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VIA ELECTRONIC MAIL

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
ATTN: Section 1377 Comments
Office of the United States Trade Representative
1724 F Street, N.W.
Washington, DC 20508

Re: Australia: Reply Comments of Telstra Corporation Ltd.

Dear Ms. Blue:

These reply comments are filed on behalf of Australia's Telstra Corporation Ltd. (Telstra) in response to the request of the United States Trade Representative (USTR) for comments pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. § 3106, concerning the compliance of U.S. trading partners with U.S. telecommunications trade agreements.

A. Introduction

This year only one party, COMPTEL, has lodged comments concerning Australia. However, as discussed below (See Sections B. and C.), the two issues raised by COMPTEL neither violate nor are even properly subject to the application of the U.S.-Australia Free Trade Agreement (FTA)[1] or the World Trade Organization (WTO) Basic Telecommunications Agreement and related regulatory Reference Paper. Indeed, both potential market access concerns identified by COMPTEL relate to the arrangements which the Australian Competition and Consumer Commission (ACCC) may ultimately establish for access to certain network facilities owned by Telstra. On the first issue (See Section B.), pricing of unbundled local loop services, there is no basis for asserting that Telstra's pricing would be anything other than "cost oriented" – a subject on which, in any event, the relevant treaties afford all parties considerable discretion. On the second issue (See Section C.),

[1] *See* United States-Australia Free Trade Agreement Implementation Act, Pub. L. No. 108-206, 118 Stat. 919 (2004).

COMPTEL's assertion that Telstra would refuse wholesale access to its proposed Fiber-to-the-Node network, is contrary to the public record and simply false. Moreover, in both areas identified by COMPTEL, the alleged regulatory harm is purely hypothetical because the regulatory process is ongoing and, even if the regulator were ultimately to adopt Telstra's position, any such action would not rise to the level of a trade law infraction.

Telstra also wishes to emphasize at the outset, as COMPTEL has also done, that 2006 saw the Australian Government's successful completion of its plan to privatize Telstra. Divestiture of the Government's remaining 51.81% ownership of Telstra has been a long-running concern of the USTR[2] due to the alleged bias that the Government's stake imparted to sector regulation, although no such bias has actually been documented.[3] In any case, the last phase of the Government's share sell-off is in the final stages of completion and Telstra is now majority owned by private investors.[4] The transfer of the Government's remaining shares to the private sector clearly moots any remaining concerns regarding the independence of the ACCC and any inappropriate influence that Telstra may have on the regulatory process.

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[2] For example, the prior 2006 Section 1377 Review observed that "the Australia Parliament has authorized the sale of its remaining stake in the dominant carrier Telstra, a development the United States strongly supports." USTR, "Results of the 2006 Section 1337 Review of Telecommunications Trade Agreements," April 4, 2006, p. 9. The USTR has urged the full privatization of Telstra since at least 2002. *See e.g.*, USTR, "National Trade Estimates Report on Foreign Trade Barriers," April 1, 2002, available at: http://www.USTR.gov/Document_Library/Reports_Publications/2002/2002_NTE_Report/Section_Index.html.

[3] On the contrary, as Telstra has detailed in its prior submissions to the USTR, the principal sector regulator, the Australian Competition and Consumer Commission (ACCC), operates at arms length from the Government and has frequently adopted orders that have tended to reduce the value of the Government's stake in Telstra by, among other things, providing exceedingly favorable access arrangements for Telstra's competitors. (*See* Part B. below).

