

SENATE ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY  
AND THE ARTS LEGISLATION COMMITTEE

INQUIRY INTO THE TELECOMMUNICATIONS (CONSUMER PROTECTION AND  
SERVICE STANDARDS) BILL NO. 1 2000

LABOR SENATORS' MINORITY REPORT

**JUNE 2000**

## **EXECUTIVE SUMMARY**

### **THE UNIVERSAL SERVICE OBLIGATION**

- Labor Senators acknowledge the fundamental importance of the Universal Service Obligation in ensuring the delivery of minimum telecommunications services to rural and regional Australia.
- Labor Senators condemn the Government for its continuing push for the full privatisation of Telstra, a policy which will inevitably see a decline in services to rural and regional Australia.
- Labor Senators note that the Government has sought to portray competitive tendering of the Universal Service Obligation as both the solution to all the ills of the decline of services to rural and regional Australia following on from the partial privatisation of Telstra, and as an argument to pursue full privatisation.
- Labor Senators note the Government's own admission of the limitation of the scope of its competitive tendering policy by requiring Telstra to remain as the safety net service provider of last resort in the two proposed pilot project areas.
- Labor Senators believe that the Universal Service Obligation must be upgraded in the future to encompass access to minimum digital data services, and condemn the Government for continuing to ignore the growing need for reliable data services for Australians in remote or isolated communities.

### **CALCULATING THE COST OF THE UNIVERSAL SERVICE OBLIGATION**

- Labor Senators believe that any Ministerial determination regarding the calculation of the cost of providing the universal service obligation, whether in full or in part, should be based on advice from the Australian Communications Authority, and should be by way of disallowable instrument.

**EXTENDING LOCAL CALL ZONES TENDER**

- Labor Senators do not believe that the successful tenderer for the \$150million extension of local call zones project should automatically become the nominated Universal Service Provider for that area, particularly as this goes further than the Government's proposed competitive tendering pilot projects.
- Labor Senators believe that any prospective universal service tenderers be selected on the basis of clear, defined objective criteria, expressed through legislation.

## **CARRIER INFORMATION PROVISIONS**

- Labor Senators believe that the information framework should reflect commercial sensitivities and address only the specific needs of an incoming carrier in respect of carrying out specific obliged services or functions.
- Labor Senators believe that the ACA, on approach from an affected carrier, should be given the power to declare a request for information unreasonable.
- Labor Senators believe that, consistent with freedom of information principles, carriers should be able to recover the reasonable costs of complying with a request for information.

## **INTRODUCTION**

The Telecommunications (Customer Protection and Service Standards) Amendment Bill No.1 2000 seeks to make a range of amendments to the Telecommunications (Customer Protection and Service Standards) Act 1999, in the following areas:

- i. Initial development of a framework for competitive tendering for Universal Service Obligation services;
- ii. A framework to issue a \$150 million tender to extend local call facilities to remote parts of Australia;
- iii. Adjusts the mechanism used to calculate the cost of the Universal Service Obligation, to enable the Minister to nominate a figure for three years in advance.

These proposed amendments flag the potential for significant change to the framework for providing universal telecommunications services to all Australians, regardless of where they live or work.

Labor Senators acknowledge the fundamental importance of the Universal Service Obligation in ensuring the delivery of minimum telecommunications services to rural and regional Australia.

## **THE UNIVERSAL SERVICE OBLIGATION**

It is the view of Labor Senators that the Government is not engaging in the process of possible reform of the Universal Service Obligation with clean hands.

Service levels, particularly in rural and regional areas, have declined under the partial privatisation of Telstra, and Labor Senators believe that the Government has ignored these areas in its ideological obsession with the initial privatisation and subsequent push for the full privatisation of Telstra.

Service levels in some parts of Australia remain woefully inadequate, and it is the view of Labor Senators that any change in the universal service obligations arrangements must not be at the expense of genuine improvements in service levels in those areas.

Labor Senators note that the Government has sought to portray its proposed competitive tendering framework as the solution to all the ills in the decline of rural and regional service delivery since the partial privatisation of Telstra, and as an argument to pursue the full privatisation of Telstra.

Labor Senators note the Government's own acknowledgment of the limitations in its approach, namely that:

- (a) Firstly, its plan is limited to two pilot projects in undefined areas the results of which will not be known for a number of years; and
- (b) Secondly, its decision to require Telstra to remain as a safety net provider of last resort in the areas to be covered by the pilot projects acknowledges the unique role of Telstra in the delivery of services to rural and regional Australia and therefore the folly of pursuing full privatisation.

Labor Senators condemn the Government for its continuing push for the full privatisation of Telstra, a policy which will inevitably see a decline in services to rural and regional Australia.

There is little attention paid to the detail of how specific service difficulties faced in USO serviced areas will be addressed by these changes.

The high cost and limited availability of broadband or data services represents a significant barrier to the use of the Internet and other emerging digital services by rural, regional and remote communities.

