Parliament of the Commonwealth of Australia

Telstra (Transition to Full Private Ownership Bill) 1998

Telecommunications (Consumer Protection and Service Standards) Bill 1998

Telecommunications Legislation Amendment Bill 1998

Telecommunications (Universal Service Levy) Amendment Bill 1998

NRS Levy Imposition Amendment Bill 1998

Report by the Senate Environment, Communications, Information Technology and the Arts Legislation Committee

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ABBREVIATIONS

ACA	Australian Communications Authority
ACCC	Australian Competition and Consumer Commission
ATUG	Australian Telecommunications Users Group
CSG	Customer Service Guarantee
CSP	carriage service provider
ISDN	Integrated Services Digital Network
NRS	National Relay Service
PSTN	public switched telephone network
RTIF	Regional Telecommunications Infrastructure Fund
TIO	Telecommunications Industry Ombudsman
TPA	*Trade Practices Act 1974*
USO	universal service obligation
USP	universal service provider

COMMITTEE RECOMMENDATIONS

Recommendation 1

The Committee recommends that the government should proceed with the development of a Universal Service Obligation (USO) tendering scheme with a view to determining if there is a serious commitment from industry to participate in such arrangements.

Recommendation 2

The Committee recommends that the government should review the appropriateness of the standard call zones, having regard to demographic and technological change.

Recommendation 3

The Committee recommends that the government should monitor the performance of carriers in this area and make sure that mobile location indicators for the emergency call service are appropriately implemented.

Recommendation 4

The Committee recommends that the government seek advice from the ACCC on any procedural changes it would recommend to improve the effectiveness of the competitive regime.

Recommendation 5

The Committee recommends that the government undertake ongoing consultations with appropriate groups regarding the development of the 'prescribed criteria'.

Recommendation 6

The Committee reports to the Senate that it has considered the Telstra (Transition to Full Private Ownership) Bill 1998, the Telecommunications

(Consumer Protection and Service Standards) Bill 1998, the Telecommunications Legislation Amendment Bill 1998, the Telecommunications (Universal Service Levy) Amendment Bill 1998 and the NRS Levy Imposition Amendment Bill 1998 and recommends that the Bills proceed.

CHAPTER 1

INTRODUCTION

Background

1.1 Telstra is one of Australia's largest corporations. It has about 68.2 per cent of Australia's telecommunications market.[1] In the 1997-98 financial year it had revenue of $17.3 billion, profits after tax of over $3 billion, and paid dividends of $9 billion.[2]

1.2 Telstra is the descendent of Telecom, the public monopoly telecommunications provider created in 1975 by the break-up of the former Australian Postmaster General's Department. Telecom was corporatised in 1989. Telecom merged with the former Overseas Telecommunications Commission (OTC) in 1992; and it changed its name to Telstra in 1995 (in 1993 overseas). Full competition in telecommunications was introduced from 1 July 1997 with the *Telecommunications Act 1997* and related acts.

1.3 This is the Senate Committee's third inquiry into the privatisation of Telstra. In May 1996, the government introduced legislation to Parliament to sell one-third of the Commonwealth's equity in Telstra Corporation by means of a share float. The Bill was subsequently referred to the Senate Environment, Recreation, Communications and the Arts References Committee for inquiry. The References Committee conducted an Australia–wide inquiry between May and September 1996 and tabled its Report in the Senate on 9 September 1996. The issues relevant to the full privatisation of Telstra were canvassed extensively in that Report.[3] The Bill was passed, and the one-third sale proceeded in late 1997. It raised $14.3 billion for the Commonwealth.[4]

1.4 On 15 March 1998, the Prime Minister, the Hon John Howard MP, announced that it was the intention of the government to seek a mandate at the next federal elections to sell the two-thirds share of Telstra that is currently government–owned. The Prime Minister committed the government to using the bulk of the proceeds from the sale to retire public debt.

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1 1998-1999 Telecommunications Strategies, p. 49

2 Telstra Corporation Ltd., *Annual Report 1998*, pp. 22, 28 and 29

3 Senate Environment, Recreation, Communications and the Arts References Committee. *Telstra: To Sell or not to Sell?* September 1996, Senate Environment, Recreation, Communications and the Arts Legislation Committee. *Telecommunications Bills Package 1996*, March 1997, Refer also to the Senate Economics References Committee. *Inquiry into Public Equity in the Telstra Corporation Ltd*, March 1997.

4 Submission No. 75 to the Senate Committee's May 1998 inquiry into the *Telstra (Transition to Full Private Ownership) Bill 1998*, p. 603 (Office of Asset Sales and Information Technology Outsourcing)

1.5 The first *Telstra (Transition to Full Private Ownership) Bill 1998* was introduced in the House of Representatives on 30 March 1998. On 1 April 1998 the Senate referred the Bill to the Environment, Recreation, Communications and the Arts Legislation Committee for inquiry and report. The Committee reported to the Senate on 26 May 1998 and made 8 recommendations (see Appendix 3). The Bill was put to the vote in the Senate on 11 July 1998 and was not passed.

1.6 Prior to the federal elections of 3 October 1998, the government announced that it was committed to a staged approach to any further privatisation of Telstra. It would first sell a further 16 per cent of its equity in Telstra. It committed itself to legislation to provide that until an independent inquiry certifies that Telstra's service levels are adequate, there would be no futter sell down of the government's 51 per cent share.[5]

This Committee's Inquiry

1.7 On 2 December 1998 the Senate referred the present *Telstra (Transition to Full Private Ownership Bill) 1998*, the *Telecommunications (Consumer Protection and Service Standards) Bill 1998*, the *Telecommunications Legislation Amendment Bill 1998*, the *Telecommunications (Universal Service Levy) Amendment Bill 1998* and the *NRS Levy Imposition Amendment Bill 1998* to the Environment, Communications, Information Technology and the Arts Legislation Committee for inquiry and report by 15 February 1999. On 15 February 1999, the reporting date was extended to 18 February 1999 by resolution of the Senate. The Senate subsequently extended the reporting date to 8 March 1999.

1.8 The inquiry was advertised in all State major newspapers and in the *Week-End Australian* of Saturday 12 December 1998. The inquiry was also advertised on the Internet. The Committee received 27 submissions and these are listed at Appendix 1.

1.9 The Committee examined 30 witnesses at two public hearings in Canberra (3 February 1999 and 16 February 1999). Details of witnesses who appeared at the public hearings are listed in Appendix 2.

1.10 The Committee expresses its appreciation to all those who made submissions and gave evidence to the inquiry.

Submissions

1.11 There was no substantial opposition in submissions to the further privatisation of Telstra. The majority of submissions were not concerned with the issue of ownership. Rather they concentrated on consumer service issues such as the Universal Service Obligation, the Customer Service Guarantee and on the level of competition in the industry.

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5 Liberal Party of Australia and National Party of Australia, *Communications: Making Australia Stronger*, [Coalition policy statement], September 1998

1.12 The majority of submissions with a shared viewpoint (6) came from Telstra's competitors, Optus, AAPT, Vodafone, Macquarie Corporate Telecommunications and Hutchison Ltd and from the Australian Telecommunications Users Group (ATUG). They shared concerns regarding the regulatory powers of the (Australian Competition and Consumer Commission) ACCC, particularly in what they perceived to be excessive delay in reaching decisions about possible anti-competitive conduct by Telstra. They all requested amendments to Part X1B of the *Trade Practices Act 1974* to curb what they see as Telstra's anti-competitive behaviour.

1.13 They were also concerned about the size of Telstra's Universal Service Obligation (USO) claim for 1997/98 ($1.8 billion compared with $252 million the previous year) and suggested various approaches to deal with this problem, including amendments to the *Telecommunications (Consumer Protection and Service Standards) Bill 1998* to allow for "improved" methods of assessment of the USO losses.

1.14 Only three submissions opposed the further sale of Telstra on the grounds that a fully privatised Telstra will look after shareholder interests to the detriment of consumers. They came from the Communications Electrical Plumbing Union (CEPU), the Consumer's Telecommunications Network (CTN) and Professor John Quiggin, who referred the Committee to his submission to the May 1998 inquiry into the full privatisation of Telstra. They argued that quality of service has already suffered under partial privatisation, and the CEPU also had concerns about the impact of outsourcing.

1.15 The Committee received 4 submissions from individuals concerned about quality of service issues. Amongst other submissions, the Telecommunications and Disability Consumer Representation Project expressed concern about the lack of access to new telecommunications technologies for people with disabilities.

1.16 The Committee notes that over a quarter of the submissions received came from Western Australia (five submissions, including one from the Western Australian State government) and South Australia (two submissions, including one from the South Australian State government). Those submissions expressed the concern of people in regional and more remote parts of Australia for equality of access to a reasonable level of telecommunications services and to new telecommunications technologies.

1.17 The Committee supports the process of full privatisation of Telstra. No substantial arguments to the contrary were presented to the Committee during its inquiry. The majority of submissions were not concerned with the issue of ownership of Telstra but concerned with the issues of the provision of Universal Service Obligation (USO) services and of the effectiveness of the competitive regime.

1.18 The Committee notes that there was support for the government's proposal to put the USO to tender from a majority of witnesses including from the National Farmers' Federation and from all major industry players such as Optus, AAPT and Vodafone, Macquarie Corporate and Hutchison Telecommunications.

Benefits of Privatisation

1.19 The Department of Communications, Information Technology and the Arts stated in its submission to the Committee that:

> Completing the privatisation of Telstra is a logical extension of the Government's policy objectives in privatising one third of the company. The arguments for selling the rest of the Commonwealth's equity are substantially the same as those relating to partial privatisation, including the beneficial effect on Telstra's performance of market disciplines imposed by investors' scrutiny and changes in the share price; maximising Telstra's capacity to access capital in the private market; moving shareholder risk to private shareholders; and enabling the retirement of significant amounts of public debt at the same time providing some funding for communications infrastructure and environment protection enhancement projects.[6]

1.20 In the Explanatory Memorandum to the *Telstra (Transition to Full Private Ownership) Bill 1998*, the government made it clear that, in its view, part privatisation has many drawbacks:

> The drawbacks of this arrangement are that the Government would have to continue to balance both regulatory and shareholder objectives in addressing telecommunications policy. Telstra would continue to be governed by a regime which seeks to emphasise competitive neutrality on the regulatory side, but also requires specific additional governance and reporting requirements related to public ownership.
>
> …The community, private shareholders, business analysts, Parliamentarians and Telstra management would continue to have difficulty in discerning the differences between the roles of Government as a majority owner of Telstra and regulator of the telecommunications industry. Members of the public, in particular, would continue to have difficulty in accepting that majority ownership does to equate to Ministerial control of the management of day-to-day operations of Telstra.
>
> In short it would tend to maintain the impression that Commonwealth ownership directly influences the price, quality and range of services provided. The phased approach to full private ownership is intended to allay fears that privatisation will lead to service decline by introducing change on a graduated basis, but the confusion of roles will continue for so long as the Commonwealth is an owner.[7]

1.21 The Explanatory Memorandum also stresses that continued part government ownership of Telstra would act as a barrier to the development of the company:

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6 Submission no. 10, p 1 (Department of Communications, Information Technology and the Arts—DOCITA)

7 *Telstra (Transition to Full Private Ownership) Bill 1998*, Explanatory Memorandum, p 7

> Telstra would be constrained in its ability to raise new capital through equity (no Government will want to pay two-thirds of a call on shareholders). It may also be constrained in forming strategic alliances and may find itself retrained from entering potentially lucrative ventures.

1.22 Telstra also picked up on those themes in its submission, arguing that full privatisation would enable it to move forward more strongly focused on meeting competition from global communications companies (for example by raising new capital). Other benefits mentioned included the resolution of the perceived conflict with the government's dual role as part owner of Telstra, and as the telecommunications industry regulator.[8]

> Further privatisation would allow Telstra to compete more effectively against the well resourced, global communications companies now operating in Australia. These companies are experienced operators in a variety of markets and regulatory regimes all around the world. Further privatisation would also give us better access to capital, markets and technology, and provide us with increased opportunity to become a more significant competitor in the global communications market, including being able to strategically partner with other companies in pursuit of our commercial objectives.[9]

The Bills

1.23 *The Telstra (Transition to Full Private Ownership) Bill 1998* is part of a package of bills that have all been referred to the Committee. The *Telecommunications (Universal Service Levy) Amendment Bill 1998* and the (National Relay Service) *NRS Levy Imposition Amendment Bill 1998* are consequential bills. They make minor amendments to the *Telecommunications (Universal Service Levy) Act 1997* and to the *NRS Levy Imposition Act 1998*. The bills make no changes to the delivery or terms of the Universal Service Obligation (USO) or to the National Relay Service. The provisions contained in those two bills have not been raised in any submission to this Committee's inquiry and they will not be further discussed in this report.

1.24 Submissions have concentrated instead on the provisions contained in the *Telstra (Transition to Full Private Ownership) Bill 1998*, the *Telecommunications (Consumer Protection and Service Standards) Bill 1998* and the *Telecommunications Legislation Amendment Bill 1998*. A brief outline of the main provisions in each of the 3 bills that have been the focus of the Committee's inquiry follows:

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8 Submission no. 21, p 6 (Telstra)

9 Evidence, 16 February 1999, p. 2

Telstra (Transition to Full Private Ownership) Bill 1998

1.25 The bill provides for the Commonwealth to sell up to 49.9 per cent of its equity in Telstra. However it must retain 50.1 per cent equity until certain conditions have been met.

- Sale of the Commonwealth's remaining 50.1 per cent equity can only occur after an independent inquiry into Telstra's performance finds that Telstra has met "prescribed criteria" for a designated period of at least 6 months and after the inquiry has given a written certificate to that effect to the Minister. The certificate is to be published in the Commonwealth Gazette before sale can occur. It must also be tabled in both Houses of Parliament.

- The "prescribed criteria" against which Telstra's performance is to be assessed are to be set out in regulations (disallowable by either House of Parliament) which are to be made within 18 months of the Bill becoming law.

- The Ministerial power of direction under section 9 of the *Telstra Corporation Act 1991* will be repealed when Commonwealth ownership falls below 50%.

1.26 The proceeds from the sale are to be used to:

    - Increase funding (by $250 million) under *Natural Heritage Trust of Australia Act 1997;*

    - Make $70 million available to establish Rural Transaction Centres in country towns;

    - Allocate $150 million to provide untimed local calls in extended zones (and abolish Telstra's pastoral call rate) and upgrade the telecommunications network in remote Australia.

    - An additional $81 million over three years will be provided to the Regional Telecommunications Infrastructure Fund (RTIF) including enhancing telecommunications to remote islands such as Cocos, Norfolk, King, Flinders Kangaroo and other Islands and the Australian Antarctic Territories;

- Provide 100 per cent continuous mobile phone coverage on key major national highways. ($25 million) and

    - Allocate $120 million to a Television Fund which will be used to extend SBS television transmission to areas with more than 10,000 people.

Telecommunications (Consumer Protection and Service Standards) Bill 1998

1.27 This Bill brings together existing consumer protection measures and, as noted by the Department of Communications, Information Technology and the Arts in its submission, it also adds new powers in relation to compliance with consumer safeguards: These are that:

(a) The Minister will have the power to direct Telstra to take specific action to ensure that it complies with the Act (Part 10, clause 159). This power will remain irrespective of the level of commonwealth ownership in the future.

(b) The Australian Communications Authority (ACA) will be given the power (Part 5, clause 118) to direct a telephone company to redress systemic problems in relation to the Customer Service Guarantee (penalty for non compliance will be up to $10 million). This will enable the ACA to look proactively into systemic problems (eg. consistent faults in a particular geographic area) and direct a Carriage Service Provider (CSP) about the things it should do to ensure those problems do not recur.

(c) Subclause 128(3) will make it clear that there is only one Telecommunications Industry Ombudsman (TIO) scheme.

(d) Subclause 155(3) will clarify that price control arrangements can include charges for untimed local calls in regional areas.

(e) Subclause 155(4) will allow different price control arrangements to apply to different customers in relation to one type of Telstra service charge.

(f) Subclause 155(5) will require Telstra to comply with any determination setting out price control arrangements.[10]

1.28 Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Bill 1998* (the Consumer Bill) re-enacts Part 7 of the *Telecommunications Act 1997* and relates to the universal service regime designed to ensure that all people in Australia, wherever they reside or carry on business, have reasonable access to standard telephone services, payphones and other prescribed services.

1.29 Part 3 relates to the National Relay Service and Part 4 continues the requirement on Carriage Service Providers to give customers an untimed local call option and adds a scheme to give comparable benefits to remote customers who do not have that access (in the form of a rebate of up to $160 per annum).

1.30 Part 5 of the Consumer Bill continues the operation of the Consumer Service Guarantee but expands the powers of the ACA as described in paragraph 1.27 (b) above.

1.31 Part 6 continues the operation of the Telecommunications Industry Ombudsman (TIO) scheme and Part 7 provides protection to residential customers from losing pre-paid monies if their Carriage Service provider becomes insolvent or fails to provide a service.

1.32 Part 8 provides for reliable telephone access to Emergency Calls Services which is currently guaranteed under Part 12 of the *Telecommunications Act 1997.*

10 Submission No. 10 (Department of Communications, Information Technology and the Arts), p 4

Telstra is the "emergency call person" designated by the ACA. However, multiple operators may be necessary to manage calls from teletypewriter machines and the ACA is revising arrangements made under subordinate legislation to this effect.

1.33 Part 9 covers the Price Control regime. At present, the cap on untimed local calls extends to 30 June 1999 and is currently being reviewed.

- The cap on main services (connection & line rental charges, charges for mobile services, trunk & international calls) also extends to 30 June 1999. Telstra is required to reduce its standard price for rental services and trunk and international calls by 1 per cent in real terms each year. It is also required to reduce prices for main services by 7.5 per cent each year in real terms. [11]

1.34 As mentioned earlier, Part 10 of the Consumer Bill deals with various matters including giving the Minister a power to direct Telstra to comply with this Bill.