[4] Of its previous 51.81% holding, the Commonwealth sold close to 35% of its shares to the public and certain institutional investors in a global offering in November 2006. (This figure includes a small number of shares – amounting to 0.75% of total Telstra shares – being held in trust for future allocation to purchasers in the global offering as 'loyalty bonus shares'.) The Commonwealth currently retains a little less than 17% of Telstra, and it intends to transfer all of its remaining Telstra shares to the Future Fund Board of Guardians by February 24, 2007. The Future Fund was established by the *Future Fund Act 2006* (Cth) and is a Commonwealth investment fund set up to strengthen the Commonwealth's long-term finances by providing for its unfunded superannuation liabilities. The activities of the Future Fund are directed by the Future Fund Board of Guardians, a separate legal entity from the Commonwealth that is responsible for investment decisions of the Future Fund. As an investment fund, the Future Fund by its nature intends to operate as an ordinary investor focused on maximizing investment returns which is reflective of the statutory mandate of the Future Fund Board of Guardians in the Future Fund Act. The Future Fund's holding in Telstra is required to be maintained in escrow for two years (save in certain exceptional circumstances) and thereafter will be wound down in a manner that will maximize investment returns. All members of the Future Fund Board of Guardians are held to similar standards of care and duties as those of company directors under Australian law.

B. Australia's Trade Commitments Provide Considerable Regulatory Latitude When It Comes To Pricing Network Access

Despite COMPTEL's perennial concerns regarding the ACCC, this year COMPTEL devotes the first part of its comments to a defense of the Commission's decision to reject Telstra's wholesale pricing plan for unconditioned local loop (ULL) services which was based on a nationwide averaged price of A$ 30 per loop.[5] The ULL service provides a basic unbundled copper loop (wire pair) between a local Telstra exchange and a customer's premises. ULLs may be used to provide basic telephone service or, with the addition of a Digital Subscriber Line Access Multiplex (DSLAM), to provide competitive high-speed broadband services. Unlike the current regulatory regime in the United States, however, in addition to the mandated resale of broadband-capable ULL facilities, Telstra's own provision of broadband services are still subject to *ex post* telecommunications-specific regulation under Part XIB of the Australian *Trade Practices Act 1974* (Cth). As well, and again in distinction to the U.S. regime for incumbent telephone operators, Telstra is still required to provide broadband competitors with unbundled access solely to the high frequency portion of its local loops at regulated rates (e.g., to offer line sharing), which, in Australia, is known as the High Frequency Unconditioned Local Loop or Spectrum Sharing Service (SSS).

COMPTEL maintains that nationwide price averaging for Telstra's wholesale ULL service would be inconsistent with Australia's trade commitments because price-averaging would result in "prices in urban areas that [are] not cost-oriented in violation of the FTA and the Reference Paper."[6] Hence, COMPTEL states that, if the ACCC's decision to reject Telstra's averaged ULL pricing plan is reversed on appeal,[7] Australia would be in breach of its treaty commitments.

COMPTEL's claim as to the supposed illegality of averaged wholesale rates for network access under the FTA and the WTO Reference Paper is not supportable and, tellingly, COMPTEL cites no authority for this proposition. Furthermore, it is quite clear that under the FTA and the Reference Paper, a signatory has substantial latitude in determining whether pricing for unbundled networks access is cost-oriented. Consequently, the ACCC's pricing decision was in no way constrained by Australia's current treaty obligations; nor would the FTA or the Reference Paper constrain a contrary decision on

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5 *See* COMPTEL Comments, December 15, 2006, p. 3. The ACCC decision at issue is ACCC, *Assessment of Telstra's ULLS and LSS monthly charge undertakings: Final Decision – Public Version*, December 2005, available at http://www.accc.gov.au/content/index.phtml/itemId/660425/fromItemId/269280

6 COMPTEL Comments, p. 3.

7 In September 2006 Telstra filed for review of the ACCC's decision by the Australian Competition Tribunal (ACT No. 8 of 2006). The hearing was conducted in December 2006 but the ACT is yet to hand down its decision.

appeal by the Australian Competition Tribunal (ACT). To suggest otherwise would require rewriting the basic treaty documents at issue as Telstra explained at some length in the reply comments it docketed in connection with the 2006 Section 1377 review process. We recapitulate the main points below.