Labor Senators believe that the Universal Service Obligation must be upgraded in the future to encompass access to minimum digital data services, and condemn the Government for ignoring the growing need for reliable data services for Australians in remote or isolated communities.

## CALCULATING THE COST OF THE USO

The Bill would allow the Minister to determine the Universal Service Cost for up to three years in advance, generally based on estimates provided by the Australian Communications Authority(ACA).

The issue of calculating the cost of providing the universal service obligations has been debated for some time, as the cost is borne by industry, by way of an *ex post facto* levy based on a calculation of cost by proportion of market share.

In 1999, the ACA reviewed the framework for determining the USO cost, in the wake of a \$1.8billion claim for the cost by the Universal Service Provider, Telstra.

These amendments complement legislation enacted by the Parliament in 1999, in advance of an ACA review, which established a temporary provision which allowed the Minister for Communications to make a determination concerning the cost of providing the universal service for the years 1998-99, 2000-01, and 2001-02, for the purpose of providing industry certainty.

Concerns have been raised that the Bill reduces the role of the ACA in developing and administering a methodology for the calculation and collection of the Universal Service Obligation cost and levy, as the Bill confers a power on the Minister to require the ACA to use a particular methodology or formula for determining the cost.<sup>1</sup>

Labor Senators believe that any Ministerial determination regarding the cost of providing the universal service obligation, whether in full or in part, should be based on advice from the Australian Communications Authority, and made by way of disallowable instrument.

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<sup>1</sup> Communications, Electrical and Plumbing Union - submission to the Committee, June 2000.

## LOCAL CALL ZONE TENDER

The Government has proposed to issue a \$150million tender for the supply of infrastructure to remote areas currently without an untimed local call service.

Telstra raised in its submission the provisions of the Bill which would see the successful bidder for the \$150million automatically become the nominated universal service provider (NUSP) for the area covered by the tender<sup>2</sup>, thereby potentially relieving Telstra of any responsibilities in those areas.

This raises valid concerns that customers in such areas may suffer the consequences if, for any reason, the tender project fails.

Labor Senators are concerned that the project goes further than the two competitive tendering trial proposed in respect of the Universal Service Obligation, in that this could replace Telstra as the universal service provider in those areas.

Labor Senators do not believe that a successful tenderer for the \$150million extension of local call zones project should automatically become the nominated universal service provider for that area, particularly as this goes further than the Government's competitive tendering proposals.

Concerns have also been raised about provisions in the Bill which confer a power on the Minister for Communications to determine a successful bidder for the \$150million local call zone project<sup>3</sup>.

The Bill states in proposed new sections 20(2A) and 26A(2A) that, in making Universal Service Provider declarations, "the Minister is not limited to considering only the person's suitability to provide the services that must be provided to fulfil the universal service obligation"<sup>4</sup>, without defining which other matters the Minister must consider.

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<sup>2</sup> Telstra Corporation - submission to the Committee, May 2000.

<sup>3</sup> Communications, Electrical and Plumbing Union - submission to the Committee, June 2000.

<sup>4</sup> Telstra Corporation - submission to the Committee, May 2000.



This seems overly broad, and provides little guidance as to what matters would be considered important in determining who provides a universal service for a given area.

Labor Senators believe that any prospective universal service tenderers be selected on the basis of clear, defined objective criteria, expressed through legislation.

## **CARRIER INFORMATION PROPOSALS**

The Bill would allow incoming universal service providers to “require the former provider to give to the [incoming] provider specified information...that will assist the [incoming] provider in doing something that the [incoming] provider is or will be required to do by...this part”<sup>5</sup>.

Concerns were raised with the Committee that the proposals allow for unnecessarily broad access to an incumbent carrier’s information.

In particular, Telstra submitted that the provisions were “objectionably wide”, because:

They are not limited to information that is “required” to carry out an obligated service;

They do not limit what the incoming carrier can do with the information;

They allow the Minister to declare what information must be provided, but do not allow the Minister to declare that certain information need not be provided;

They do not allow the Australian Communications Authority to declare a request unreasonable;

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<sup>5</sup> Telstra Corporation - submission to the Committee, May 2000.

They do not allow the former provider to recover costs for the preparation and delivery of information.<sup>6</sup>

Other concerns raised include:

That the broad nature of the information provisions increase the potential for ambit requests, designed simply to seek commercial information;

That any determination by the Minister should be by way of a disallowable instrument.<sup>7</sup>

Labor Senators believe that the information framework should reflect the commercial sensitivities of the information that may be sought, and address only the specific needs of an incoming carrier in respect of carrying out specific obliged services or functions.

Labor Senators believe that the Australian Communications Authority should be given the power, on appeal from affected carriers, to declare a request for information unreasonable.

Labor Senators believe that, consistent with freedom of information principles, carriers should be able to recover the reasonable costs of complying with a request for information.

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**SENATOR MARK BISHOP**  
**(A.L.P., W.A.)**

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<sup>6</sup> Telstra Corporation - submission to the Committee, May 2000.

<sup>7</sup> Communications, Electrical and Plumbing Union - submission to the Committee, June 2000.