Telecommunications Legislation Amendment Bill 1998

1.35 This Bill adjusts the telecommunications specific competition regulation provisions contained in parts X1B and X1C of the *Trade Practices Act 1974*, and provisions of the *Telecommunications Act 1997*. It strengthens the ACCC's powers to regulate and enhance competition and the ACA's powers to enhance consumer safeguards.

1.36 In response to this Senate Committee's recommendations on the earlier Telstra sale bill (May 1998), the Bill provides for the ACA to make a determination to require Carriage Service providers to give customers specified information about the terms and conditions on which goods and services are supplied and information about the Customer Service Guarantee.

1.37 The Bill enables the ACCC to disclose or require disclosure of information it requires to be kept under record keeping rules made under Division 6 of Part X1B of the *Trade Practices Act 1974*. The Bill also enables parties other than the ACCC to seek injunctive relief in regard to a breach of the competition rule contained in Part X1B of the *Trade Practices Act 1974* whether or not a competition notice has been issued in regard to the conduct (proposed item 26 of Schedule 1 to the Bill).

1.38 It provides persons with the right to initiate court action for a breach of the competition rule where the person disagrees with an ACCC decision not to issue a notice or where the ACCC is taking too much time in the person's view.

1.39 The Bill contains an amendment to extend the ACCC's information gathering powers. The amendment is designed to ensure that information obtained under the rules is treated as "protected Part X1B and X1C information" for the purposes of s. 155 (proposed item 40 of Schedule 1).

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11 Submission No.10 (DOCITA) p. 21-22

1.40 Under the current legislation, the ACCC is also able to make record-keeping rules for specified carriers and CSPs (Part 5, Division 5). The Amendment Bill contains significant amendments (proposed items 6 to 25, 27 and 28 of Schedule 1 to the Bill) to the legislation which broaden the scope of the current record-keeping rule provisions by enabling rules to relate to the operation of Parts XIB and XIC of the *Trade Practices Act 1974* and Part 6 of the *Telstra Corporation Act 1991* rather than simply in relation to the performance of an ACCC function or an exercise of an ACCC power conferred under those provisions.

1.41 Other amendments enable the ACCC to require carriers or carriage service providers to prepare reports on information kept pursuant to the record keeping rules and to disclose information provided in reports prepared pursuant to record-keeping rules to the public or specified persons.

1.42 The legislation clarifies that Telstra is required to comply with any price control arrangements determined by the Minister. Compliance with the *Telecommunications Act 1997* and with the amendments in this Bill (including subclause 158(4)) is a standard carrier licence condition. In addition, the Bill requires the ACCC to monitor and report on compliance by Telstra and universal service providers with price control arrangements applying to them, in addition to its general function of monitoring and reporting of charges paid by consumers (proposed item 29 of Schedule 1 to the Bill).

1.43 The Committee notes that the *Telecommunications Legislation Amendment Bill 1998* includes the following provisions recommended by the Committee, in its May 1998 report into the earlier *Telstra (Transition to Full Private Ownership) Bill 1998*. These include:

- greater transparency of Telstra's costs in relation to negotiations over cost based pricing of access to telecommunications infrastructure and

- the right to initiate court action for a breach of the competition rule where the person disagrees with an ACCC decision not to issue a notice or where the ACCC is taking too much time in the person's view.

1.44 The *Telecommunications (Consumer Protection and Service Standards) Bill 1998* provides for the opportunity for the Australian Communications Commission (ACA) to make a determination to require Carriage Service providers to give customers specified information about the terms and conditions on which goods and services are supplied and information about the customer service guarantee. This provision also stems from a recommendation of the Committee in its earlier report on this issue (see Appendix 3).

CHAPTER 2

UNIVERSAL SERVICE AND CUSTOMER SERVICE ISSUES

2.1 Regulation of telecommunications has two main purposes:

- to counteract market failure - for example, to break down natural monopolies, barriers to entry, or anti-competitive behaviour;
- to ensure, for social policy reasons, minimum standards of affordable telecommunications service to all Australians regardless of their location, in circumstances where services might not naturally be provided in even a perfectly competitive market.

2.2 The measures in the present bills for enhancing competition are considered in chapter 3. Issues to do with assuring minimum standards of service and consumer protection are considered in this chapter. It should be noted that the regulatory scheme applies without regard to ownership. Most submitters to this inquiry, though they had various concerns and suggestions about the regulatory scheme, had no objection in principle to the sale of Telstra providing the regulatory scheme is strong enough.

2.3 The pro-competition regulatory regime may be considered as the underpinning of consumer protection, in that more competition is expected to flow through into cheaper and better services generally. As well, there are various more direct consumer safeguards to ensure adequate telecommunications service for all Australians. The rationale for these, according to the government, is that -

> …While competition will, in most cases, provide a good outcome for consumers, there is a need for safety nets to ensure that in all cases consumers have a guarantee of certain basic levels of service.[1]

2.4 This applies particularly to people living in the smaller states and in rural and regional areas where competition may be slower to develop.

2.5 These safeguards are:

- the Universal Service Obligation, which ensures that standard telephone services and pay phones are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business (*Telecommunications Act 1997*, section 138)

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1 Minchin the Hon N., *Telecommunications (Consumer Protection and Service Standards) Bill 1998* - second reading speech, Senate *Hansard*, 30 November 1998, p.610

- the National Relay Service, which provides a service comparable to a standard telephone to people with a hearing or speech impediment (*Telecommunications Act 1997*, section 221A)
- access to untimed local calls, and comparable benefits for rural customers outside standard zones (*Telecommunications Act 1997*, section 222, 226)
- price caps applying to Telstra (*Telstra Corporation Act*, section 20), and power to regulate charges for the defined universal services (*Telecommunications Act 1997*, section 172)
- directory assistance to users of a standard telephone service (*Telecommunications Act 1997*, schedule 2 clause 7: standard licence conditions). Under present price cap arrangements, Telstra may not charge for directory assistance.
- emergency call service (*Telecommunications Act 1997*, section 264)
- the Customer Service Guarantee, which sets standards for installation, fault rectification and appointment-keeping by all carriage service providers, and sets damages payable to customers when the standards are not met (*Telecommunications Act 1997*, section 234)
- a scheme to protect customers' payments in advance against default by a service provider (*Telecommunications Act 1997*, section 252)
- the Telecommunications Industry Ombudsman scheme to investigate customers' complaints (*Telecommunications Act 1997*, section 244)

2.6 All these protections continue unchanged in the *Telecommunications (Customer Protection and Service Standards) Bill 1998* (the *T(CPSS) Bill*), but with the following enhancements:

- The power to regulate Telstra's prices is amended to make it clear that price caps can include charges for untimed local calls in regional areas; to allow different price control arrangement to apply in relation to one type of Telstra service charge; and to require Telstra to comply with any determination setting out price control arrangements (*T(CPSS) Bill 1998*, part 9). As well, an amendment to the *Trade Practices Act 1974* will make it explicit that the Australian Competition and Consumer Commission (ACCC) is responsible for monitoring and reporting each financial year to the Minister on Telstra's compliance with its price control arrangements and the universal service provider's compliance with any universal service-related price controls (*Telecommunications Legislation Amendment Bill 1998* (*TLA Bill*), schedule 1 item 29).
- A new 'systemic problems' provision enhances the Customer Service Guarantee (CSG) by allowing the Australian Communications Authority to give directions to carriage service providers with a view to ensuring that they comply with CSG performance standards (*T(CPSS) Bill 1998*, clause 118). Disobeying such a direction could incur a penalty of up to $10 million. This provision answers the

complaint that the regulated damages for failing the CSG standards are too small, so that companies might find it cheaper simply to pay the damages than to provide the service. As well, a new provision will enable the Australian Communications Authority (ACA) to make a determination requiring carriage service providers to give customers specified information about terms and conditions of service and about their rights as customers including their rights under the Customer Service Guarantee (*TLA Bill 1998*, schedule 2).

2.7 The *T(CPSS) Bill 1998* also includes a new power for the Minister to direct Telstra to comply with the Act (clause 159). Disobeying such a direction could incur a penalty of up to $10 million. This provision replaces the Minister's more general power to direct Telstra (*Telstra Corporation Act 1991*, section 9). The current more general power to direct will be repealed when Commonwealth ownership of Telstra falls below 50 per cent, as the government thinks the more general power is inappropriate in a competitive private telecommunications market.

2.8 Submissions approved the measures proposed in the bills, but made various suggestions as to how, in their view, the consumer safeguards should be strengthened further. These are summarised below. These suggestions raise policy questions which have no *logical* connection to the proposed sale of Telstra (since the regulatory regime applies to all without regard to ownership). Their connection to the present inquiry arises from the concern that (to quote the Western Australian government, for example) '…further tightening of the safeguards… is necessary to be both legislated and proven effective before the sale proceeds'.[2] The Committee comments on this argument on page 28.

Universal Service Obligation

2.9 The Universal Service Obligation (USO) requires a universal service provider to provide a 'standard telephone service' (voice telephony, or equivalent service for people with disabilities) to all who request it; to provide payphones; and to provide any other services prescribed in the regulations (at present, no other services are prescribed). The Minister may also declare 'regional universal service providers' for specified areas. If an area ceases to have a regional universal service provider, the obligation to provide the universal service in that area defaults back to the national universal service provider (*Telecommunications Act 1997*, sections 17, 141ff).

2.10 At present Telstra is the national universal service provider. The government's policy is to call tenders for the provision of the universal service, and this was welcomed by most witnesses at this inquiry, including both Telstra and Telstra's competitors.

2 Submission No. 9 (Government of Western Australia), p. 9

Expansion of universal service to include data capability

2.11 An Australian Communications Authority Standard sets the minimum data speed for voice telephony at 2.4 kilobits per second (kps). This, though adequate for voice telephony, is far too slow to support data applications such as fax or Internet access: for example, at this speed it would take about 100 seconds to fax an A4 page, or 3 minutes to view an average Web page. In practice the Public Switched Telephone Network (PSTN), though it was not designed for it, can transmit data at useful speeds to most customers. However, in this regard rural customers are relatively disadvantaged, largely because data speed drops over long runs of copper wire. A data rate of 28.8kps is available to 60 per cent of urban and major provincial customers but only 30 per of rural and remote customers.[3]

2.12 Several submissions stressed the importance of modern telecommunications in rural and regional areas - in fact, they argued that, because of physical isolation, modern telecommunications are relatively *more* important in rural and regional areas than in the cities. For example, according to the South Australian government:

> Telecommunications services are becoming an increasingly important mode of delivery for State Government services to the community… It is apparent from this State's experience with the Commonwealth's Regional Telecommunications Infrastructure Fund (RTIF) that regional awareness and expectations of telecommunications services and technology is at an all-time high and that regional users are equally if not more demanding than their city counterparts…[4]

2.13 According to the Western Australian government there are a significant number of unmet needs in rural areas which could be delivered electronically:

> … One is thinking in terms of health services, education services and a number of others. That requires data capacity rather than voice capacity. Outside of the Perth metropolitan area, over 70 per cent of Telstra's customers cannot get a data speed over 28.8 kilobits per second, whereas most of those electronic service delivery methods require 64 or 128 or higher data speeds. The existing infrastructure is not able to provide that.[5]

2.14 Submissions feared that 'the lack of a data capable USO will only serve to exacerbate the widening gulf between the information rich (major cities) and the information poor (regional) residents'.[6] The National Farmers Federation among others argued strongly that all Australians, regardless of location, should have affordable access to digital data capability:

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3 Australian Communications Authority, *Digital Data Inquiry - public inquiry under section 486(1) of the Telecommunications Act 1997*, August 1998, pp. 5,19,33

4 Submission No. 25 (Government of South Australia) pp. 3-4

5 P. Skelton (Government of Western Australia), Evidence 3 February 1999, p. 60

6 Submission No. 25 (Government of South Australia) p. 4

> The NFF believes that all regulation and legislative changes must reflect a commitment to an upgrade in quality standards of existing services, not merely a maintenance of the status quo.[7]

2.15 The Committee endorses these concerns. The Committee notes that the government's policy is to include in the USO a requirement to provide a 64kps ISDN service on demand to at least 96 per cent of the Australian population, and a comparable satellite service to the rest. The Committee considers that this policy should satisfy most of the concerns expressed in submissions to this inquiry.

2.16 There remains a concern about whether, without a price cap, this service will be affordable. The Communications, Electrical and Plumbing Union argued that -

> '…it is now possible for a service provider to make a service universally "available" while still pricing it out of reach of many consumers. This effectively robs the concept of the USO of all meaning.'[8]

2.17 In the Committee's view a 'universal service' must be not only available but it must also affordable by its intended recipients. The Committee notes the government's present initiatives in this regard - a subsidised trial of satellite access; a policy commitment to subsidise the associated costs more widely; a $70 million program to establish rural transaction centres in country towns and a $36 million program to give all Australians local call access to the Internet.[9] The last two of these are provided for in the *Telstra (Transition to Full Private Ownership) Bill 1998*, to be funded from the next partial sale of Telstra. The Committee notes that the government is now reviewing the Telstra price cap regime under section 20 of the *Telstra Corporation Act 1991*, and has flagged for discussion the question of whether services such as ISDN should be price capped.[10]

Cost of the Universal Service Obligation

2.18 The Universal Service Obligation (USO) is carried out by Telstra, and Telstra's loss from providing mandated uneconomic services is partly reimbursed by other carriers so that all carriers share the cost in proportion to their share of the total telecommunications market. For several years the industry has been in dispute over what real cost of the USO is, and the ACA's determinations on this have been a compromise agreed to by the carriers. In 1996/97 the ACA determined the USO loss as $251.56 million. In October 1998, using a new methodology, Telstra estimated its

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7 Submission No. 16 (National Farmers Federation), p. 6-7

8 Submission No. 19 (Communications, Electrical and Plumbing Union), p. 12

9 Alston the Hon. R, *Alston launches rural satellite Internet trial*, press release 27 November 1998; Liberal Party of Australia and National Party of Australia, *Communications: Making Australia Stronger*, Coalition policy statement September 1998.

10 Department of Communications, Information Technology and the Arts, *Discussion Paper - Telstra Retail Price Control Arrangements*, December 1998, p10

actual 1997/98 USO loss as $1.8 billion - about seven times greater than the previous figure. The ACA is now considering this claim.

2.19 In their submissions Telstra's competitors argued that Telstra's cost information needs to be more transparent:

> If we have to pay our share of it, we should be able to see the bill and get a decent invoice for us to look over.[11]

2.20 The competitors believe that the ACA's deliberations on Telstra's claim would benefit from more consultation with them earlier in the assessment process:

> The way the legislation states it at present, competitors do have access to Telstra's cost claims [but only] once the ACA has made its assessment. The fact of the matter is that our contribution to the ACA's process is really needed during the assessment process, not subsequent to it.[12]

> We consider that the ACA's ability to fully assess Telstra's claim would be enhanced by a greater contribution from ourselves. We have already raised questions of the ACA's resources and the timeliness of what the ACA can do. The early release of this information would enable us to provide full input to the ACA.[13]

2.21 In any case, the competitors dispute the amount of the claim. For example:

> We just cannot understand some of the figures that Telstra has come up with. Optus has already mentioned that in one area Telstra has costed out the delivery of one service at $88,000. That is 20 times what we think the maximum amount would be to deliver a satellite service. In other areas where Telstra is looking at cable delivery, the maximum average cost for it is $66,000. That is 40 times what we think wireless delivery would cost. These figures are just mind-boggling to us….[14]

2.22 This raises the obvious possibility of calling tenders to provide the Universal Service, so that carriers who think they can do it cheaper than Telstra have the chance to prove it. Several competitors expressed interest in doing so:

> …here is a market of $2.4 billion, according to Telstra's claim, and you have all your costs, reasonable losses, reimbursed. We believe that would be very attractive to a lot of businesses within Australia. This is a franchise that has just been allocated by government to Telstra and I endorse what

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11 A. Grant (AAPT Ltd), Evidence 3 February 1999, p. 10

12 A. Grant (AAPT Ltd), Evidence 3 February 1999, p. 10

13 C. Dalton (Vodafone Network Pty Ltd), Evidence 3 February 1999 p. 24

14 C. Dalton (Vodafone Network Pty Ltd), Evidence 3 February 1999 p. 21

> previous speakers have said about wanting the opportunity to tender for that.[15]

2.23 Some submitters saw a link between competitive tendering and the quality (not merely the cost) of the service:

> Competitive tendering is important not just so that the rest of the industry which shares the USO burden can fulfil that burden for a lesser amount, but also so that the savings that result and the ability of new entrants to fulfil the USO will mean that the USO will become a forward-looking concept rather than a static concept. That is one of the major concerns. It is not just the cost of funding it; it is what people in non-urban areas are getting for the standard telephone service.[16]

2.24 On the other hand, some were concerned about what would happen if a regional universal service provider failed, possibly leaving an area without any universal service at all. For example:

> …we really do need to have some discussion on this issue of tendering out the USO and some discussion as to how it might happen, to ensure that Australians are not left without a telecommunications service.[17]

2.25 In this regard the Committee notes that under the Act, if at any time a carrier ceases to be a regional universal service provider for a particular area, and is not replaced by another regional universal service provider, the national universal service provider automatically becomes the universal service provider for that area (*Telecommunications Act 1997*, section 151). Thus there is no possibility of an area being left without universal service.