First, the provision of ULL services on a nationally averaged basis does not violate any potentially relevant provision of the FTA.[8] While the telecommunication chapter of this bilateral treaty prescribes that unbundled network access should be provided at rates that are cost-oriented, and bars anti-competitive and discriminatory practices, it does not specify any particular methodology for achieving cost-orientation, nor does it provide any guidance on the level of geographical granularity to which cost-orientation should apply. Thus, geographically averaged wholesale pricing for unbundled loops does not, *per se*, run afoul of the FTA. Moreover, in Australia's case, the economic rational for averaged wholesale prices – and access prices are expressly conditional on economic feasibility under the FTA – is supported by the Government's long standing policy position that all Australians should have access to standard telephone service at equivalent prices and services levels.[9] Moreover, Article 12.18 of the FTA clearly acknowledges the right of each party to pursue universal service policies.

In view of the government's strong support for retail telecommunications pricing parity in metropolitan and non-metropolitan areas alike, Telstra simply asked the ACCC to approve a wholesale pricing regime for the ULL service that is consistent with this social policy objective. In this regard, Telstra shares the conclusion reached by the OECD that, "if the regulator wishes to preserve the geographically averaged structure of end-user prices, it is

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[8] COMPTEL does not cite to any specific provision of the FTA or the Reference Paper. However, during last year's Section 1377 review, outside counsel for Primus Telecommunications Group Incorporated (Primus) asserted that Telstra's averaged pricing plan for ULL services violated Article 12.8 of the FTA, which requires parties to maintain appropriate measures to prevent major suppliers from "engaging in anti-competitive cross-subsidization;" Article 12.11, which requires parties to ensure that major suppliers provide interconnection under "non-discriminatory terms and conditions, rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled . . .;" and Article 12.17, which requires each party to ensure that "the decisions and procedures of its telecommunications regulatory body are impartial with respect to all interested persons." See Letter of Andrew D. Lipman, Swidler Berlin LLP, to Gloria Blue, Executive Secretary, USTR, December 15, 2005, available at http://www.ustr.gov/assets/Trade_Sectors/Telecom-E-commerce/Section_1377/2006_Comments_on_Review_of_Compliance_with_Telecom_Trade_Agreements/asset_upload_file629_8646.pdf

[9] *See e.g.*, the December 19, 2005 press release of the Minister for Communications, Information Technology and the Arts "Wholesale access prices for ULL and wholesale pricing party," available at http://www.minister.dcita.gov.au/media/media_releases/wholesale_access_prices_for_ull_and_retail_pricing_parity and also jointly released by the Minister for Finance and Administration, available at http://www.financeminister.gov.au/media/2005/mr_5905_joint.html

essential to geographically average [wholesale] ULL prices."[10] In the absence of averaged ULL service prices, the impact of Australia's regime for retail pricing parity (i.e., universal service) would be to discriminate against Telstra and place it at a severe competitive disadvantage. For if ULL wholesale prices were deaveraged, Telstra would still be required to subsidize below-cost retail rates in rural areas while competitors would be provided favorable wholesale rates to "cherry pick" urban customers.[11]

At root, therefore, COMPTEL's prospective concern with Telstra's ULL pricing is properly directed at the Australian Government (not the USTR) and the Government's universal service policy which cannot readily be squared with the ACCC's apparent preference for geographically disaggregated cost recovery. Telstra has historically been forced to bear the burden of this policy divergence (providing below cost network access to stimulate competition while furnishing service in the bush and other non-urban areas that is significantly underfunded by current universal service arrangements). In fact, the USTR itself has recognized the conundrum this presents both for Telstra and the ACCC's competition policies, and last year suggested that "Australia should consider other mechanisms [other than rate cross-subsidies] to address rural service issues, such as expanded use of a competitively neutral universal service fund."[12]

