

Australian Democrats Minority Report

Telecommunications (Consumer Protection and Service Standards) Amendment Bill (No.1) 2000

Senator Lyn Allison

The Australian Democrats wish to raise a number of matters that arise out of this Bill. As a preface to those comments, we note that the small number of submissions to this inquiry did not include comment from any consumer groups.

Guaranteeing the fulfilment of the USO

Telstra's submission raises the concern that, if it does not win the tender to provide untimed local call access to those in extended zones and another carrier becomes the regional universal service provider for those zones, it will continue to be the universal service provider (USP) and will be obliged to maintain its network in that region as a result. Telstra expresses this concern as follows:

Telstra might have concurrent obligations with the new regional USP and will thereby remain obligated to maintain and operate the very network which the successful tenderer is being publicly funded to replace.

The Department responded to this concern by suggesting that Telstra's interpretation of the Bill is incorrect and Telstra's obligations to the region would be extinguished. Whilst this appears to satisfy Telstra's concern, the Democrats are concerned about the potential for a situation where, for example, the new regional universal service provider becomes insolvent and is no longer in a position to service the area. If Telstra had already chosen to remove its operations and personnel from the area, how would residents of that area continue to obtain telecommunications services?

Some time ago, there was talk of Telstra being the carrier 'of last resort' so that if that type of situation was to arise, Telstra would be reinstated as the universal service provider for the area. What funding arrangements would apply in that circumstance? Is it still proposed that that will occur or would the Commonwealth be forced to 'prop-up' an insolvent service provider to ensure residents could obtain services?

Ministerial Discretion

Telstra also raised the concern that the Minister has an unfettered discretion in respect of the declaration of the universal service provider. Telstra suggested that as a minimum the Minister's considerations should at the least be limited to matters which he reasonably considers to be relevant to the achievement of the objects of the Act (the *Telecommunications (Consumer Protection and Service Standards) Act 1999*) as set out in section 9.

The Australian Democrats have a general concern about handing completely unfettered discretions to Ministers where such a wide discretion is not necessary. Confining the Minister to considerations relevant to achieving the objects of the Act would still leave it open for the Minister to consider a very wide range of matters.

I am unable to think of any circumstance which a Minister could properly consider which would fall outside such a limitation. Consequently the Australian Democrats will seek to amend the Bill to impose that limitation.

Provision of Information by Telstra (or other 'outgoing' USP's)

Telstra has expressed concern about the ability of incoming USP's to require the production of information by Telstra.

Rather than being concerned about the nature of the information that is able to be obtained, the Democrats are concerned about the purpose to which that information may be put. There are no limits on the use to which the information may be put.

I agree with Telstra when they suggest that the use of the information should be confined to honouring their USP obligations. The Departmental response to the concern is inadequate. I will be making further inquiries on this issue to determine if an appropriate amendment can be drafted to confine the use of information to matters which relate to USP obligations.

Ministerial Determination of the Net Universal Service Cost

The Minister is again provided with an almost unfettered discretion to set the universal service cost. Telstra submitted that the power of determination should be limited so that the Minister must be satisfied, after reasonable inquiry, that the figure he determines is a reasonable estimate of the figure that would be derived by the application of a methodology set out in the Act or declared by a disallowable instrument.

The Communications, Electrical and Plumbing Union (CEPU) said that the determination should be on the basis of a recommendation by the ACA and if the ACA recommendation is not accepted, the Minister should be obliged to state the basis for any adjustments to the estimate.

The ACA is the independent industry regulator. During the passage of the *Telecommunications Laws Amendment (Universal Service Cap) Act 1999*, the Australian Democrats took the view that instead of legislating an arbitrary cap on the USO cost amount, the government should have waited for the independent determination of the ACA. For the same reasons as we took that view, the Democrats are inclined to agree with the CEPU and believe that whilst the Minister has the final decision, he should be obliged to provide reasons should he depart from the recommendation of the ACA.

Conclusion

As a general comment the Democrats do not necessarily agree that competition is the best method of achieving better services at lower costs for people in rural and remote Australia. We are concerned at the prospect of ‘cherry-picking’ – that is, carriers choosing the potentially most ‘profitable’ areas and tendering to service those areas – resulting in improvements to services and increased availability of services to those areas whilst other areas continue to receive only basic services.

We believe that reviewing and increasing the level of the standard telephone service through the USO mechanism may be the best method, at this stage, of ensuring that residents of rural and remote Australia are not left behind with the continual advent of new technologies. We are disappointed that the government has not so far agreed to legislate a periodic review of the USO standard telephone service.

The Australian Democrats reserve our position in relation to this Bill.

Senator Lyn Allison