2.26 The government's policy is to investigate putting the Universal Service Obligation to tender, and the Department of Communications, Information Technology and the Arts (DOCITA) is currently preparing a discussion paper canvassing the issues involved.[18] The government is also considering its position on the funding of the USO in light of Telstra's $1.8 billion claim. On the competitors' concerns about what they see as inadequate information on Telstra's costs, DOCITA comments:

> …we are generally well disposed to the notion that, where possible, information that assists the development of a competitive market should be made available but these have to be balanced against considerations of

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15 C. Dalton (Vodafone Network Pty Ltd), Evidence 3 February 1999 p. 21

16 A. Grant (AAPT Ltd), Evidence 3 February 1999, p. 15. See also P. Skelton (Government of Western Australia), Evidence 3 February 1999 p. 59

17 W. Craik (National Farmers Federation), Evidence 3 February 1999, p. 34. See also H. Campbell (Consumers' Telecommunications Network), Evidence 3 February 1999, p. 36; R. Eason (Communications, Electrical and Plumbing Union), Evidence 3 February 1998 p. 50

18 J. Neil (Dept of Communications, Information Technology & the Arts), Evidence 3 February 1999 p. 70

> commercial in confidence and people getting competitive advantage through getting access, say, through a USO provision. So there would be a balancing to be considered, but generally speaking if you want a departmental position, I think we could say that we are in favour of as much disclosure as is reasonable in a pro-competitive framework.[19]

2.27 Telstra has indicated that it has no objection to tendering the USO, and is sceptical of its competitors' claims about how cheaply they could perform the service.[20]

2.28 The Committee supports the government policy of tendering the Universal Service Obligation. This will provide the opportunity for competitors to prove their claims that Telstra's costs are unnecessarily high. Of course the process will need to be properly controlled to avoid the risks that some submitters feared (such as the risk of a provider defaulting). Contract periods would have to be short enough to preserve in providers the discipline that comes from knowing that they will soon have to compete for the next contract; and, at this time of rapid technological change, they should not lock in particular modes of provision for extended periods. In recent years there has been considerable experience of contracting out performance of subsidised public services: the Committee is confident that with this experience, and with adequate resources in the regulatory authorities, the matter can and will be managed properly to the benefit of both efficiency and service quality.

Recommendation 1

The Committee recommends that the government should proceed with the development of a Universal Service Obligation (USO) tendering scheme with a view to determining if there is a serious commitment from industry to participate in such arrangements.

Customer Service Guarantee

2.29 The Customer Service Guarantee Standard (CSG) was an initiative of the Coalition Government before the part sale of Telstra in 1997. It sets standards that carriage service providers must comply with in relation to waiting times for installation of services; waiting times for fault rectification; and appointment keeping. Default makes the provider liable for set damages - for example, the damages for failing to connect a standard telephone service by the set day, for each working day of delay after the first five, are $40 per day.

2.30 The CSG's enabling provision has wide scope (the CSG can relate to any 'carriage services' - *Telecommunications Act 1997*, section 234), but the present

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19 J. Neil (Dept of Communications, Information Technology & the Arts), Evidence 3 February 1999 p. 71

20 G. Ward (Telstra), briefing to committee 15 February 1999 p. 2, 16 February 1999 p. 8

standard is defined to apply only to the standard telephone service terminating at a handset without switching functions, and certain enhanced call handling features (such as call waiting, call barring and calling number display). Thus it does not apply to mobile services, services that terminate at customer switching systems (PABX's and small business systems) or customer equipment (such as the handset). Details of the Customer Service Guarantee Standard are in Appendix 4.

2.31 A provision proposed in the present bills enhances the Customer Service Guarantee (CSG) by allowing the Australian Communications Authority to give directions to carriage service providers in relation to 'systemic problems' with a view to ensuring that they comply with CSG performance standards (*T(CPSS) Bill 1998*, clause 118). Disobeying such a direction could incur a penalty of up to $10 million. As well, a new provision will enable the Australian Communications Authority (ACA) to make a determination requiring carriage service providers to give customers specified information about terms and conditions of service and about their rights as customers, including their rights under the Customer Service Guarantee (*TLA Bill 1998*, schedule 2). This is in line with a recommendations of this committee in its May 1998 report on the earlier *Telstra (Transition to Full Private Ownership) Bill 1998* (see Appendix 3).

2.32 Submissions supported the proposed 'systemic problems' provision, but had various other concerns and suggestions on how they thought the CSG should be strengthened:

- The Government of Western Australia argued that the scope of the services covered by the CSG should be widened - for example, to include mobile service, customer equipment such as the handset, payphones and directory assistance.[21] The Communications, Electrical and Plumbing Union pointed out that the proposed 'systemic problems' provision is limited by the limited scope of the CSG itself.[22]

- The Australian Telecommunications Users Group argued that the CSG should include standards for operational performance as well as installation, fault rectification and appointment keeping.[23]

- The National Farmers Federation (NFF) argued that the actual standards are inadequate, particularly the potential 12 months wait for connection in rural areas. The NFF argued strongly that '…the current CSG should be altered to reflect the same quality of service and timeframes for all Australians.'[24]

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21 Submission no. 9 (Government of Western Australia), p. 6; Submission No. 12 (Consumers Telecommunications Network), p. 15; Submission No. 19 (Communications, Electrical and Plumbing Union), p. 10

22 Submission No. 19 (Communications, Electrical and Plumbing Union), p. 10

23 Submission No. 5 (Australian Telecommunications Users Group), p. 7

24 Submission No. 16 (National Farmers Federation), p. 7

> It seems a bit odd that it takes three days to repair a fault in remote areas and 12 months to install a phone in the same areas.[25]

- The CSG provides that a carriage service provider is not liable for delays caused by faults in a carrier's network. Macquarie Corporate Telecommunications pointed out the difficulty that the carrier is not liable either. Thus (Macquarie argued) there is no incentive for the carrier (Telstra) to repair a fault associated with a Macquarie customer; whereas Telstra would be liable if the customer was a direct customer of Telstra. This would discourage people from becoming customers of Macquarie.

- Submissions argued that the damages are not high enough to counteract the possible savings from cutting staff at the expense of service - particularly in country areas.

> …there is still a concern that carriers may opt to pay the penalty rather than install the phone.[26]

> Just providing a payment for every day's rental that the phone is out of order when the phone is not repaired is no substitute for actually having the ability to do your business or the ability to actually make contact. It is much more important for our constituents to have the phone.[27]

2.33 Telstra's compliance with the CSG standard is described in the ACA's recent *Telecommunications Performance Report 1997-98*. From January to June 1998 Telstra's success in connecting new services within the set times was mostly in the range 80 to 90 per cent depending on location, and slightly higher for rural and remote than for urban customers (this does not mean faster connections in rural and remote areas, but merely better success at meeting more liberal deadlines). Telstra's success in clearing faults within the set times was mostly in the range 50 to 90 per cent depending on location, and significantly worse for rural and remote than for urban customers. In respect of appointment-keeping the ACA reported that -

> …Telstra has not sought to comply with the CSG Standard… While the ACA is aware of Telstra's systemic breach of the CSG Standard in this regard, the ACA currently has no power, other than that of persuasion, to act on this breach.

2.34 An ACA survey found that 55 per cent of small businesses and 45 per cent of residential households were aware that they are eligible for a rebate on their telephone rental for a breach of the CSG standards.[28]

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25 W. Craik (National Farmers Federation), Evidence 3 February 1999, p. 33

26 Submission No. 9 (Government of Western Australia), p. 7

27 W. Craik (National Farmers Federation), Evidence 3 February 1999, p. 28

28 Australian Communications Authority, *Telecommunications Performance Report 1997-98*, p. 20ff

2.35 The ACA has recently reviewed the Customer Service Guarantee Standard, in accordance with a request from the Minister to review the Standard with a view to tightening it where practicable. The review considers most of the matters mentioned above. Some key findings and recommendations are:

- The standard should apply to standard telephone services with up to five terminating lines. This would protect small businesses who are not now covered.
- It is not necessary or justifiable to include additional carriage services (such as mobiles or Internet access services) in the standard, because in these areas there is effective competition and little evidence that poor service is a problem.
- It would be premature to broaden the scope of the standard to include additional customer services (such as complaint handling, billing, disconnection), in light of the principle of encouraging industry self-regulation.
- The relationship between the CSG and the Universal Service Plan should be clarified given the concern that current linkages place Telstra in a position where it is driving an industry standard. [At present some of the CSG standards are imported by reference from Telstra's Universal Service Plan.]
- Some definitions (such as 'not readily accessible to infrastructure') should be clarified.
- Some of the deadlines for service should be tightened.
- The problem between carriage service providers and carriers [described by Macquarie Corporate Telecommunications, page 19 above] should be tackled by an industry code.[29]

2.36 The Government has accepted the ACA's recommendations, though implementation of some recommendations will be delayed to allow the industry to prepare. The process of drafting a new CSG direction from the Minister to the ACA will include further consultation with industry and consumer groups.[30]

2.37 In view of this the Committee will make no more detailed comments here. The Committee affirms the importance of ensuring that the Customer Service Guarantee is a genuine spur to satisfactory service, so that its damages are not simply treated as an expense associated with economies of staffing. In this regard the proposed power and penalties in the *T(CPSS) Bill 1997* relating to 'systemic faults' are an important initiative which, in the Committee's view, answers the concern that service providers might find it cheaper simply to pay the damages than to provide the service.

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29 Australian Communications Authority, *Review of the Telecommunications Customer Service Guarantee - report to the Minister for Communications, Information Technology and the Arts*, October 1998, p. 4ff

30 Submission No. 10 (Department of Communications, Information Technology and the Arts), p. 17

Other measures in the Telecommunications Act

Untimed local calls

2.38 Carriage service providers providing a standard telephone service must offer untimed local calls (voice and data calls for residential/charity customers; voice only for business customers). This duty does not apply to mobile or satellite services unless it is being supplied to fulfil the Universal Service Obligation. A 'local' call is one that starts and finishes in the same call zone. The default call zones are those in force at 30 June 1991, though a carrier may nominate different zone boundaries with the consent of the customer. (*Telecommunications Act 1997*, section 222ff).

2.39 Price caps under section 20 of the *Telstra Corporation Act 1991* limit Telstra's charges for local calls to 25 cents (40 cents from payphones). Average charges for local calls in country areas must be no more than in the capital cities (the 'local call pricing parity scheme'). The present price cap regime (which includes these and various other caps) expires on 30 June 1999, and the government is now considering its future. The Department of Communications, Information Technology and the Arts released a discussion paper on this in December 1998 calling for comment by 12 March 1999. The government's policy is to maintain price caps, including the 25c/40c local call cap and the local call pricing parity scheme.[31]

2.40 Section 226 of the *Telecommunications Act 1997* mandates 'comparable benefits' for customers outside standard zones (ie in remote areas). These customers (about 37,000) are given a 'pastoral call rate' of 25c for 4.5 minutes for calls to their nearest community service town, and a rebate of up to $160 per year on pastoral call charges.[32]

2.41 The Western Australian Government regards the present arrangements as inadequate for the needs of rural and remote customers:

> …A fixed rebate to such customers [outside standard call zones] was a welcome short-term measure but quite inadequate long term response… Untimed local call access should be provided to all customers in the current extended charging zones, in the same manner that local calls are provided to customers in standard zones…. The need is highlighted by the fact that customers in extended zones do not have the same alternatives to the telephone as are available to standard zone customers. For example, extended zone customers cannot use as a substitute for the telephone call a five minute walk or drive to the called party, be it a shop, school, doctor, post officer or neighbour… Much of regional and remote Western Australia is served by a widely dispersed network of very small towns, rather than a

31 Liberal Party of Australia and National Party of Australia, *Communications: Making Australia Stronger* [Coalition policy statement] September 1998, pp.2,10; Department of Communications, Information Technology and the Arts, *Discussion Paper - Telstra Retail Price Control Arrangements*, December 1998

32 Submission 10 (Department of Communications, Information Technology and the Arts), p. 16

> smaller number of large regional centres. Consequently, not all extended zones may have a town that can provide even the limited array of services listed above.[33]

2.42 The WA Government suggested that 'the universality of access to untimed local calls could be treated as part of the Universal Service Obligation regime.'[34] The National Farmers Federation (NFF) argued that the zone structure should be revisited as 'a matter of urgency' with a view to increasing zone boundaries and reducing the number of zones. The NFF doubts that the present zones are appropriate in view of the decline of services in rural and regional communities; the historic inertia in zoning decisions; improvements in network technology and cost reductions, making distance less relevant to costs; and the fact that 'Telstra is acting as judge over its own decisions with regard to zonal charging arrangements'. The NFF called for a public inquiry into call zones and related issues with recommendations to be implemented by 1 October 1999.[35] The Consumers' Telecommunications Network recommended that the Telecommunications Act should provide for declaration of local call zones by regulation, providing this does not have the effect of increasing call costs for any group of residential customers.[36]

2.43 Telstra, responding generally to such suggestions, pointed out that Australia has among the largest untimed local call zones in the world. Telstra said that -

> The principles behind Telstra's local and long distance calling structures have been the subject of many inquiries over the years - as I recall, they have been subject to at least two or three parliamentary inquiries. Certainly Telstra continues to review the appropriateness of its call zones and its long distance charging arrangements.[37]

2.44 As well, Telstra argued that any increase in local calling areas could only be done in conjunction with appropriate rebalancing of charges, which would have losers as well as winners overall:

> Abolishing local call zones for a single rate long distance charge would mean that some customers would be likely to incur an increased price on call so others could enjoy a significantly reduced price. Pricing differentiation between competitors would also be constrained under this type of scenario where they could not undercut a local call price. Therefore,

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33 Submission No. 9 (Government of Western Australia), p. 2-3

34 Submission No. 9 (Government of Western Australia), p. 3

35 Submission No. 16 (National Farmers Federation), pp. 9-10, quoting House of Representatives Standing Committee on Expenditure, *Ringing in the Change - Telecom's zonal charging policies*, 1984. Also W. Craik (National Farmers Federation), Evidence 3 February 1999, p. 33; P. Skelton (Government of Western Australia), Evidence 3 February 1999, p. 63

36 Submission No. 12 (Consumers' Telecommunications Network), p. 16

37 G. Ward (Telstra), briefing to committee 15 February 1999, p. 6

> increasing a social benefit in one area has implications for the shape of competition under other aspects of the current regulatory regime.[38]

2.45 The Committee notes the government's policy initiatives on this issue:

- $150 million from the sale of Telstra will be allocated over three years to upgrade infrastructure in remote Australia. Following this all calls within an extended zone will be untimed local calls. The infrastructure upgrade is necessary to handle the expected increase in traffic.[39]
- The pastoral call rate will be replaced by a new preferential rate of 25c for 12 minutes, which will benefit over 700,000 Australians who live in extended zones or community service towns.[40]

2.46 The Committee considers that these initiatives should largely answer the concerns expressed. However the Committee agrees that the call zone structure should be regularly reviewed having regard to demographic and technological changes. The present default call zones, for the purposes of the law mandating untimed local calls, are those in use by Telstra at 30 June 1991 (*Telecommunications Act 1997*, section 227). Considering the speed of technological change, it is not self-evident that these are still appropriate; but without appropriate call zones the public policy behind mandatory untimed local calls does not achieve its purpose. The Committee agrees with the National Farmers Federation that the call zone structure should be publicly reviewed as a matter of public policy, whether or not it is also continuously reviewed by Telstra for Telstra's purposes.

Recommendation 2

The Committee recommends that the government should review the appropriateness of the standard call zones, having regard to demographic and technological change.

Emergency service

2.47 Carriage service providers must give their customers free access to an emergency call service. Where the carriage service provider and the operator of the emergency call service are different parties, the terms and conditions of the service are as agreed between them, or failing that, as arbitrated by the ACCC. Performance

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38 Submission No. 21 (Telstra), p. 12

39 Liberal Party of Australia and National Party of Australia, *Communications: Making Australia Stronger* [Coalition policy statement] September 1998, p. 15; Alston the Hon. R. & Fischer the Hon. T., *Government extends untimed local calls to remote Australians*, press release 10 July 1998

40 Liberal Party of Australia and National Party of Australia, *Communications: Making Australia Stronger* [Coalition policy statement] September 1998, p. 16

standards are set out in an ACA determination. At present Telstra is the national operator of emergency call services.[41]

2.48 Several submissions were concerned that the integrity of the emergency call service should not be compromised by commercial considerations. They noted recent mishaps in attending to emergency calls from mobiles where the location is uncertain (nearly 20 per cent of all emergency calls are now from mobiles):

> …you would have picked up the foul-up of mobile calls to the 000 number over Christmas. I think that occurred on two occasions. An incorrect location was identified and the emergency service was sent to the wrong place.[42]

2.49 The Australian Telecommunications Users Group (ATUG), supported by the Bureau of Emergency Services (Telecommunications), argued that mobile origin location information should be available to reduce these problems. ATUG argued that this is technically possible, but has been held up by the lack of motivation of the carriers:

> Much work has been done over the past two years to develop a standard approach to Mobile Origin Location Information… but with very limited success. Mobile carriers do not appear to be motivated to agree to a standard approach.[43]

2.50 Another concern is the lack of an explicit funding mechanism for the emergency service. The Consumers' Telecommunications Network (CTN) is concerned that '…there is a perception that if Telstra becomes fully privatised there will be a diminishing commitment to quality of 000 service provision as this is not a potential source of revenue or profit.' CTN urged that emergency call costs should be subject to independent audit and included in the Universal Service Obligation arrangements. [44]

2.51 The government will monitor Telstra's progress on the provision of geographical identification.

2.52 The Committee agrees that the integrity of the emergency call service is vital. Whether the service is best maintained by making it part of the Universal Service Obligation, or by current arrangements in which the cost is largely absorbed by Telstra, is a matter for the government to consider. It is an essential service mandated

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41 *Telecommunications Act 1997*, section 264ff; Australian Communications Authority, *Telecommunications (Emergency Call Service) Determination 1997, Telecommunications (Emergency Call Person) Determination 1997*

42 A. Horsley (Australian Telecommunications Users Group Ltd), Evidence 3 February 1999, p. 2

43 Submission No. 5 (Australian Telecommunications Users Group), p. 8. Submission No. 24 (Bureau of Emergency Services Telecommunicaions), p. 1

44 Submission No. 12 (Consumers' Telecommunications Network), p. 17; also Submission No. 24 (Bureau of Emergency Services Telecommunications), p. 1

for social policy reasons quite analogous to the present Universal Services; to put it in the Universal Service Obligation would make all carriers contribute to the costs in proportion to their share of total telecommunications business. Whatever the funding mechanism, the essential thing is that performance standards are clear, adequate, and enforced, so as to reduce the incidence of mishaps like those mentioned above.