Second, the "cost-oriented" rate provision of Article 12.11(d) does not require deaveraging of prices on a geographical basis to reflect lower costs in metropolitan and urban areas versus higher costs in extra-urban and rural areas. The language of Article 12.11(d) is identical to Article 2.2(b) of the WTO Reference Paper, which was closely examined by the WTO Panel decision in the 2004 U.S.-Mexico interconnection dispute. The Panel took the view that "cost-oriented" rates need not equate exactly to cost, but should be founded on

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[10] OECD, *Access Pricing in Telecommunications*, 2004, p. 134, available at: http://www.oecd.org/dataoecd/26/6/27767944.pdf

[11] Such a policy also arguably would violate Article 12.18 of the FTA, which requires that "each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory, and competitively neutral manner."

[12] The Government's current (2006-2007 FY) universal service funding of A$ 157 million (of which Telstra pays over A$ 100 million) very significantly understates the actual cost of serving remote areas which must legally be borne by Telstra. A January 2000 study done by the Australian Communications Authority (as it was then known) – the last occasion on which a transparent and verifiable universal service costing study was conducted – put the annual cost of serving the Australian bush at approximately A$ 421 million. *See* "Estimate of Net Universal Service Costs for 1998/99 and 1999/2000," available at http://www.acma.gov.au/acmainterwr/telcomm/universal_service_regime/nusc_est1998-2000.pdf *See* generally "USO Funding and Subsidies", Australian Communications and Media Authority, available at http://www.ACMA.gov.au/ACMAINTER.1507598:STANDARD::pc=PC_2483

cost, with an element of causality between the cost elements and the services provided.[13] The Panel noted that, "The degree of flexibility inherent in the term 'cost-oriented' suggests, moreover, that more than one costing methodology could be used to calculate 'cost-oriented' rates."[14]

The mechanical reflection of local costs in ULL service pricing thus does not constitute the only or even a preferred form of compliance with Article 12.11(d) and, taken to its logical conclusion, would require that every individual loop should be differently priced to reflect its unique cost elements. Such an extreme de-averaging approach would be inherently impractical and could not be considered to be "reasonable, having regard to economic feasibility", which again is the key qualification set by Article 12.11(d) of the FTA for determining whether a rate is "cost-oriented". The Panel in the U.S.-Mexico matter said,

> "The term 'reasonable' thus suggests that the interconnection rates should be 'suitable to the circumstances or purpose' – in other words, that they reflect the overall objectives of the provision that the rates represent the costs incurred in providing the service. The word 'reasonable' thus emphasizes that the application of the cost model chosen by the Member reflects the costs incurred for the interconnection service. Flexibility and balance are also part of the notion of 'reasonable'."[15]

With respect to Telstra's ULL pricing plan, all the costs relied upon for calculation of averaged pricing are costs incurred in supply of that service. As such, the issue of which costing methodology should be used – averaging or deaveraging into geographic bands – does not give rise to any breach of the "cost-oriented" requirement in Article 12.11(d). While WTO Panel decisions do not bind interpretation of identical provisions in the FTA, Telstra submits that the Panel's views should be regarded as persuasive on this point.

In short, while some U.S. carriers may benefit if the ACCC's pricing decision on ULL services is upheld by the ACT, that is solely COMPTEL's policy preference (cherry picking urban customers is quite rational if one has little or no universal service obligations). But, there is nothing in the FTA or the Reference Paper that compels Australia to adopt such a policy. Telstra has taken the opportunity here to reiterate the legal deficiency of COMPTEL's claims because it appears that the USTR may have uncritically accepted the association's position in the past regarding ULL service pricing, or confused Telstra's

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[13] WTO, *Mexico – Measures Affecting Telecommunications Services: Report of the Panel*, 2 April 2004 (WT/DS204/R), at ¶¶ 7.168 and 7.174.

[14] *Id*, ¶ 7.168.

