastructure subsidized by the Federal government, is refusing to offer wholesale services or roaming access to the new network. This is despite these services being available on the CDMA network that is being replaced.

The result would be that Telstra would have a monopoly over mobile voice and data coverage in many regional locations and would leverage the monopoly power into other markets. It is already pursuing such a strategy in its marketing to corporate customers.

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<sup>1</sup> Sydney Morning Herald December 30 2006. *Talk to the Hand*  
<http://www.smh.com.au/news/business/talk-to-the-hand/2006/12/29/1166895477795.html?page=fullpage#contentSwap1>

The CCC and its members believe that the case for regulatory intervention to require wholesale access and/or roaming on this network in the case of market failure is compelling and consistent with past decisions by the regulator. It is concerned that Telstra has sought to use political influence to prevent the regulator even inquiring into the issue. This issue will become a matter of urgent concern for competitors in the next three months when a review of certain regulated mobile services falls due. The willingness of the regulator to stand firm against political influence will become apparent at this time.

The CCC supports Comptel's suggestion that the USTR pay close attention to developments in Australia to ensure that they are consistent with the Government's obligations and is happy to provide the USTR with any further information it might require.

Yours Sincerely

David Forman  
Executive Director  
CCC Inc