2.53 The Committee agrees that given the increasing use of mobiles, the emergency service should include mobile location information. The Committee notes evidence from the Department of Communications, Information Technology and the Arts on current progress in this regard:

> Telstra has indicated in its recent proposals to make changes to its emergency call handling arrangements so that it would provide, by I think April of this year, the stated origin of those [mobile] calls. There is work occurring in the United States in relation to improving the ability of mobile networks to identify the location of the mobile caller. In addition, the Australian Communications Industry Forum, which is an industry self-regulatory body, is working on what they call mobile location indicators, or MOLI. Those provisions or those arrangements are used not only for the emergency call handing arrangements but for some other commercial services operated by carriers. When those capabilities are available then the ACA would, under its obligations with the emergency handling arrangements, need to consider whether to incorporate such obligations into its determination about how emergency calls should be handled.[45]

2.54 The Committee notes that the ACA is currently deliberating on a draft new emergency call standard, which (after consultation with stakeholders as required by the Act) is expected to be in operation by the middle of 1999.[46]

Recommendation 3

The Committee recommends that the government should monitor the performance of carriers in this area and make sure that mobile location indicators for the emergency call service are appropriately implemented.

Directory assistance

2.55 A carriage service provider who supplies a standard telephone service must provide directory assistance (*Telecommunications Act 1997,* schedule 2, clause 6). Under present price cap arrangements Telstra's directory assistance service must be free. The Committee is not aware of any intention to change the current directory assistance arrangements.

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45 J. Cameron (Department of Communications, Information Technology & the Arts), Evidence 16 February 1999 p. 26

46 Pers. comm. Frances Wood (Australian Communications Authority), February 1999

2.56 The Communications, Electrical and Plumbing Union argued that there has been a 'deterioration of performance' in the service in recent times, and that Telstra has made no attempt to resource the service sufficiently to meet the government's policy that 90 per cent of calls should be answered within 10 seconds.[47] The ACA reports that responses within 10 seconds have averaged around 53 per cent since monitoring started, but improved to 60 per cent in the last quarter of 1997-98 after work practice changes.[48] Use of the service has increased greatly in recent years, and some argue that it is being over-exploited because it is free:

> We supported a Telstra proposition last year that a reduction of $5 to $10 in line rental and a charge for directory services was not unreasonable - that is, it was a cost neutral transfer of arrangements… basically business customers abuse the directory service - they do not read the books… we became convinced by the Telstra argument because there was a blow-out in the use of directories, and somewhere along the line it had to be controlled.[49]

2.57 The Department of Communications, Information Technology and the Arts stresses that any proposal to charge for directory assistance requires a report from the ACCC and a decision by the minister, and considers that these arrangements 'provide flexibility and scope for community input via the ACCC report.' The arrangements are not dependent on public ownership of Telstra.[50]

Number portability

2.58 The ability of customers to keep their telephone numbers while changing service providers is a critical factor in promoting competition and improving customer service. The *Telecommunications Act 1997* provides that the ACCC may direct the ACA to provide for number portability in the ACA's numbering plan for carriage services (*Telecommunications Act 1997*, sections 455(5), 458(1)).

2.59 The ACCC made such a direction in September 1997 in respect of local, freephone (1800) and local rate (13) services. In March 1998 the ACA fixed a deadline of 1 January 2000 for full local number portability. No date has yet been set for portability of freephone and local rate numbers. The ACCC has made no direction in relation to mobile services, but has asked the ACA to conduct further research on the technical options.[51] The ACA's report is now being considered by the ACCC, which must now make a decision whether to direct the ACA to provide for mobile number portability.[52]

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47 Submission No. 19 (Communications, Electrical and Plumbing Union), p. 10

48 Australian Communications Authority, *Telecommunications Performance Report 1997-98*, pp. viii, 64

49 A. Horsley (Australian Telecommunications Users Group Ltd), Evidence 3 February 1999, p. 6

50 Submission No. 10 (Department of Communications, Information Technology and the Arts), p. 23

51 Australian Communications Authority, *Telecommunications Performance Report 1997-98*, pp. 148-9

52 Submission No. 10 (Department of Communications, Information Technology and the Arts), p. 36

2.60 Several submissions to this inquiry complained that the ACA's action on number portability has been too slow:

> …we are disappointed that the ACA has agreed to a delay in number portability for complex services because, quite frankly, we see that as a disaster.[53]

2.61 The Australian Telecommunications Users Group (ATUG) argued that, at minimum, all carriers should be capable of providing portable numbers for all services offered by them by 30 December 1999. ATUG also recommended 'fresh look provision' whereby, for a period after introduction of portability, customers with long-term agreements should be able to terminate them without liability.[54]

Services for people with disabilities

2.62 The *Telecommunications Act 1997* has several special provisions for people with disabilities. The definition of 'standard telephone service' includes equivalent functionality for people with disabilities (for example, communication by teletypewriter for the deaf). The Universal Service Obligation includes supply of the necessary customer equipment. The National Relay Service, funded by a levy on carriers, provides persons who are deaf, or who have a hearing and/or speech impairment, with access to a standard telephone service on terms comparable to other people's access. (sections17,142, 221Aff)

2.63 However, the Telecommunications & Disability Consumer Representation Project pointed out several sections of the *Telecommunications Act 1997* where, in its opinion, extra reference should be made to people with disabilities. These relate mostly to consultation on industry codes and standards. For example, the ACA (through the Australian Communications Industry Forum) is drafting a Disability Standard under section 380 of the Act; but the enabling provision does not include any requirement that appropriate representatives of the disability sector should participate.[55] According to the Telecommunications & Disability Consumer Representation Project, the matter is important because:

> Very often the telephone is of more benefit and necessity to those of us with disabilities than to people generally. However, the changing nature of technology often makes it more difficult to use telecommunications products and services. Therefore, it is unacceptable to us that sometimes when products and services are developed they are not readily usable by people with disabilities.[56]

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53 A. Horsley (Australian Telecommunications Users Group Ltd), Evidence 3 February 1999, p. 7. Similarly M. Krishnapillai (Macquarie Corporate Telecommunications), Evidence 3 February 1999, p.20

54 Submission No. 5 (Australian Telecommunications Users Group Ltd), p. 3

55 Submission No. 3 (Telecommunications & Disability Consumer Representation Project), p. 5

56 W. Jolley (Blind Citizens Australia - Telecommunications & Disability Consumer Representation Project) Evidence 3 February 1999 p. 54

2.64 Another point of concern was section 113 of the Act (examples of matters that may be dealt with by industry codes and standards). The Telecommunications & Disability Consumer Representation Project argued that even though these are only examples, reference to disabilities should be explicit:

> I have found in the past that, with legislation that gives even indicative lists, people tend to look at the list of examples, even though it says 'without limiting', and that is where it stays; they develop the codes and the standards associated with what is on the list, and that is where it stops.[57]

2.65 The Project suggested amendments to sections 113, 117, 382 and 593 to make references to disabilities explicit.

2.66 The Committee is sympathetic to these concerns, but considers that they are adequately dealt with in the Act as it stands. As noted above, the Act defines the standard telephone service to include equivalent functionality for people with disabilities. In addition, the *Disability Discrimination Act 1992*, which provides for non-discrimination on grounds of disability, applies to the telecommunications industry generally as well as to other industries.

2.67 In relation to the particular sections of the Act raised in evidence, the Committee comments:

- Section 113 (examples of matters that may be dealt with by industry codes) lists topics relevant to *all* customers (for example, privacy; complaint-handling; debt collection). The list is not meant to be exhaustive. To mention particular groups (disabled, indigenous, non-English-speaking, rural, elderly…?) could lead to a very long list, which would still no doubt have omissions, and would be even more likely to be wrongly regarded as exhaustive. The Committee considers that interpreting section 113 appropriately having regard to minority needs is properly a matter for the discretion of the ACA. The Committee notes that before registering an industry code the ACA must be satisfied that at least one body representing consumers has been consulted (section 117(1)(i)).
- Similar considerations apply to section 593 (which deals with the minister's discretion to fund a consumer body to represent its interests).
- Before making a disability standard under section 380 the ACA must consider the representations of 'interested persons' (section 382). This would naturally need to include disability groups.

Comment

2.68 All the above suggestions for further improving guaranteed services raise policy questions which have no *logical* connection to the proposed sale of Telstra

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57 E. Casling (Blind Citizens Australia - Telecommunications & Disability Consumer Representation Project), Evidence 3 February 1999 p.58

(since the regulatory regime applies to all without regard to ownership). Indeed, many of these suggestions were made by parties who have no objection in principle to the sale of Telstra. For these suggestions to be relevant in argument against the full sale of Telstra relies on the following propositions:

- a fully private Telstra will more aggressively pursue profit at the expense of customer service; so stronger consumer safeguards are necessary, if not to improve, at least to maintain guaranteed minimum services; and/or
- after full sale it will be more difficult for the authorities to 'raise the bar' on Telstra.

2.69 The Committee does not accept these propositions. The various standards of mandated service will apply to a fully private Telstra no more and no less than they apply to the present partly private Telstra. Whether Telstra meets a standard is a matter for the regulators to monitor and enforce; and the Committee certainly agrees that there must be sufficient resources in the regulatory authorities, and strong enough penalties, to ensure that Telstra *does* meet the standards. The Committee notes that the *Telecommunications Act 1997* allows for civil penalties of up to $10 million for carriage service providers contravening the Act (sections 570, 101, schedule 2 section 1).

2.70 Whether a standard should be raised is a separate policy question. The point for this inquiry is that if and when the government wishes to raise a standard, the bills confer ample power on it to do so, regardless of whether Telstra is public or private. To take the matter which was of most concern in submissions to this inquiry: the minister's power to prescribe universal services, and to control charges for them, is arguably ample power to assure an adequate level of modern telecommunications in country areas.

2.71 Nevertheless, the Committee affirms that the matters raised above are very important. In particular, the Committee fully endorses the need for adequate and affordable data services in country areas, where their usefulness is arguably greatest. But this and the other matters are matters for the government to consider (as indeed the government is considering many of them now), not for the present bills.

2.72 In this regard, the Committee notes the government's policy commitments to maintain and strengthen the Universal Service arrangements as necessary; to maintain price caps; to put the Universal Service Obligation out to tender; to include ISDN service or a comparable 64kps service in the Universal Service Obligation;[58] and to ensure local call access to the Internet for all Australians.[59] We note also the ACA's

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58 This follows a report on the matter by the Australian Communications Authority which was required by section 141(2) of the *Telecommunications Act 1997*. Australian Communications Authority, *Digital Data Inquiry - public inquiry under section 486(1) of the Telecommunications Act 1997*, August 1998

59 Liberal Party of Australia and National Party of Australia, *Communications: Making Australia Stronger* [Coalition policy statement] September 1998

recent review on tightening the Customer Service Guarantee, the recommendations of which the government has accepted.[60] We note the new pro-competition measures in the present bills, detailed in chapter 3. We note the ACCC's recent draft declaration (December 1998) that will allow competitors easier access to the Telstra-owned local loop.

2.73 The Committee is satisfied that the legislation and proposed amendments provide appropriate consumer protection. The measures and consumer safeguards described in this chapter are not the actions of a government or regulatory authorities that are going easy on Telstra. They show the continuing commitment of the government and the authorities to assure mandated levels of consumer service regardless of the ownership of Telstra.

60 Australian Communications Authority, *Review of the Telecommunications Customer Service Guarantee - report to the Minister for Communications, Information Technology and the Arts*, October 1998; Submission No. 10 (Department of Communications, Information Technology and the Arts), p. 17

CHAPTER 3

REGULATORY MEASURES TO ENHANCE COMPETITION

3.1 The *Trade Practices Act 1974* (TPA) contains most of the relevant law against anti-competitive conduct. Parts XIB and XIC of the TPA contain detailed provisions relating to telecommunications. Part XIB of the *Trade Practices Act 1974* increases the ability of the Australian Competition and Consumer Commission (ACCC) to respond where there is evidence of anti-competitive conduct, particularly (though not limited to) predatory pricing behaviour. The ACCC does this for example, by making record-keeping rules, by ordering companies to supply details of their tariffs, or by issuing a 'competition notice' - that is, a finding of anti-competitive conduct which becomes *prima facie* evidence of the conduct in any court action to recover damages arising from the conduct.

3.2 Part XIC establishes an industry-specific regime for regulated access to carriage services. The legislation in that Part of the Act enables carriage services and services which facilitate the supply of carriage services to be declared by the ACCC. The consequence of declaration is that carriers and carriage service providers supplying declared services are, unless otherwise exempt, obliged to supply the declared services and specified ancillary services to requesting service providers. Where the parties cannot agree on the terms of access the ACCC may arbitrate.

3.3 The majority of submissions to the Committee (from Telstra's competitors and from ATUG) while supportive of the legislation, expressed concerns about the regulatory framework and its ability to deliver enhanced competition in the industry. For example, Macquarie Corporate Telecommunications :

> Overall, we would be supporting the thrust of the legislation. However, we see there is a significant opportunity to make the competitive framework actually work.[1]

3.4 This stance is supported by the Regulatory Manager for the AAPT who told the Committee that amendments are needed to make the legislation work in the way that the Parliament had intended it to work since July 1997. He argued that:

> Telstra's conduct to date has clearly indicated that it will do everything in its power to delay, resist and ultimately challenge any decisions or investigations that the ACCC engages in. We feel that, as a result of that conduct, a further strengthening of the regime is required.[2]

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1 Mr Krishnapillai, Evidence, p. 20, 3 February 1999

2 Mr Grant, Evidence, p. 12, 3 February 1999

3.5 The Committee notes that the legislation before it in this inquiry, in particular the provisions of the *Telecommunications Legislation Amendment Bill 1998*, addresses the concerns expressed by those same competitors of Telstra to the Committee's previous inquiry into the full privatisation of Telstra in May 1998. In the words of DOCITA:

> The ACCC has been given extensive information-gathering powers in relation to competition regulation...The Amendment Bill contains significant amendments which…will make a wider range of information available to industry participants, particularly cost data, thus enabling more informed access negotiations and scrutiny of pricing and other practices of competitors. As such the amendments respond to industry concerns about a lack of information about Telstra's underlying cost structures and their impact on Telstra's access prices. The amendments are also consistent with Recommendations 5 and 6 of the report of the Senate Environment, Recreation, Communications and the Arts Legislation Committee into the first Telstra (Transition to Full private Ownership) Bill.[3]

3.6 In particular, the Bills before the Committee, and the *Telecommunications Legislation Amendment Bill 1998* in particular, aim to enhance the competitive framework in the industry by:

- conferring a private right of action to individuals under Part XIB;
- enabling the ACCC to direct that negotiations be conducted in good faith;
- giving the ACCC the power to order disclosure of cost information maintained under Record Keeping Rules and allowing for publication of reports generated in accordance with these Rules;
- giving the ACCC a new power to make two new Codes relating to Network Information and consultation regarding Network Modifications;
- (making) rules protecting an Access Seeker's confidential information.[4]

3.7 The Committee notes that, in its submission, Telstra is very critical of the proposed enhanced powers of the ACCC in relation to the disclosure of accounting costs. It is particularly critical of amendments to section 151BUB of the TPA which would enable the ACCC to order disclosure of information held under the Record Keeping Rules, if satisfied that disclosure would promote competition in markets for listed services; or facilitate the operation of Part XIB and XIC of the TPA. In Telstra's view, the proposal is, "misconceived and poorly executed."[5] It believes that this measure,

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3 Submission no. 10 p. 30 (DOCITA)

4 Submission no. 21 p. 26 (Telstra)

5 Submission no. 21 p. 27 (Telstra)

> …is harmful to competition, because it would enable competitors to price at Telstra's costs, rather than their own, which is at odds with the primary aim of the access regime which is to promote the long term interest of end users.[6]

3.8 Telstra also argues that its competitors would "continue to clamour for more information" and it is seeking an amendment that would require the ACCC to "undertake a public benefit assessment before disclosing such information".[7]

3.9 Although seeking further enhancements, other carriers and service providers such as Optus and Macquarie Corporate Telecommunications are very supportive of the current legislation:

> This legislation should be passed irrespective of the fate of the further privatisation of Telstra. Ensuring the successful implementation of competition policy is a critical issue, whatever the ownership structure of Telstra.[8]

Time frames and Delays

3.10 ATUG argued strongly in its submission for the ACCC to have the power to impose stringent time frames in relation to negotiation between carriers or service providers:

> Delay has been unwelcome and an unhelpful element of the post'97 open competitive communications environment. ATUG is of the strong view that every effort should be made to reduce or eliminate delay.[9]

3.11 ATUG went on to suggest an amendment to section 152BBA(3) of the *Telecommunications Act 1997* to give the ACCC the power to direct the parties involved to complete negotiations within a specific time period of between 30 days and 90 days depending upon the ACCC's view of the complexity of the matter.[10]

3.12 AAPT sought to expedite matters in a different way. In its view, unnecessary delays were caused because under the present system the ACCC was required to conduct a series of arbitrations when disagreements occurred over access terms and conditions. AAPT therefore suggested an amendment to the *Trade Practices Act 1974* to enable the Minister to deem that a particular declared service is a service of "national significance". In AAPT's view,

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6 Submission no. 21 p. 5 (Telstra)

7 Submission no. 21 p. 27-29 (Telstra)

8 Submission no. 18 p. 1 (C &W Optus)

9 Submission no. 5 p. 2 (ATUG)

10 Submission no. 5 p. 2 (ATUG)

> The Ministerial determination would operate as a trigger for the ACCC to commence an inquiry into the service, for the purpose of determining the price of, and any other terms and conditions of access to, this service.[11]

3.13 The Committee is not convinced by the arguments put to it that delay is endemic in our telecommunications regulatory bodies and that legislative action is needed to address every aspect of delay in ACCC action. In this respect, the Committee notes the evidence presented by Mr Rod Shogren of the ACCC that the process has been slow because it is new. He argued that in many cases a second or subsequent investigation is not likely to take as long as the first:

> By and large we think the legislation is working satisfactorily…we think the legislative framework is adequate for the job.
>
> …To a degree, you have to think about what has been happening in the last 18 months as the bedding down of a new regulatory framework, the doing of a lot of things for the first time and, in many cases, the doing of things that will not need to be done again or at least will not need to be done for three or five years.[12]

Possible anti-competitive conduct

3.14 Although Telstra's competitors shared ATUG's concern regarding delay in completing terms and conditions of access negotiations and other negotiations, another aspect of delay was revealed to be a major source of frustration for them. They all complained about the time lapse before the ACCC can reach a decision to issue a competition notice for possible anti-competitive conduct. Worse still in their view was Telstra's decision, now that the ACCC has issued such notices, to challenge the ACCC's decision in court. According to AAPT,

> The primary policy objective of part XIB is to act as a deterrent. It is to require a party to cease engaging in anticompetitive conduct... The ACCC's commercial churn competition notice, or set of notices, to which you are referring, took 14 months for the ACCC to get to the point of issuance. Now that Telstra has decided to challenge those, it will be at least a year, we believe, before the issue will finally be resolved.
>
> It is quite clear that if the competition notice regime is working so that judicial enforcement of all those decisions is required, then it clearly cannot meet its objectives, because, as soon as you get to court with an extensive hearing with Telstra as your adversary in most cases, you have already lost that objective. So we feel that part XIB needs to be beefed up so the deterrent effect of the competition notice is strengthened.[13]

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11 Submission no. 7 p. 11 (AAPT)

12 Mr Shogren, Evidence, p. 65, 3 February 1999

13 Mr Grant, Evidence, p. 9, 3 February 1999

3.15 The solution sought by AAPT, and supported by others such as Optus and Macquarie Corporate Telecommunications, is for Part XIB of the *Trade Practices Act 1974* to be amended to enable the ACCC, if it thought it appropriate, to impose an interim "cease and desist" order requiring a party to cease engaging in conduct the subject of a Part XIB investigation for a limited period of time (for example 90 days). AAPT argued that only if it had such a power under the legislation, would the ACCC be able to act "expeditiously" in cases where anti-competitive conduct may have occurred.