[15] *Id*, ¶ 7.182.

position with that of the Government.[16] Whatever the USTR's policy predilections, however, as a matter of law, neither the FTA nor the Reference Paper compel the ACCC or the ACT to adopt a particular methodology or standard for pricing unbundled network access.

It is also worth noting that the nationwide unbundling of local loops at geographically de-averaged rates advocated by both COMPTEL and the USTR has been firmly rejected by U.S. policymakers when it comes to rural areas, based on universal service grounds. For example, the U.S. Congress expressly excused incumbent operators serving rural areas from the network unbundling and resale obligations of their urban peers.[17] The FCC's concerns regarding the impact that geographical price de-averaging may have on universal service can also be seen in recent orders rejecting the requests of competing cellular carriers for universal service funding (i.e., to become an Eligible Telecommunications Carrier (ETC)) in the less populated portions of an incumbent's territory.[18] The growing divergence between prevailing U.S. domestic policy on telecommunications sector regulation and, in particular, on network access and competition issues, and the policy preferences articulated by the USTR has led some to question whether the Section 1377 review process is still trade-related (i.e., treaty-based), as the enabling legislation requires, or has become an *ad hoc* lobbying exercise driven by special interests.[19]

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[16] Notably, the USTR's 2006 Section 1377 review states that: "Telstra has . . . unilaterally set a high, nationally averaged rate [for unbundled loops], urging that it needs to cross-subsidize rural services with above-cost urban rates . . . USTR will also encourage Australia to adopt reform concerning the structure and level of pricing for unbundled local loops that do not foreclose competitive entry into the Australian market." *USTR 2006 Section 1377 Review*, *supra*, note 8, p. 9. Of course, Telstra does not unilaterally set any ULL service rates; all rates are subject to ACCC review. Likewise price parity between the cities and Australia's bush communities is not Telstra's policy but that of the Government with which Telstra has no choice but to comply. And, as explained above, Telstra can not reasonably maintain retail pricing parity unless wholesale rates are also averaged (at parity).

[17] *See* Section 251(f) of the 1996 Telecommunications Act, 47 U.S.C. § 251(f).

[18] *See e.g., In the Matter of Federal-State Joint Board on Universal Service*, 19 FCC Rcd 20985, para. 24 (2004) (denying in part the ETC petition filed by Advantage Cellular systems, Inc.); *In the Matter of Federal-State Joint Board on Universal Service*, 19 FCC Rcd 6422, paras. 29-33 (2004) (denying in part the ETC petition filed by Highland Cellular, Inc.); *In the Matter of Federal-State Joint Board on Universal Service*, 19 FCC Rcd 1563, para. 35 (2004) (denying in part the ETC petition filed by Virginia Cellular, LLC).

[19] *See e.g.,* D. Kotlowitz, "Is the United States Trade Representative's monitoring and enforcement of its trading partners' obligations on telecommunications services market access still credible?" *Communication and Policy Research Forum*, Sydney, September 26, 2006, available at http://www.networkinsight.org/verve/_resources/Kotlowitz_paper.pdf *See also* the letter, dated April 18, 2006, from the Infocomm Development Authority (IDA) of Singapore to the USTR, available at http://www.ida.gov.sg/News%20and%20Events/20050704162306.aspx?getPagetype=20

C. COMPTEL's Concerns Regarding Access to Any Future Fiber-to-the-Node (FTTN) Network Are Unfounded

The only other Australian concern raised by COMPTEL pertains to the regulation of any next-generation Fiber-to-the-Node (FTTN) network that Telstra may construct. Yet, as COMPTEL well knows, Telstra has not committed itself to build any such network and hence any access concerns that COMPTEL may have with respect to such a network are hypothetical, at best, and do not warrant the USTR's current consideration.

COMPTEL asserts that if Telstra were to construct an FTTN network and the ACCC did not subsequently require Telstra to offer "interconnection and unbundled network elements . . . at cost-oriented wholesale prices to its competitors, then Australia would be in violation of the FTA and the Reference Paper."[20] As before, COMPTEL offers no legal authority for this assertion and it is doubtful whether any exists. There is no *a priori* reason to classify a new multipurpose broadband fiber optic network as a "public telecommunications facility" and, since 2004, the FCC has forborne unbundling and resale of new fiber optic loops and new fiber-to-the-node (FTTN) networks by incumbents.[21] However, even if Australian regulators treated any new FTTN network owned by Telstra as a type of "public telecommunications facility," there is no reason to believe that any wholesale access opportunities provided by Telstra would violate the access or unbundling requirements of the FTA.

Telstra, in fact, made public the principles that it would apply in supplying a wholesale access service on FTTN :[22]

> **"**Telstra proposed to offer a wholesale access service to be called the **High-speed Access Service** ("**HAS**"), on its Fibre To The Node ("FTTN") broadband platform. It was anticipated that the proposed HAS would be purchased by **Access Seeker**s ("**AS**") and used to deliver broadband, voice services and applications to Australian consumers within the FTTN footprint.
>
> The **HAS** consisted of the following service elements:
> - Broadband access in the form of a basic Ethernet transport service, at a choice of one of several defined access rates
> - Analogue PSTN telephony access

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[20] COMPTEL Comments, supra, p. 3.

[21] *See* generally, *Order on Reconsideration, Review of the Section 251 Unbundling Obligation of Incumbent Legal Exchange Carriers et al.*, 19 FCC Rcd 20, 293 (2004).

[22] *See* "Proposed FTTN Service Description Summary," available at http://www.nowwearetalking.com.au/Home/Page.aspx?mid=275

> The **AS** was to be responsible for the following:
> - Providing appropriately engineered backhaul and aggregation from the Telstra Points Of Interconnect ("**POI**") to their own facilities
> - Self provisioning all services and applications above the basic Ethernet transport protocol layer and managing all aspects of these
> - Managing aspects of their subscribers' services through use of the HAS Operations, Assurance and Management facility.
>
> Telstra would also offer backhaul and aggregation of the broadband access traffic from the associated HAS POI to a central location within Telstra's network.
>
> When an Exchange Service Area ("**ESA**") is cut over to the FTTN platform, all Services In Operation ("**SIO**s") within that ESA will be provisioned with data and voice capabilities, regardless of whether both data and voice services are taken.
>
> The construction process would take 40 months. The existing copper distribution network would be used to connect each customer premise to a Digital Subscriber Line Access Multiplexer ("**DSLAM**") located either in a cabinet placed in neighbourhoods or in a Telstra exchange building. As a general indication, exchange facilities will most likely be used for end users within approximately 1.5 km of cable distance from an existing exchange. All DSLAMs were to be connected with fibre optic cable to Ethernet Aggregation Nodes ("**EANs**") located in suitable Telstra Exchange buildings."

The terms of access to any future Telstra FTTN network were recently discussed during a December 2006 public session of the Australian Senate's Standing Committee on Economics which took testimony from Mr. Graeme Samuel, Chairman of the ACCC. Although Telstra has now withdrawn the FTTN proposal under consideration last Summer, Mr. Samuel confirmed that Telstra had intended to offer competitors a wholesale high-speed access or bit stream service on the network. Mr. Samuel also confirmed that the bit stream access service would give access seekers the ability to distinguish the quality of service enjoyed by their own customers. As Mr. Samuel put it: "That was a principle that we had established earlier on in the discussion with Telstra – that is that access seekers ought to have a bit stream service that would enable them to differentiate their product from others rather than simply a wholesale resale product."[23] In other words, the bit stream service would have functioned as an unbundled network access offering.