3.16 The Committee notes the evidence from the Department of Communications, Information Technology and the Arts that it foresees difficulties in the suggested approach:

> In our view the actual proposals that have been put forward have a serious risk that they would involve the conferral on the ACCC of the judicial power of the Commonwealth contrary to chapter 3 of the Constitution…It would involve the giving of judicial power to an administrative tribunal.[14]

3.17 The Committee believes that the amendments to Part X1B of the *Trade Practices Act 1974* proposed in the *Telecommunications Legislation Amendment Bill 1998*, (proposed item 26 of Schedule 1 to the Bill) which would enable parties other than the ACCC to seek injunctive relief in regard to a breach of the competition rule contained in Part XIB of the TPA whether or not a competition notice has been issued in regard to the conduct, gives telecommunications industry competitors the possibility to act expeditiously against anti-competitive conduct by any carrier.

3.18 While the Committee acknowledges that the ACCC may be able to advise on some procedural changes to improve the effectiveness of the regulatory regime, the Committee is of the view that the legislation and the proposed amendments are satisfactory in terms of the regulatory environment.

14 Mr Buettel, Evidence, p. 17, 16 February 1999

CHAPTER 4

OTHER ISSUES

Staged Approach to Sale

4.1 The *Telstra (Transition to Full Private Ownership) Bill 1998* provides that up to 49.9 per cent of the government's equity in Telstra may be sold when this legislation receives Royal Assent. It requires the Commonwealth to retain a 50.1 per cent share.

4.2 Schedule 3 of the *Telstra (Transition to Full Private Ownership) Bill 1998* sets out the conditions that must be met for the Commonwealth to sell more than 50 per cent of its original equity interest in Telstra. Part 2 of Schedule 3 contains provisions that repeal the provisions in Division 2 of Part 2 of the *Telstra Corporation Act 1991* (which require the Commonwealth to retain two-thirds of the equity in Telstra).

4.3 In brief, the Bill provides for the Minister to arrange for an independent inquiry into whether Telstra has met certain prescribed performance criteria in relation to customer service. Telstra would need to meet those criteria for a particular designated period (of at least 6 months). If the person or body conducting the inquiry finds that Telstra has met the prescribed criteria for the designated period, it must issue a written certificate to that effect and give it to the Minister. The certificate must be published in the Gazette and it must be tabled in both Houses of Parliament. The day on which the certificate is published in the Gazette becomes the ***inquiry certificate day*** and is the day from which the Commonwealth will be able to sell its remaining 50.1 per cent equity in Telstra.

4.4 The Explanatory Memorandum to the Bill states that:

> Subitem 2 (1) (of Schedule 3) empowers the Minister for Communications, Information Technology and the Arts to arrange for an independent inquiry to be established into whether Telstra has met certain prescribed performance criteria for a particular designated period. The role of the inquiry would be to assess Telstra's performance against criteria set out in the regulations relating to service levels to customers in metropolitan, rural and remote areas.
>
> Subitem 2(10) provides that for the purposes of item 2, the 'prescribed criteria' are the criteria specified in the regulations.[1]

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1 *Telstra (Transition to Full Private Ownership) Bill 1998,* Explanatory Memorandum, p.45

The pre-sale inquiry

4.5 The Committee noted the comments of the representatives of the telecommunications industry that any inquiry preceding the full sale of Telstra (that is the government's remaining 50.1 per cent share in the company) should be conducted openly and in a manner that allows for submissions from interested parties. ATUG's Alan Horsley told the Committee:

> We would (be expecting to make a submission) and I think we would see far better that the public inquiry process and the openness be followed. We see that as to some degree a characteristic of this industry since about 1988–a very open approach to legislative development and issues resolution, and we think that it would be reasonable to apply to this as well.[2]

4.6 His stance was supported by Telstra's competitors. Mr Meagher from Optus told the Committee:

> Like Mr Horsley, the previous witness, we think public inquiries are more beneficial than private inquiries and we also believe that, essentially, the whole of the telecommunications regime as it has developed since I think Senator Evans was minister–initiated in 1988–has been one of openness. That has actually been beneficial.[3]

4.7 The Committee notes that in its submission Optus suggested that the pre-sale inquiry should include an assessment of effective competition, including matters such as:

> i) The extent to which Telstra has complied, or failed to comply, with the competition rule in Part XIB;
>
> ii) whether Tesltra has met its costs disclosure obligations under the Amendment Bill;
>
> iii) whether there is effective access to services declared under Part XIC and
>
> iv) other indicators of competition such as, the availability of local number portability, preselection on a range of services and other non-price barriers to entry into the market.[4]

4.8 Optus's call for an assessment of effective competition before the final sale was supported by Mr Havyatt of Hutchison Telecommunications.[5] The Committee was concerned that there appeared to be some confusion on the part of certain witnesses between the issues of ownership of Telstra and the competitive regime. The

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2 Mr Horsley, Evidence, p. 6

3 Mr Meagher, Evidence, p. 14

4 Submission no. 18 p. 4 (C&W Optus)

5 Mr Havyatt, Evidence, p.21

Committee wishes to stress that the two issues are separate and should not be confused.

4.9 The Committee notes that nothing in the legislation would prevent the pre-sale inquiry from being a public process where interested parties would be able to put their views. The Committee is not convinced that the inquiry should look into issues of competitiveness. However other means of improving the competitive regime should not be ignored. Accordingly,

Recommendation 4

The Committee recommends that the government seek advice from the ACCC on any procedural changes it would recommend to improve the effectiveness of the competitive regime.

Prescribed Criteria

4.10 The Explanatory Memorandum (EM) to the *Telstra (Transition to Full Private Ownership) Bill 1998* states that:

> The provisions for an inquiry and for Telstra to meet certain performance criteria on quality of service need to set meaningful thresholds for performance that will provide assurance that acceptable standards of service will be achieved and sustained. Consultations have been held with a range of stakeholders, based on a discussion paper issued by the Department but views were wide and varied.[6]

4.11 The evidence before the Committee suggests that the industry and telecommunications consumer organisations would be anxious to participate in such a process and to offer suggestions as to what should be included in the "prescribed criteria".

4.12 In its submission to both the current and the previous inquiry into the full privatisation of Telstra, ATUG has argued that performance criteria for carriers must be set out in legislation. In ATUG's view, all carriers (not just Telstra) need to meet required performance criteria and it suggests that "a broad framework or broad areas of consideration" should be set out in the legislation to guide the development of the regulations proposed in the Bill. ATUG also called for an amendment to Schedule 3, part 1, Section 2(10) of the *Telstra (Transition to Full Private Ownership) Bill 1998* mentioning some specific prescribed criteria which it believed should be in the legislation, including support services such as time to connect a new service, time to

6 *Telstra (Transition to Full Private Ownership) Bill 1998*, Explanatory Memorandum, p.10

restore a faulty service, time to answer a call to customer inquiry service, time to dial tone, post dialling delay, congestion and drop out.[7]

4.13 ATUG's preference would be for the "prescribed criteria" to be set not simply in the context of a pre-sale inquiry but in the context of continuing assessment of customer service linked to the carriers' licence conditions, as is currently the case in the United States:

> It is about moving on to ensure that all carriers provide network performance, service performance, at some defined standards and not have low quality services marketed as high quality services; that is, not to have consumers hoodwinked by undefined and underperforming services.[8]

4.14 The National Farmers' Federation, Mr Needham also argued in relation to access to a 64 kilobits service that unless certain levels of service are specified in legislation, "there is no result."[9]

4.15 The Committee is of the opinion that it would be premature to reach a view on the prescribed criteria and that the government should take into consideration the consultations undertaken on this matter.

Recommendation 5

The Committee recommends that the government undertake ongoing consultations with appropriate groups regarding the development of the 'prescribed criteria'.

Designated period

4.16 The Explanatory Memorandum to the Bill describes the meaning of "designated period" for the purpose of the inquiry before full privatisation can proceed. A minimum "designated" period of 6 months is prescribed:

> Subitem 2(9) provides that for the purpose of item 2, a 'designated period' is each of one or more specified periods, or each period in a specified series of periods, of at least 6 months specified in the regulations. A designated period will be able to begin before or after Royal Assent.[10]

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7 Submission no. 5 pp. 2 & 4 (ATUG)

8 Mr Horsley, Evidence, p. 5

9 Mr Needham, Evidence, p 31

10 *Telstra (Transition to Full Private Ownership) Bill 1998*, Explanatory Memorandum, p.45

4.17 The Committee notes that the representative of the Government of Western Australia, although not opposed to the sale of Telstra, made a plea for the designated period to be longer than a minimum of 6 months:

> The six months mooted in the bill as a period under which a measured service performance would be a criterion for the government relinquishing majority ownership would not be acceptable. A period of over 12 months is considered the absolute minimum…an absolute minimum of 12 months in order to provide for a complete annual cycle, not only of the business cycle but of the weather cycle. There is a big difference in the difficulty in executing repairs or providing new services in the wet weather compared to the dry, for example. It is also in a short period of time of six months possible for a special effort to be put in, after which that special effort then collapses because all the resources have been focussed into that six–month period. It is just not long enough to measure the likely sustainable performance.[11]

Minister's power to direct Telstra

4.18 At present the Minister has a broad power to direct Telstra (*Telstra Corporation Act 1991,* section 9). The bills provide that this power will lapse when public ownership of Telstra falls below 50 per cent. The power has never been used, and the government thinks that it is insufficiently targeted or defined and is inappropriate in relation to a privately owned company. Instead, the *T(CPSS) Bill 1998* gives the Minister a power to direct Telstra to comply with the bill. Breaching such a direction could incur a fine of up to $10 million.[12]

4.19 Witnesses who favoured keeping the broader power to direct argued that the power acts as a brake on Telstra even if it is never formally used:

> To look at a pattern of ministerial non-intervention over a period of time I do not think is actually a valid argument for selling off those remaining shares. The ministerial pressure acts in a very subtle way. If we look at some of the other policy issues over the past 18 months or two years, such as 013 directory service charging, price caps and a whole range of areas, the minister and his office have kept a close eye on developments and I am sure the minister has actually sent messages through to Telstra to behave in a certain way. You do not actually see overt ministerial intervention, but the inclination is still there for the minister to act when there is a retention of public ownership.[13]

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11 Mr Skelton, Evidence, p.62

12 Minchin the Hon N., *Telstra (Transition to Full Private Ownership) Bill 1998* - second reading speech, Senate *Hansard*, 30 November 1998, p.610. *T(CPSS) Bill 1998 - Explanatory Memorandum*, p. 9,114

13 S. Horrocks (Consumers' Telecommunications Network), Evidence 3 February 1999, p. 39. Similarly Submission No. 19 (Communications, Electrical and Plumbing Union), p. 15

4.20 While Telstra argued that 'hybrid ownership' creates a regrettable conflict of interest between government as regulator and government as owner, the Communications, Electrical and Plumbing Union claimed that such arguments are rarely, if ever, accompanied by concrete examples of how such conflict has produced unsatisfactory outcomes.[14]

4.21 In the Committee's view, the matter of principle is that the current power to direct is inappropriate in the case of a privately owned company. It is also unnecessary in practice providing that the general regulatory scheme is powerful enough. The Committee is satisfied (particularly considering the improvements contained in these bills) that the general regulatory scheme is powerful enough.

Conclusion

4.22 It is difficult to estimate the exact effect on Commonwealth revenues from the sale of the remaining two thirds of Telstra because of the many variables that need to be assessed. However the Committee is satisfied that the government's commitment to use the proceeds of the sale for the purpose of retiring public debt will ensure that the beneficial impact of the sale will be felt through all areas of the Australian economy and benefit all Australians.

Recommendation 5

The Committee reports to the Senate that it has considered the *Telstra (Transition to Full Private Ownership) Bill 1998*, the *Telecommunications (Consumer Protection and Service Standards) Bill 1998*, the *Telecommunications Legislation Amendment Bill 1998*, the *Telecommunications (Universal Service Levy) Amendment Bill 1998* and the *NRS Levy Imposition Amendment Bill 1998* and recommends that the Bills proceed.

Senator Alan Eggleston

Chair

14 Submission No. 21 (Telstra), p. 6; Submission No. 19 (Communications, Electrical and Plumbing Union), p. 15

APPENDIX 1

SUBMISSIONS RECEIVED BY THE COMMITTEE

1	Mr G.J. Simonsen
2	Confidential
3 & 3A	Telecommunications & Disability Counsumer Representation (Managed by Blind Citizens Australia)
4	Mr Alan J.Spinks
5	Australian Telecommunications Users Group (ATUG)
6	Mr Stewart A. Fist
7	AAPT Limited
8	Network Vodafone
9	Government of Western Australia
10	Department of Communications, Information Technology and the Arts
11	Hutchison Telecommunications (Australia) Limited
12	Consumers' Telecommunications Network (CTN)
13	City of Yarra
14	Balanced State Development Working Group (BSDWA)
15	The Australian Privacy Charter Council
16	National Farmers Federation
17	NSW Farmers' Association
18	Cable & Wireless Optus
19	Communications Electrical Plumbing Union (CEPU)
20	Concerned Residents of Swanbourne
21	Telstra
22 &22A	Macquarie Corporate Telecommunications
23	Professor John Quiggin

24 Bureau of Emergency Services Telecommunications (BEST)

25 South Australian Government

26 J. Hoogland and N. Fahy

27 Lev Lafayette

APPENDIX 2

WITNESSES WHO APPEARED BEFORE THE COMMITTEE

Wednesday 3 February 1999, Committee Room 2S3, Parliament House, Canberra

Australian Telecommunications Users Group

Mr Allan Horsley, Managing Director

AAPT

Mr Alasdair Grant, Manager, Regulatory

Cable & Wireless Optus

Mr Bruce Meagher, Group Manager, Corporate Communications

Mr Adam Suckling, Group Manager, Regulatory

Vodafone

Mr Chris Dalton, Regulatory Policy Manager

Mr Clive Dale, Regulatory Policy

Hutchison Telecommunications Ltd.

Mr David Havyatt, Regulatory and Corporate Affairs Manager

Macquarie Corporate Telecommunications

Mr Maha Krishnapillai, Senior Manager, Strategy

Mr Aidan Tudehope, Chief Operating Officer

National Farmers' Federation

Dr Wendy Craik, Executive Director

Mr Mark Needham

Consumers' Telecommunications Network

Ms Helen Campbell, Executive Officer

Mr Steve Horrocks, Policy Adviser

Communications and Electrical Pluming Union

Mr Ian McLean, State Secretary Telecommunications & Services Branch Queensland

Ms Rosalind Eason, Senior Industrial Research Officer

City of Yarra

Mr Nick Matteo

Telecommunications and Disability Consumer Representation Project (Managed by Blind Citizens Australia)

Dr Elizabeth Casling, Policy Officer

Mr William Jolley, Project Manager

Western Australian State Government via teleconference

Mr Phillip Skelton, Leader, Telecommunications Task Force

Department of Communications, Information Technology and the Arts

John Neil, Acting Chief General Manager, Telecommunications

Trish Barnes, Acting General Manager, Enterprise and Radiocommunications

James Cameron, Acting General Manager, Telecommunications Competition and Consumer

Rohan Buettel, General Manager, Legal and Parliamentary

Dr Rod Badger, Executive Director, Telecommunications, Information Technology and Broadcasting.

Australian Competition and Consumer Commission

Mr Rod Shogren, Commissioner

Tuesday 16 February 1999, Committee Room 2R1, Parliament House, Canberra

Telstra Corporation Limited *(By teleconference)*

Mr Graeme Ward, Group Director, Regulatory and External Affairs

Mr John Stanhope, Director, Finance

Mr Lawrence Paratz, Executive General Manager, Network and IT Infrastructure

Mr Andrew Day, Managing Director, Sales

Ms Deena Shiff, Director, Regulatory

Department of Communications, Information Technology and the Arts

John Neil, Acting Chief General Manager, Telecommunications

Trish Barnes, Acting General Manager, Enterprise and Radiocommunications

James Cameron, Acting General Manager, Telecommunications Competition and Consumer

Rohan Buettel, General Manager, Legal and Parliamentary

Dr Rod Badger, Executive Director, Telecommunications, Information Technology and Broadcasting.

APPENDIX 3

RECOMMENDATIONS OF LEGISLATION COMMITTEE - 1998

Recommendation 1

The Committee recommends that Clause 6 of the Telecommunications *(Customer Service Guarantee) Standard 1997* require that customers be informed of all service provider obligations and penalties under the Standard.

and

That Section 480 of the *Telecommunications Act 1997* be amended to require providers of all services subject to the Telecommunications Industry Ombudsman's jurisdiction to supply to each customer a reasonable summary of the terms and conditions on which the service is supplied (and an updated summary where those terms and conditions change), including all service provider obligations and penalties set under any Customer Service Guarantee standard under section 234.

Recommendation 2

The Committee recommends that the penalty for failure to meet the Customer Service Guarantee standard in non-metropolitan areas be amended so that after a week, the $11 per day penalty could for example, accelerate incrementally or to $100 per day for each extra day that the service is not provided.

Recommendation 3

The Committee recommends that a portion of the proceeds from the sale of the remaining two-thirds of the Telstra Corporation Ltd be used to upgrade the existing infrastructure available for telecommunications services in rural areas.

Recommendation 4

The Committee recommends that schools, and in particular rural schools, be given the option of having access to telephone services at the rate Telstra charges residential customers, rather than being required to pay commercial business rates.

Recommendation 5

The Committee recommends that the Australian Competition and Consumer Commission's (ACCC) powers in relation to record-keeping rules be amended or clarified as necessary to ensure that the costs associated with Telstra's internal transfer prices are made known in the context of negotiations over cost-based pricing of access to telecommunications infrastructure.

Recommendation 6

The Committee recommends that the Australian Competition and Consumer Commission (ACCC) be empowered to direct the publication of information kept in accordance with the record-keeping rules.

Recommendation 7

The Committee recommends that parties adversely affected by anti-competitive conduct should be able to take action against it under Part XIB of the *Trade Practices Act 1974*, whether or not the Australian Competition and Consumer Commission (ACCC) has issued a competition notice.

Recommendation 8

The Committee reports to the Senate that it has considered the Telstra (Transition to Full Private Ownership) Bill 1998 and recommends that the Bill proceed, subject to the amendments recommended in this Report.

APPENDIX 4

THE CUSTOMER SERVICE GUARANTEE

The Australian Communications Authority, if directed by the Minister, may make performance standards which carriage service providers must comply with in relation to customer service (the 'Customer Service Guarantee'). If a carriage service provider contravenes such a standard, it is liable to pay damages to the customer. These provisions were an initiative of the *Telecommunications Act 1997* (section 232ff), and the Customer Service Guarantee Standard came into force on 1 January 1998.

The Customer Service Guarantee Standard requires carriage service providers to:
- supply services and rectify faults or service difficulties within minimum timeframes
- keep agreed appointment times with customers
- inform customers about obligations placed on them by the Standard
- keep records of arrangements made relating to connection and fault rectification
- pay compensation when a customer lodges a valid complaint regarding contravention of a specific service requirement under the Standard.

Services covered by the Customer Service Guarantee (CSG) Standard include the standard telephone service (STS) where the STS does not terminate on customer switching systems such as a PABX or commander system. In the case of a person with a disability, the STS incorporates another form of communications equivalent to voice telephony, such as a teletypewriter service for a person with a hearing impairment.

Features covered by the CSG include the ability to make local, long distance and international calls, as well as enhanced call handling features such as call waiting, call barring and calling number display. The CSG applies to any carriage service provider which supplies or is requested to supply a specified service to a customer.

Standards for installing services

standards for installing services			
	maximum time to connect, from customer's request		
	in-place connection	available cabling (capacity) or other infrastructure that the carrier can use	no available cabling (capacity) or other infrastructure that the carrier can use
urban: towns/cities over 10,000 people	3 working day	5 working days	1 month
rural 1: towns from 2,500 to 10,000	3 working day	10 working days	1 month
rural 2: towns/ communities 200 to 2,500	3 working days	40 working days	6 months
remote: areas other than the above	3 working day	40 working days	12 months
Note: the present standards for installation are imported by reference from Telstra's Universal Service Plan, which was approved by the minister under section 160 of the *Telecommunications Act 1997* on 18 May 1998.			

Standards for repairing faults

maximum time to repair, from customer's request	
metropolitan	end of next working day
non-metropolitan	end of second working day*
remote	end of third working day*
'metropolitan' = within 30km of a service depot of the relevant carriage service provider 'non-metropolitan' = not metropolitan 'remote' = a non-metropolitan area that is in an extended charging zone * Faults must be cleared by the end of the next working day regardless of location, if • fault is caused by the company's administrative error; or • fault can be rectified without external plant work, travel more than 30km from a depot, or attending the customer's premises.	

Appointment keeping

Carriage service providers must keep appointments at customer premises (within 15 minutes) unless they change an appointment by giving reasonable notice to the customer. Appointment times may be a specified time, an agreed part of the day, or on a specified day, providing half day appointments have previously been offered.

Penalties

The CSG initially set damages equivalent to the monthly service rental (eg Telstra $20 business, $11.65 residential) for each working day of delay (50 per cent of these figures for delays associated only with enhanced call handling features). In June 1998, following the Senate Committee May 1998 report on the proposed sale of Telstra, and concerns about Telstra's performance in the quarter to March 1998, the government decided to increase the damages. Increased damages for delays beyond five days came into force on 1 August 1998.

Samples of penalties for contravening Customer Service Guarantee standards	
contravention	penalty
Delay in connecting standard telephone service	first 5 working days: monthly standard telephone service rental, per day* additional working days: $40 per day
Delay in rectifying a service difficulty of the standard telephone service	first 5 working days: monthly standard telephone service rental, per day* additional working days: $40 per day
Failure to keep an appointment (other than on a day where damages are payable under another part of the standard)	monthly standard telephone service rental*
* If no monthly line rental charge is apparent, these penalties default to $20 per day for a business service, $11.65 per day otherwise (which are Telstra's standard monthly charges)	

Sources: Australian Communications Authority (ACA), Telecommunications Performance Report 1997-98, 1998. ACA, Telecommunications (Customer Service Guarantee) Standard 1997, 11 November 1997 and amendments. ACA, Telecommunications (Customer Service Guarantee) Scale of Damages 1997, 11 November 1997 and amendments. ACA, Review of the Telecommunications Customer Service Guarantee, October 1998

APPENDIX 5

ADDITIONAL INFORMATION RECEIVED

Department of Finance and Administration, 24 February 1999, 23pp

Department of Communications, Information Technology and the Arts, 25 February 1999, 89pp

Telstra Corporation Limited, 26 February 1999, 35pp

Telstra Corporation Limited, 2 March 1999, 39pp

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

Inquiry into

Telstra (Transition to Full Private Ownership) Bill 1998

Telecommunications Legislation Amendment Bill 1998

Telecommunications (Consumer Protection and Service Standards) Bill 1998

NRS Levy Imposition Amendment Bill 1998

Telecommunications (Universal Service Levy) Amendment Bill 1998

MINORITY REPORT OF ALP SENATORS

March 1999

CHAPTER 1 - OVERVIEW AND RECOMMENDATIONS

Introduction

This is the third time in as many years that the Senate has considered a proposal by the Coalition Government to privatise part or all of Telstra.

This most recent attempt is the culmination of a tawdry process of political deception and sleight of hand by the Coalition Government.

Despite the creation of a perception by the Ministers for Communications and Finance on 22 July 1998 that the Government would, in the first instance, seek to sell no more than 49% of Telstra, the Government has introduced legislation that, if passed, will authorise the sale of 100% of Telstra without further reference to the Parliament, and without Parliament being aware of the criteria for the sale beyond 49%.

This is in spite of numerous pleas from its own backbench and from rural, regional and remote constituents all over Australia, fearful of a voracious private monopolistic Telstra.

Conclusions

The Opposition members of the Committee remain strongly opposed to the sale of any further portion of Telstra.

Opposition Senators condemn the Coalition Government for its crude attempt to dupe the public and its own backbench and bypass the authority of the Parliament by instituting a sham inquiry as the trigger for the disposal of the Government's controlling equity in Telstra.

Opposition Senators do not believe it is appropriate to hold for ransom reform of the regulatory environment for telecommunications. The case for reform of aspects of the current regime is a compelling one and legislation to effect change in this area should be considered in advance of and independently of any proposal to sell more of Telstra.

Opposition Senators believe that a strong case has been made for a closer examination of the proposed amendments to the current pro-competitive regime. Evidence received by the Committee has indicated that the proposed legislation does not go far enough towards addressing some of the inadequacies of the existing framework, in particular the problems caused by procedural delay.

Opposition Senators welcome the move to enshrine in legislation consumer protection measures and guarantees of service standards but warn that in the absence of a more effective Government information and awareness campaign and more effective

monitoring by the relevant authorities, consumers will continue to suffer the inconvenience of sub-standard service.

Recommendations:

Opposition Senators recommend:

1. That the Government not proceed with the *Telstra (Transition to Full Private Ownership) Bill 1998*

2. That the Government urgently pursue a comprehensive public review of the competitive regime and make further amendments to the regime where appropriate.

3. That the *Telecommunications (Consumer Protection and Service Standards) Bill 1998* be amended to ensure that in the event of a delay in the provision of service due to a network fault, the carrier responsible for the fault, not the carriage service provider, be required to compensate effected consumers.

4. That the Government pursue further the notion of competitive tendering of the Universal Service Obligation on a regional basis, so long as it is understood that Telstra will remain as the National Universal Service Provider.

CHAPTER 2 - FURTHER SALE

Opposition Senators continue to strongly oppose the sale of any further shares in Telstra for all the reasons outlined in the Majority Report of the September 1996 Senate Environment, Recreation, Communications and the Arts References Committee inquiry into the proposed sale of the first third of Telstra and the Opposition Senators' Minority Report of the May 1998 Senate Environment, Recreation, Communications and the Arts Legislation Committee inquiry into the first *Telstra (Transition to Full Private Ownership) Bill 1998.*

No new evidence has been presented, by the Government or any witness to this inquiry, to justify any further sale of Government shares in Telstra.

Rationale for Continuing Opposition to Telstra Privatisation

Labor's reasons for stridently opposing any further sale of shares in Telstra are summarised in brief terms as follows:

- Since the sale of the first one third of Telstra, service levels in the less profitable areas of Australia have declined. By keeping Telstra, Australia's dominant service provider, in public hands the Federal Government will retain the right to direct Telstra to ensure that adequate service levels and access to up-to-date technology are delivered to all Australians, particularly in rural, regional and remote Australia.

- The money that Telstra generates each year and pays to the Government directly benefits taxpayers. As the level of Government ownership in Telstra decreases, so does the dividend to Government at the end of each financial year. By keeping Telstra in public hands the Federal Government will continue to receive these funds, funds which will grow each year into the future.

- 35% of the profits of a fully privatised Telstra will go off shore.

- Investment in and maintenance of Australia's national telecommunications infrastructure will decline as more of Telstra is sold. Australia's telecommunications infrastructure is too crucial an element of the economic, industrial and social framework of the nation to allow any further dilution of government ownership and control.

- Levels of investment by Telstra in research and development for the public good have already begun to decline. Instead of selling Telstra, the Government should be ensuring that Telstra continues to invest time, resources and expertise in the innovations and technical infrastructure necessary to take Australian industry into the new millenium.

- Privatisation gives rise to an environment where the emphasis is on reducing staff and staffing costs - this means less workers, and degraded workplace conditions for those lucky enough to keep their jobs. Telstra has shed nearly 25% of its total workforce in less than two years with further job cuts scheduled for both the current and subsequent financial years.

As more and more of Telstra is sold, the pressures on the Telstra Board to make decisions based solely on economic and logistic imperatives, will increase. Profit for shareholders will become the primary and eventually, under a fully privatised Telstra, the only concern.

Bitter experience, since the sale of the first third, has shown that as more of Telstra is sold:

- Service levels will decline, particularly in rural and regional areas;

- Investment in research and development for the national good will cease;

- Levels of foreign ownership will increase - with more of Telstra's profits going overseas;

- More jobs will be lost in regional Australia;

- Investment in and maintenance of the telecommunications infrastructure in rural and regional areas will decrease;

- Any notion that Telstra has a social (and not just a legislative) obligation to provide services to the sick, the disabled, the elderly and the isolated in the Australian community, will vanish completely.

Reforms Held to Ransom

Opposition Senators are strongly of the view that the Government's proposal to further privatise Telstra is completely irrelevant to the issue of the adequacy of the regulatory regime for telecommunications. The *Telstra (Transition to Full Private Ownership) Bill 1998* should be considered entirely independently of legislation relating to any proposed reform of existing consumer and competition provisions.

There was considerable support for this view in evidence presented at the public hearing by witnesses to this inquiry:

> *We are concerned about going any further down that track (further privatisation) while we are still in a period of uncertainty about how that regulatory regime might operate and, fundamentally, how the further privatisation of Telstra and the demands of the shareholders*

will match with the overall social objectives which are stated and set out in the Telecommunications Act 1997.[1]

The problem is that, if you release the shackle from Telstra before you have actually achieved the goal of full competition, you actually put at risk achieving competition and all the other objectives that are set out in the (Telecommunications) Act.[2]

The Charter Council concludes that it is not yet 'safe' to relinquish government control over Telstra through its majority shareholding. Given the inadequacy of the current regulatory framework, and the history of Telstra's unwillingness to comply with the spirit of privacy principles, the Committee should recommend that the Sale Bill not proceed. Ideally, the accompanying legislation strengthening the ACA and the Minister's power should proceed independently.[3]

That is our fundamental message: while it is in public ownership governments of any calibre or any colour will be making sure that the country constituency and all those other disadvantaged areas get a reasonable deal.[4]

The WA Government has no objection to the partial sale of the next part of Telstra but is very keen to see consumer safeguards in place and actually proven to be working before the sale.[5]

Proposed Sham Inquiry

Irrespective of their attitude to the question of the further privatisation of Telstra, witnesses before the Committee almost universally condemned the Government's model for an inquiry into the service levels of Telstra.

Witnesses variously criticised the extraordinarily short timeframe of six months, the proposal to conduct the inquiry in secret, the fact that the public were not being asked to make submissions to the inquiry, the fact that the terms of reference for the inquiry had not been released prior to consideration of the legislation by the Senate, the fact that those terms of reference would ultimately be set by regulation not legislation despite an ironclad commitment to the contrary by Government ministers, and finally

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[1] Helen Campbell, Consumers Telecommunications Network (CTN), Evidence 3 February 1999, p 39

[2] Stephen Horrocks, CTN, Evidence 3 Feb 1999, p 40

[3] Submission No. 15 (The Australian Privacy Charter Council) p 282

[4] Ian McLean, Communications Electrical and Plumbing Union (CEPU), Evidence 3 Feb 1999, p 43

[5] Philip Skelton, Government of Western Australia, Evidence 3 Feb 1999, p 59

that the inquiry would examine only Telstra's service levels, not the behaviour of Telstra vis-à-vis its competitors.

> *We view with alarm the apparent reneging on the Government's commitment to ensuring there would be a public process in which there would be public access to information and the opportunity for the public to participate. As we have said in our submission, it appears to us that, despite the fact that there will be a review, that can be conducted in secret. There is no obligation on the minister to reveal the results of the review or, indeed, if the review makes a recommendation, there is no obligation on the Minister to follow the recommendation.*[6]
>
> *The period of six months is short in the context of a decision whose impacts will be felt for generations. With Telstra management publicly and vigorously committed to full privatisation, it is hard to imagine that the company will not be able to muster the energy to jump the immediate hurdle presented to it.*[7]
>
> *The six months mooted in the Bill as a period under which a measured service performance would be a criterion for the government relinquishing majority ownership would not be acceptable. A period of twelve months is considered an absolute minimum.*[8]
>
> *I think the Government should have confidence that past experience of an open consultative process has been very successful. Therefore it seems to us very inappropriate to do it that way (in private).*[9]
>
> ***Senator Allison**: Can I ask you then about the inquiry that is proposed prior to full privatisation. Is it your view that that ought to include some criteria for what is happening in the bush in terms of current services and new services? Should that be a public inquiry? Would you wish to make a submission to it? And would you expect to see the report at the end of the process?*
>
> ***Dr Wendy Craik**: Yes, yes, yes and yes.*[10]
>
> *Cable & Wireless Optus believes that any independent inquiry ordered before a further sell down to remove Government ownership*

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[6] Helen Campbell, CTN, Evidence 3 Feb 1999, p 41

[7] Submission no. 19 (CEPU), p 381

[8] Philip Skelton, Government of Western Australia, Evidence 3 Feb 1999, p 59

[9] Alan Horsley, Australian Telecommunications Users Group (ATUG), Evidence 3 Feb 1999, p 6

[10] Wendy Craik, National Farmers Federation (NFF), Evidence 3 Feb 1999, p 33

should also involve an investigation of the health of competition in the telecommunications market.[11]

The "Social Bonus"

According to the provisions of the *Telstra (Transition to Full Private Ownership) Bill 1998*, $671 million of the total funds derived from the further sale of Telstra will be set aside in the form of a "social bonus" and allocated to various initiatives, principally for the benefit of residents of rural and regional areas.

The Department of Finance and Administration gave evidence to this inquiry that the current value of the Commonwealth's remaining shares in Telstra is $55.4 billion[12]. According to the Explanatory Memorandum to the *Telstra (Transition to Full Private Ownership) Bill 1998*, fees for the sale of these shares are expected to amount to between 1.5 and 2 per cent of sale proceeds. On this basis, the Government will pay bankers and lawyers between $800 million and $1.1 billion for the sale.