[23] *See* the hearing transcript of the Senate, Standing Committee on Economics, 7 December 2006, Hansard, Proof Issue, at p. E-7, available at http://www.aph.gov.au/hansard/senate/commttee/S9915.pdf

Mr. Samuel's testimony also makes it clear that any bit stream service would have been cost-oriented. In Mr. Samuel's words, "We had, on access pricing, reached . . . an understanding in principle as to the fundamental issues: the issues of costs." However, as evidenced by Mr. Samuel's subsequent colloquy with various Senators, the ACCC and Telstra were unable to agree in advance on the specific costs which should be included in the relevant wholesale products. In view of this impasse and other factors, Telstra opted to withdraw its FTTN proposal prior to any formal public review process. There was no disagreement, however, that wholesale access pricing of the bit stream service would need to be cost-oriented.

Given that Telstra made public its intention to offer wholesale access on the FTTN network, and that the Chairman of the ACCC has confirmed this to be the case in testimony before an Australian federal parliamentary committee, COMPTEL's allegations regarding wholesale access on the FTTN network are without any basis in fact and should not be credited by the USTR in this year's Section 1377 review.

Finally, it is curious that COMPTEL has focused its comments regarding access to future FTTN facilities only on the network once proposed by Telstra, whereas a consortium of nine other telecommunications companies (known as the G-9) are still committed, in principle, to moving forward with an alternative fiber network.[24] Given that the capabilities of the G-9's network would be similar to those of Telstra's proposed network, if COMPTEL were truly interested in non-discriminatory access to any new national fiber network in Australia (rather than merely constraining Telstra), one would have expected it to urge the ACCC to be equally vigilant in protecting competitive access to this network under pain of a trade complaint. But COMPTEL completely fails to mention the G-9's network in its USTR filing.[25]

D. Conclusion

The full privatization of Telstra in 2006 marked a major milestone in the liberalization and reform of Australia's telecommunications sector. In divesting its remaining 51.81% interest in Telstra, the Government not only achieved a long sought domestic policy objective, but also advanced the international trade goals it shares with the United States and other major trade partners. The financial separation from the Government

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[24] *See* Chris Jenkins, "Telstra rivals prepare to build fibre network," *The Australian*, December 7, 2006, available at http://www.theaustralian.news.com.au/story/0,20867,20883863-643,00.html *See* also http://en.wikipedia.org/wiki/G9_(consortium)

[25] This is also surprising given that the network's putative owners have stated that they would ask the ACCC for a special access undertaking to determine access prices. See the sources at note 25, *supra*.

of the country's major telecommunications supplier, which began in 1987 with the corporatization of Telstra, is now a market fact and the independence of the country's main telecommunications regulator, the ACCC, can not reasonably be questioned.

It would be wholly inappropriate for the USTR to endorse COMPTEL's fanciful allegations in the mistaken belief that they raise legitimate questions about Australia's ability to fulfill its telecommunications treaty commitments. Far from it, COMPTEL's concerns actually arise from the operation of Australia's independent regulator and the country's domestic legal and regulatory institutions are quite capable of resolving the hypothetical network access issues advanced by COMPTEL, none of which implicate that the FTA or the WTO Reference Paper.

Telstra has observed that, each year, COMPTEL's comments on Australia in the Section 1377 process have become ever more misinformed. In an effort to provide COMPTEL with access to accurate information about the Australian market, Telstra's wholly-owned U.S. subsidiary, Telstra Incorporated, has recently joined COMPTEL as a member. Telstra will make every effort to educate COMPTEL about the Australian market so that the USTR can focus on those markets where the U.S. (and indeed Australia) have legitimate reason to express concerns about market access limitations and anti-competitive conduct in breach of treaty obligations. Australia should not be cited in the forthcoming Section 1377 review, other than to commend the Australian government on completing the full sale of its remaining interest in Telstra.

Any questions regarding this submission should be directed to the undersigned at (202) 639-6744.

Sincerely,

/s/ Gregory C. Staple

Gregory C. Staple
Counsel for Telstra Corporation Ltd.