So, while the bankers and lawyers collect in excess of $1 billion, the people of rural and regional Australia stand to reap just $671 million in compensation for the sale of the remaining two thirds of Telstra.

Opposition Senators condemn the Government its pitiful attempt at bribery. The residents of rural and regional Australia, far from feeling placated by additional funding, should feel outraged that their telecommunications needs are worth less than the services supplied by the myriad of bankers and lawyers fortunate enough to be aboard the Telstra sale gravy train.

Recommendation

Opposition Senators recommend that the Government not proceed with the *Telstra (Transition to Full Private Ownership) Bill 1998.*

[11] Submission no. 18 (Cable & Wireless Optus), p 336

[12] Answers to Questions on Notice from Senator Allison, 24 Feb 1999.

CHAPTER 3: THE COMPETITION REGIME

The current pro-competitive regulatory framework for telecommunications is still in its infancy. Nonetheless it is possible, even at this early juncture, to identify failings in the regime's operation.

That we do not have a fully operative competitive environment in telecommunications in Australia is clear from the evidence, not only of industry participants but consumer and community organisations, who consistently claim that Australian consumers, particularly those in regional and rural Australia, are paying substantially more for telecommunications services than consumers in other countries and getting poorer service.[13]

As was the case in the last Senate inquiry into a Government proposal to privatise Telstra, a number of witnesses have alleged that the regulatory scheme, even with the passage into law of the legislation currently before this Committee, is inadequate to prevent Telstra from using its market dominance for anti-competitive purposes.

> *The main cause of Australia's lack of international competitiveness is Telstra's bottleneck control over the local network. As the Industry Commission, the Hilmer Committee and Professor Henry Ergas have recognised, Telstra is able to impose price and non-price terms on access on its competitors which limit their ability to compete against Telstra's retail arm.*[14]

> *The danger for non-Telstra telecommunications service providers, particularly new entrants without a critical mass of capital or customers, is that the dominant player uses its position to directly or indirectly flout the rules in order to damage its competitors.*[15]

Opposition Senators welcome, as do most in the industry, the recent draft decisions of the ACCC with respect to interconnection charges and access to Telstra's local call network and the issuing and pursuit to the Federal Court by the ACCC of competition notices against Telstra in regard to "customer churn".

These actions represent important steps in the right direction, but much relies on cooperation by Telstra for any practical effect.

In evidence, Telstra has demonstrated an unwillingness to submit passively to the authority of the Regulator.

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[13] see Submission no. 18 (C&W Optus) p 336, Submission no. 12 (CTN) p 196, NFF Evidence 3 Feb 1999, p 32

[14] Submission no. 18 (C&W Optus), p 336

[15] Submission no. 22 (Macquarie Corporate Telecommunications), p 497

> *We do not believe, particularly with the modified processes that we have put in place, that we are in contravention of the Trade Practices Act. The ACCC clearly has another view.*[16]

The Witnesses' view of the Telecommunications Amendment Bill 1998

It is perhaps telling that, of all of the witnesses to this inquiry, Telstra was the only one to criticise attempts in the proposed legislation to improve or modify the current regulatory framework.

> *Telstra continues to have concerns with the measures proposed by the Government for amendment to the Trade Practices Act - specifically, increasing the powers of the ACCC to enable it to order disclosure of Telstra's costs to its competitors. Telstra considers this is harmful to competition, because it would enable competitors to price Telstra's costs, rather than their own, which is at odds with the primary aim of the access regime which is to promote the long term interest of end users.*[17]

This provision in the Bill is justified by the Department of Communications Information Technology and the Arts:

> *These amendments will make a wider range of information available to industry participants, particularly cost data, thus enabling more informed access negotiations and scrutiny pricing and other practices of competitors.*[18]

None of the other carriers expressed any objection to the provisions contained in either the *Telecommunications Legislation Amendment Bill* or the *Telecommunications (Consumer Protection and Service Standards) Bill*, but all, bar one, were of the view that a number of additional measures were warranted in order to counteract what they maintain is a market monopoly or market dominance by Telstra.

> *We support the measures that are contained in the Telecommunications Legislation Amendment Bill, which relates to the opening up of competition. We advocate a number of other things.*[19]

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[16] Graeme Ward, Telstra, Evidence 16 Feb 1999, p 6

[17] Submission no. 21 (Telstra), p 456

[18] Submission no. 10 (Department of Communications, Information Technology and the Arts), p 174

[19] Bruce Meagher, C&W Optus, Evidence 3 Feb 1999, p 9

> *So I guess overall, we would be supporting the thrust of the legislation. However, we see there is significant opportunity for finetuning to make the competitive framework actually work.*[20]

"Ring-fencing"

AAPT, Cable & Wireless Optus and Macquarie Corporate all expressed support in their submissions and at the public hearings for the notion of "ring fencing" Telstra's corporate entities requiring them to deal with one another at arm's length.

The rationale for this proposal was expressed by Mr Grant of AAPT to be as follows:

> *The primary need for ring fencing arises from the fact that Telstra is an incumbent-forming monopolist. It is a vertically integrated operator so it provides the access and all the retail and wholesale services and it is also horizontally integrated in that it provides the full range of services at the retail level. Now a fundamental regulatory problem is how to stop a vertically integrated operator providing preferential treatment to itself as opposed to its competitors, and how to stop a horizontally integrated operator cross-subsidising profits from areas that are not subject to competition… to those services that are subject to competition.*[21]

Opposition Senators note the recent draft determinations of the ACCC with regard to Telstra's access prices and access to the local call network. These decisions represent important advances in respect of ensuring existing barriers to competition are torn down.

Ring fencing is an artificial commercial device and Opposition Senators are not persuaded that currently, at this early stage in the development of the competitive environment, such a measure is warranted.

Delay

Telstra's competitors have all expressed concern with delay - that is the time taken by the ACCC to take action in respect of alleged anti-competitive conduct or to finally effect competitive changes. They refer variously to Telstra's anti-competitive and persistent monopolistic behaviour, timidity on behalf of the ACCC to act speedily for fear of legal challenge, and the infancy and inadequacies of the regime as possible reasons for such delay.

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[20] Maha Krishnapillai, Macquarie Corporate Telecommunications, Evidence 3 Feb 1999, p 20

[21] Alasdair Grant, AAPT, Evidence Feb 3 1999, p 11

> *At the moment that is possibly the major criticism if you like of the legislation over the last 18 months or so - that there are a number of major issues which have taken far too long to be resolved and there are a number of major issues that will take far too long to be resolved in the future.*[22]

> *We are looking at a situation where a competition notice investigation will continue for periods of three or six months - perhaps even longer. This is simply an unacceptable period of time for the industry to be able to withstand anti-competitive conduct, if that conduct is subsequently held to be so.*[23]

Mr Horsley of the Australian Telecommunications Users Group expressed a similar concern:

> *I think most of us are of the view that delays have been too great and that, in fact, delays have become somewhat of a disease in the industry.*[24]

The ACCC, in giving evidence at the Committee, seemed to accept that the concern with delay was valid, but it nonetheless defended its own conduct in this regard:

> *I would certainly say that we have been disappointed and concerned about the length of time it has taken to deal with some of the anti-competitive issues that confront us. The reason for that is not any lack of expedition on our part but essentially just the processes that we have to go through. The basic point about the processes that we have to go through is that we have to be affirmatively satisfied, in the same way as a court would be, that we have a breach of the Act.*[25]

"Cease and Desist" orders

A number of witnesses to the inquiry addressed this issue by advocating amendments to Part XIB of the *Trade Practices Act 1974.* The most substantive of these purports to enable the ACCC to impose an interim "cease and desist" order on a carrier or carriage service provider who is the subject of an investigation into anti-competitive conduct commenced under that Part.[26]

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[22] Maha Krishnapillai, Macquarie Corporate Telecommunications, Evidence 3 Feb 1999, p 20

[23] Alasdair Grant, Evidence Feb 3 1999, p 11

[24] Alan Horsley, ATUG, Evidence 3 Feb 1999, p 1

[25] Rod Shogren, Australian Competition and Consumer Commission, Evidence 3 Feb 1999, p66

[26] see Submission no.s 7, 18 and 22

Mr Alasdair Grant of AAPT made the case for a "cease and desist" power on the grounds that in order for the Regulator to be effective it needed a power to stop suspected breaches of anti-competitive conduct swiftly.

> *The primary policy objective of Part XIB is to act as a deterrent. It is to require a party to cease engaging in anti-competitive conduct. The ACCC's commercial churn competition notice, or set of notices… took 14 months for the ACCC to get to the point of issuance. Now that Telstra has decided to challenge those, it will be at least a year, we believe, before the issue will be finally resolved.*
>
> *It is quite clear that if the competition notice regime is working so that judicial enforcement of all those decisions is required, then it clearly cannot meet its objectives… So we feel that Part XIB needs to be beefed up so the deterrent effect of the competition notice is strengthened.*[27]

Mr Shogren appears to have some sympathy with this argument when he says that:

> *the basic point about the processes that we have to go through is that we have to be affirmatively satisfied, in the same way as a court would be, that we have a breach of the Act.*[28]

He then goes on to say:

> *The sorts of things we look at in telecommunications tend to be like section 46 misuse of market power cases. They tend to be big and difficult issues where we have to go through complex processes of defining the market, deciding where the market power is, whether it is being abused and whether there is a substantial lessening of competition. You just cannot do that quickly - not if you want to do it properly.*[29]

Telstra disagrees:

> *We believe that proposals that are currently on the table very much err on the side of discouraging and potentially dooming healthy competition.*[30]

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[27] Evidence 3 Feb 1999, p 9

[28] Evidence 3 Feb 1999, p 66

[29] Evidence 3 Feb 1999, p 66

[30] Graeme Ward , Telstra, Evidence 16 Feb 1999, p 5

Both Telstra and the Department expressed the view in evidence that an attempt to empower the ACCC to issue an interim cease and desist order would be in breach of the constitutional doctrine of separation of powers and therefore unconstitutional.[31]

The ACCC's view of the adequacy of the current regime

Opposition Senators note the statement of Mr Shogren from the ACCC that *"by and large we think the legislation is working satisfactorily"* and that *"overall we think the legislative framework is adequate to the job."*[32]

But we also note Mr Shogren's reluctance to canvas ways in which the legislative framework could be improved:

> *We are not in the policy advising business or the legislative change business. We deal with the legislation we have and we administer it as efficiently as we can.*[33]

Evidence from Mr Cameron, Acting General Manager, Telecommunications Competition and Consumer Branch, of the Department of Communications Information Technology and the Arts, that Mr Shogren has in fact raised with the Department certain matters is an indication, however, that the ACCC, far from viewing the regime as perfect, has some concerns with its current operation.

> *The issues that have been raised by Rod (Shogren) with the ACCC and the Department are issues that the Minister has indicated he does want advice on in relation to whether there should be particular amendments to the provisions of the anti-competitive conduct provisions of the Trade Practices Act with a view to actually facilitating a faster operation of those services.*
>
> *The Department is aware of the comments made by the industry, and the Minister has indicated that if amendments can be made to improve or speed up the operation of those provisions then he would give consideration to those.*[34]

Mr Cameron made it clear to the Committee that the Minister had requested the Department to prepare as a matter of priority a report into the adequacy of the legislation:

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[31] Department of Communications, Information Technology and the Arts, Evidence 16 Feb 1999, p17; Telstra, Evidence 16 Feb 1999, p 5

[32] Evidence 3 Feb 1999, p 66

[33] p 66

[34] James Cameron, Department of Communications Information Technology and the Arts, Evidence 3 Feb 1999, p 66

Mr Cameron: *The Minister has indicated that he would hope to make relevant decisions on this as early as possible this year.*

Senator Mark Bishop: *Is it regarded as a matter of priority or urgency?*

Mr Cameron: *It is certainly an issue that we would want to deal with as rapidly as possible, yes.*[35]

Conclusion

Opposition Senators are sympathetic to the concerns of Telstra's competitors on the issue of delay in the identification and determination by the ACCC of anti-competitive conduct by a telecommunications carrier. The complex processes adopted by ACCC under Part XIB with respect to an investigation of perceived anti-competitive conduct, render speedy resolution of any matter nigh on impossible.

Opposition Senators are horrified that the Government has proceeded with legislation when it had clearly not examined the issues in proper detail. Evidence given by the Department of Communications Information Technology and the Arts indicates that the Minister has only recently, almost three months after the introduction of the legislation into the House of Representatives, called for advice on the adequacy of the competition regime and whether any further amendments should be made to it.

It is clear to Opposition Senators that steps must be taken immediately to lessen delays in the issuance of a competition notice once evidence of anti-competitive behaviour exists.

Opposition Senators believe that a comprehensive review of the competition regime and the powers of the ACCC, as the Regulator, must be urgently conducted prior to the review currently scheduled for July 2000.

Recommendations

Opposition Senators recommend that the Government urgently pursue a comprehensive public review of the competitive regime and make amendments to the regime where appropriate.

[35] Evidence 3 Feb 1999, p 67

CHAPTER 4 - CONSUMER PROTECTION AND SERVICE STANDARDS

The Customer Service Guarantee

A number of witnesses to this inquiry have indicated that in spite of measures imposing performance standards on telecommunications carriers, implemented by the Government at the time of its initial one third sale of Telstra, adequate levels of service are still not being provided to Australian consumers.

The National Farmers Federation, the Consumers Telecommunications Network, the WA Government, the City of Yarra, and the Communications Electrical and Plumbing Union all gave evidence of poor performance by Telstra in the provision of service, particularly in rural and regional areas.

Their concerns have been underscored each and every quarter since the beginning of 1997 in statistics released by the Australian Communications Authority (ACA). The ACA monitors carrier performance using various indicators including the percentage of new services connected on or before the agreed commitment date, the percentage of faults cleared within one and two working days and the percentage of payphone faults cleared within one and two working days.

According to the ACA, Telstra's service levels in the provision of service to regional, rural and remote Australia hit a record low in the 1997 December quarter. Quarterly reports since have not indicated much improvement.

In its *Telecommunications Performance Report for 1997-98*, the ACA expressed its concern at the "apparent decline in service levels for the provision of telephone services and repair of faults, particularly in the country".[36]

In addition, anecdotal and deductive evidence, indicates that not all customers are being compensated when they experience unreasonable delays in connection or fault repair.

The ACA reports that in the first 6 months of the CSG's operation, Telstra compensated some 52,847 out of a total of 3.25 million consumers, for delays in service provision. That amounts to less than 2% of Telstra's customers receiving compensation. The ACA also reports that Telstra, on average, fails to comply with the CSG in 10-15% of cases, indicating that a significant number of consumers are missing out.[37]

C&W Optus makes the very valid point that improved competition will ultimately be the panacea to tardy service:

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[36] ACA *Telecommunications Performance Monitoring Report 1997* p viii

[37] see ACA *Telecommunications Performance Monitoring Report 1997-98*

> *We believe that measures such as the Customer Service Guarantee and other consumer safeguards like that are valuable and useful tools but, at the end of the day, if the penalty that is suffered for failure to connect the service or provide adequate service is some form of imposition of financial cost, that will not prove nearly as useful as an incentive as the risk that a customer can actually take the whole of their business away from a carrier and go to another competitor.*[38]

In the meantime, we see it as incumbent upon the Government to properly enforce the CSG by promoting consumer awareness of the scheme and by keeping a closer watch on carriers.

Clarification of the CSG

The object of the Customer Service Guarantee is to ensure that consumers, who are inconvenienced by slow or sub-quality service, are compensated.

In its submission to the inquiry Macquarie Corporate Telecommunications has identified what it perceives as a significant problem in the application of the Customer Service Guarantee Standard.[39]

Opposition Senators agree with Macquarie Corporate that the differential application of the Customer Service Guarantee to carriers and carriage service providers in the event of a network fault has the potential to form a significant barrier to fair competition, as consumers may be less willing to give their custom to a carriage service provider instead of the network carrier, Telstra.

Competitive Tendering for the USO

There was considerable discussion at the hearings on the issue of the Universal Service Obligation and whether there was room for more than one universal service provider. Many of the carriers expressed an interest in being allowed to bid for the USO on a regional basis:

> *We are a little bit frustrated that at the moment Telstra is the only one that is able to supply those services and we look forward to*

[38] Bruce Meagher, C&W Optus, Evidence 3 Feb 1999, p 9

[39] see Submission no. 22 (Macquarie Corporate Telecommunications)

> *opportunities to competitively bid for the provision of the USO in those areas.*[40]
>
> *We also, like AAPT, are scoping whether internally we could provide that service. What the engineers have told us and what we have looked at is we absolutely could provide those services.*[41]
>
> *This is a franchise that has just been allocated by Government to Telstra and I endorse what previous speakers have said about wanting the opportunity to tender for that.*[42]

A number of non-carrier witnesses, including the Australian Telecommunications Users Group, the NFF, the WA Government and the Consumers Telecommunications Network expressed a wish to look at the notion in more detail:

> *Yes, we strongly support the concept of competitive tendering so that one is able to bring to bear the best technological/service solution to a particular circumstance and be able to deliver the USO at the best price.*[43]
>
> *It is our view that what the marketplace needs to be is open and competitive. Once you get the competition in there, you tender out the universal service obligation and you have some competition, then if one carrier is not providing the service another one can.*[44]
>
> *…there is some competition in the provision of infrastructure in major cities and maybe a little bit in very large regional centres, but we would have only perhaps one in Western Australian and for the vast rest - around 200 towns in Western Australia - there are no incentives for incumbent carrier to upgrade or extend infrastructure. Perhaps competitive tendering for the USO might be part of a solution to that.*[45]

The Consumers Telecommunications Network expressed a concern that such a scheme might put service to a particular region at risk:

> *We have in our earlier submission indicated that we would have some concerns about the tendering model. It would be fair to say that concerns the implementation rather than the theory of it, if you*

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[40] Alasdair Grant, AAPT, Evidence 3 Feb 1999, p 8

[41] Adam Suckling, C&W Optus, Evidence 3 Feb 1999, p 16

[42] Chris Dalton, Network Vodafone, Evidence 3 Feb 1999, p 21

[43] Alan Horsley, ATUG, Evidence 3 Feb 1999, p 4

[44] Wendy Craik, NFF, Evidence 3 Feb 1999, p 29

[45] Phillip Skelton, Government of Western Australia, Evidence 3 Feb 1999, p 59

> *know what I mean. One of the concerns that was expressed about the tendering model was what happens if the tenderer fails.*[46]

Telstra expressed support for competitive tendering of the USO on a regional basis:

> *We would welcome competition in the provision of USO services. We think that if other carriers believe the costs of USOs that we provide - or indeed they see an opportunity to provide lower cost services - we would welcome that competition.*[47]

Opposition Senators note evidence from the Department of Communications Information Technology and the Arts that a discussion paper of this issue is forthcoming from the Australian Communications Authority.

Opposition Senators are in favour of pursuing further the notion of competitive tendering of the USO on a regional basis.

But we stress that our support for this notion is conditional upon Telstra remaining the one and only National Universal Service Provider. In order to ensure that a consistent level of service is available at all times to the residents of regional, rural and remote Australia, we must and should retain Telstra as the National Universal Service Provider. We must also maintain existing levels of Government ownership and control. Service standards cannot be guaranteed unless the Government retains a power to direct Telstra in the public interest.

Cost of the USO and Public Disclosure of USO levy cost data

Several witnesses to the Inquiry addressed directly the issue of Telstra's 1997-98 USO levy cost claim. The witnesses, Telstra's competitors, disputed the amount of the claim and called for amendment to the USO levy regime.

> *The recent $1.8 billion USO claim by Telstra has served to highlight the need to strengthen the legislation in this regard. The very size of the claim (over seven times the value of claims in previous years) and the inadequacies and shortcomings in the data provided by Telstra in support of its claim, have generally highlighted the inadequacies of the current arrangements.*[48]

Network Vodafone summarised its concerns with Telstra's claim in its submission, citing an inadequate sampling base for data, the fact the wireless local loop and satellite technologies have not been utilised by Telstra in the delivery of the service,

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[46] Helen Campbell, CTN, Evidence 3 Feb 1999, p 36

[47] Graeme Ward, Telstra, Evidence 16 Feb 1999, p 8

[48] Submission no. 8 (Network Vodafone), p 110

questionable financial parameter values and an equally questionable calculation of the weighted average cost of capital.[49]

Witnesses to the inquiry almost universally supported the notion of full public disclosure of information relevant to the formulation of a USO cost claim. Public disclosure of all data and the basis for calculation of expenses would, they suggest, assist in determining the voracity of the claim.

> *…given that the community pay the bill, they are entitled to know the basis of the calculation.*[50]
>
> ***Senator Mark Bishop:*** *Do you support Telstra's method of calculation of the USO being out there in the public domain so that other carriers, members of your organisation and other interested groups could participate in the debate, to try to have some objective determination of the true cost of the USO?*
>
> ***Ms Campbell:*** *Certainly. The more information that is available to the public and the more capacity we have to participate in this, the better we believe the regulatory regime will be overall.*[51]
>
> *We all have to pay our share of it (the USO). If we have to pay our share of it, we should be able to see the bill and get a decent invoice for us to look over.*[52]
>
> *It has certainly been the experience overseas - and we have always pointed to the UK - that a lot of these problems disappeared when the Regulator said, 'Alright British Telecom, just make your costs available to your competitors.' If for no other reason than the shame factor - that they could not have inflated and outrageous costs…*[53]
>
> *If we were the USO provider and we had put in a $1.8 billion claim, expecting Telstra to pay a levy of $1.5 billion to us, you can be sure that Telstra would be at the table here demanding that there be full disclosure of all our costs for making them pay a levy of $1.5 billion.*[54]

Telstra expressed its opposition to the notion of full public disclosure:

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[49] at p 111

[50] Alan Horsley, ATUG, Evidence 3 Feb 1999, p 1

[51] Helen Campbell, CTN, Evidence 3 Feb 1999, p 36

[52] Alasdair Grant, AAPT, Evidence 3 Feb 1999, p 10

[53] Bruce Meagher, C&W Optus, Evidence 3 Feb 1999, p 10

[54] Chris Dalton, Vodafone, Evidence 3 Feb 1999, p 21

> *…we do not have any problem with making most of the information available. However, we are in a competitive environment and there is certain information that we would not like competitors to have because it will give them a certain advantage. I have described one of those; that was the component parts of the weighted average cost of capital.*[55]

Opposition Senators are aware that the Australian Communications Authority is at present analysing and assessing Telstra's USO claim. Reports released by the ACA in recent weeks bring into question aspects of Telstra's calculation, in particular the figure allocated to the Weighted Average Cost of Capital.

Opposition Senators agree with Telstra's competitors and interested parties that there is far too much secrecy associated with the calculation of the USO cost.

There is particular validity in the argument that as the public are ultimately the ones to bear the cost of the claim, information relating to its calculation should be more readily available upon request.

Conclusion

Opposition Senators welcome the move to consolidate all existing provisions relating to consumer protection and service standards in the one Bill.

In respect of the Customer Service Guarantee, Opposition Senators urge the Government to work harder to promote awareness of the existence of the Customer Service Guarantee.

With respect to the issue of competitive tendering for the Universal Service Obligation, Opposition Senators note the evidence of witnesses that an ACA report on this issue will soon be released. We certainly agree that this notion is worth examining in more detail.

Opposition Senators share the concerns of numerous witnesses to this inquiry about the magnitude of Telstra's recent $1.8 billion USO cost claim, particularly in terms of its ramifications not only for consumers who ultimately have to bear the cost, but for the viability of competition in the industry if Telstra's competitors are forced to foot this enormous bill.

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[55] John Stanhope, Telstra, Evidence 16 Feb 1999, p 7

Recommendations

Opposition Senators recommend that the *Telecommunications (Consumer Protection and Service Standards) Bill 1998* be amended to ensure that in the event of a delay in the provision of service due to a network fault, the carrier responsible for the fault, not the carriage service provider, be required to compensate any effected consumers.

Opposition Senators recommend that the Government pursue further the notion of competitive tendering of the USO on a regional basis, so long as it is understood that Telstra will remain the National Universal Service Provider.

CHAPTER 5 - CONCLUSION

As in the two previous Senate inquiries into Telstra privatisation legislation, evidence presented to this inquiry confirms that there is significant and persistent community concern about any proposed sale of further shares in Telstra.

In this instance those concerns are magnified by the none-too-subtle attempt by the Government to by-pass the authority of the Parliament and sell off 100% of Telstra by way of a sham inquiry.

No new or compelling evidence has been presented by the Government to justify its ideological obsession with privatising Telstra.

Opposition Senators would welcome an opportunity to debate the merits of the *Telecommunications Legislation Amendment Bill 1998* and the *Telecommunications (Consumer Protection and Service Standards) Bill 1998* independently of the proposal to privatise Telstra. As stated above, the issue of Telstra's ownership is irrelevant to the effective operation of a pro-competitive telecommunications regime.

Signed this Day

8th March 1999

Senator Mark Bishop

Senator the Hon Nick Bolkus

MINORITY REPORT BY THE AUSTRALIAN DEMOCRATS

Telstra (Transition to Full Private Ownership Bill 1998, and related bills

The Australian Democrats do not believe the privatisation of Telstra – Australia's universal telecommunications service provider – is in the public interest. We have consistently argued that Telstra should remain in public ownership. The experience of the one-third sale of Telstra and evidence before the Senate Environment, Communications, IT and the Arts Legislation Committee has not let us to deviate from this position.

Recommendation 1: The remaining two-thirds of Telstra remain in public ownership.

We recall the Democrats' minority report submitted to the Senate Environment, Recreation, Communications and the Arts Legislation Committee in May 1998, when the Committee considered the previous Telstra (Transition to Full Private Ownership) Bill 1998, prior to its defeat in the Senate in July 1998.

We believe the same issues of concern relate to this package of bills currently before the Senate and we reiterate our primary concerns raised in that report.

These concerns included:

- The timing of the presentation of the Bill before the Senate and the inadequate length of time the Committee has to consider the Bill.

- The lack of hearings held in rural and regional areas, or on other capital cities of Australia.

- The lack of any long term analysis with clear performance indicators formulated by the ACA, of Telstra's ability to meet its obligations under the Universal Service Obligation and the Customer Service Guarantee standards

- The deviation of Telstra's annual dividend from consolidated revenue (and hence to the benefit of all Australian) into the hands of a minority of private investors, stockbrokers and large corporations.

- A rejection of the Government's argument that Telstra should to be sold in order to:

    - increase competition in the telecommunications sector,

    - to pay off public debt,

- fund special social programs through a 'social bonus' rather than properly funding programs, services and infrastructure directly through line items in the Budget.

The Australian Democrats argue that:

1. There is nothing inherently uncompetitive about Telstra being in public ownership. Efficiencies and profitability are not automatically derived from the private sector, but come from sound regulation, good policy and technological advances.

2. privatisation will reduce the net income. The sale of Telstra will lead to an increased debt burden because of the loss of revenue stream that is returned to the Commonwealth through paid dividends and annual tax returns. The amount the Government expects to receive is a one off amount from the sale of its most significant public asset. The Government will never again receive the revenue stream from Telstra which contributes significantly to consolidated revenue and provides government funding for all budget appropriations – not just the "social programs" the Howard Government deems worthy of funding.

   Whilst the sale of Telstra would result in an interest saving of $2 Billion per annum, it would also result in a loss of profits ($1.7 billion) currently paid to the Commonwealth or retained by Telstra, and a loss of $860 million because private shareholders would be able to claim tax rebates in respect of franking credits on Telstra dividends. Overall, this represents a loss of approximately $560 million, rising to $1.8 billion within three years, if Telstra's profits continue to grow at their current rate.[1]

   It should be noted that the Government has consistently refused to disclose the estimated future dividend flows used to determine the future profitability of the company. This information is crucial in assisting the Parliament in determining the true value of Telstra, and the impact the loss of dividend stream will have on consolidated revenue – the very revenue the Government requires to fund social services and maintain a healthy public sector. The Government continues to maintain that it is not in the financial interests of the Commonwealth for it to disclose its estimates of expected future cash flows, both dividends and retained earnings of the company.

3. social programs should be funded from recurrent expenditure. Funding special programs from 'left over' revenue after debt retirement is no more than political pork barrelling, designed to secure support for government policies rather than a legitimate linkage between asset sales and levels of current expenditure. It should be recognised as such.

4. The significant undervaluing of Telstra's shares resulted in an issue price for the instalment receipts which was well below their true value. The size of the individual windfall gains was proportionate to the number of shares purchased.

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1 J. Quiggin, *Proposed privatisation of Telstra: an assessment*, Submission to the Senate Environment, Recreation, Communications and the Arts Committee, 13 April 1998, p. 706.

Clearly the major beneficiaries from this were institutional investors and wealthy individuals who were able to subscribe for large numbers of shares. Those windfall gains should have been shared among all Australians in their capacity as owners of Telstra, not just those who were in position to purchase shares.

5. The government has again shown contempt for the Parliament in appointing advisers to commence preparations for the further sale when the Bills which will permit the sale have not even passed the Senate. Should the Senate reject this legislation, the government will have wasted over $600,000 of taxpayers' money.[2]

In relation to the Social Bonus, the Democrats raise the following:

- Who will manage the fund?
- What public interest tests will underpin the funds to ensure they are wisely spent and distributed?
- Why will the fund be distributed among states and territories rather than through regions, or for specific projects, identified thought independent means?
- Will there be an imposed timeframe in which the fund should be exhausted? What restrictions will that impose on the roll out of infrastructure? Will this encourage unwise spending?
- Relying on Senate Estimates to question the allocation of the fund is inadequate. Parliament should be provided with ongoing reports throughout the allocation process, in the same manner that Parliament is able to scrutinise the Budget. In this way, the fund should act as if these projects or services were properly funded through line item allocations.

The Government does not have widespread support for the sale of the remaining two thirds of Telstra. The Government's decision to sell Telstra, is a reflection of the Government's ideological position that government ownership hampers industry. The Australian Democrats believe that the greatest impediment to the telecommunications industry is a dysfunctional regulatory environment.

The Australian Democrats believe it is essential for retention of the remaining two-thirds of Telstra to be in public ownership. It is only in full public ownership that Australians will receive:

- access to essential services at affordable and competitive prices
- social benefits deriving from Telstra's revenues to Government
- ongoing maintenance and extension of infrastructure to all Australians, regardless of their income levels and geographical location

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[2] L. Patterson (Department of Finance and Administration), Evidence, Question on Notice, 24 February 1999.

Customer Service Guarantee

The Democrats welcome the Government's resolve to strengthen the Customer Service Guarantee. However, the Democrats remain concerned that the scheme has not been able to ensure the maintenance of the existing quality levels provided in legislation following the sale of the first third of Telstra. This is demonstrated by Telstra's declining performance particularly in country areas, which has occurred despite the introduction of the CSG at the beginning of 1998.

This does not instil confidence that a fully privatised Telstra will deliver high quality service in accordance with performance standards, especially for rural and remote areas. The Democrats are of the opinion that the drop in service standards reflects a change in corporate ethos from a service provider, to a shareholder / profit oriented organisation.

The Democrats have a number of concerns about the CSG scheme including the services covered, those subject to performance standards, enforcement provisions, and public information about the scheme. We believe that the CSG should contain dynamic standards which are continually reviewed to ensure that carriers are obliged to supply the highest level of service on an ongoing basis.

Recommendation 2: that the Customer Service Guarantee performance standards be the subject of constant review by the Australian Communication Authority and that the ACA be empowered to amend CSG performance standards without receiving Ministerial direction. This should occur regardless of Telstra's ownership status.

Recommendation 3: that service providers provide details of the CSG to their customers as a matter of course. Service providers should automatically pay compensation to customers in instances of CSG breaches.

Universal Service Obligation

The Australian Democrats also welcome the government announcement prior to the most recent general election that a 64kps ISDN or an equivalent digital service will be available on demand as part of the USO to 96 per cent of the Australian population and a comparable satellite service will be made available to the remaining 4 per cent. However, we recount the concerns of the Communications, Electrical and Plumbing Union that while a service can be universally available, it can still be priced out of reach of many customers.[3]

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[3] Submission No.19 (Communications, Electrical and plumbing Union), p. 12.

Recommendation 4: That the price of the 64kps ISDN or equivalent service and the comparable satellite service, supplied as a part of the USO, be capped at an affordable level.

Recommendation 5: that the definition of the standard telephone service be broadened to include mobile telephony and Internet access. This should occur regardless of Telstra's ownership status.

Recommendation 6: that regular reviews of the Universal Service Obligation be guaranteed in legislation. This should occur regardless of Telstra's ownership status.

Recommendation 7: that a permanent panel of review be established, comprising industry, consumer, legal and departmental representation.

This panel would report to the Australian Communications Authority on the working of the universal service obligation and the customer service guarantee and standards. This would enable longitudinal studies of systemic failures in telecommunications service provision by Telstra and other service providers. It would also make recommendations to the ACA on the need to upgrade the USO and CSG as technological changes and the passage of time require.

Costing Compliance with the USO

Whilst we are concerned to ensure that Telstra is being adequately compensated for provided the USO, we also believe that it must be forced to fully disclose the basis upon which it arrives at its USO cost claim. We do not support a cap on the USO cost claim and don't necessarily think that tendering out the USO is a complete answer to the problem, although we support that process.

Given that the non-Telstra carriers are obliged to build a component into their charges for payment of the USO levy, we believe that they have the right to fully scrutinise Telstra's cost claim as soon as that claim is lodged. We also believe that they should be given access to assumptions used by Telstra in making its calculations, such as the weighted average cost of capital.

Ministerial Power of Direction

Section 9 of the *Telstra Corporation Act 1991* currently provides the Minister for the Communications, Information Technology and the Arts with a very wide power to

make directions to Telstra in respect of any matter provided the direction is in the public interest.

The effect of the proposed new power of direction, which will come into effect on the repeal of the existing power, is to allow the Minister to direct Telstra to take specific action to ensure that it complies with the law. This is clearly a watered down power of direction designed to appease those who are concerned at the abolition of the existing power. The Department of Communications, Information Technology and the Arts was unable to give even just one example of a circumstance in which this new power of direction could usefully be exercised.[4]

It is true that the existing power has not formally been used by the Minister but clearly, its existence has meant that Telstra has been much more attentive to statements of concern by the Minister than had the power not existed.

The majority report comments that 'the more general power is inappropriate in a competitive private telecommunications market.' Telstra is and should continue to be subject to regulation which is not necessarily imposed on the other carriers, for example, the price cap regime and the requirement that 2 of Telstra's directors have knowledge of or experience in the communications needs of regional areas. If, as is argued, the Ministerial power of direction is inappropriate for a privately owned Telstra, then it would be logical for the Telstra-specific price cap regime to be abolished too. The Democrats support neither the removal of the Minister's power to direct nor the abolition of the price cap.

Recommendation 8: that the current wide ranging Ministerial power of direction contained in section 9 of the *Telstra Corporation Act 1991* be retained.

Inquiry Process

The inquiry – to determine whether more than a total of 49.9% of Telstra is to be privatised – is triggered when the Parliament agrees to sell the next 16.6% of Telstra.

The Australian Democrats are very concerned that in its present form the legislation will permit the remaining 50.1% of Telstra to be sold, without further reference to the Parliament after an inquiry which requires no public involvement whatsoever. As the legislation presently reads, the only aspects of the process which will be able to be scrutinised by the public are the assessment criteria which will be disclosed in regulations and the final inquiry certificate. There is no requirement that public

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4 R. Buettel (Dept of Communications, Information Technology and the Arts), Evidence 16 February 1999 p. 23.

submissions be called for or that public hearings be held and very significantly there is no requirement that the inquiry's report be tabled in the Parliament.

The Australian public must be given the opportunity to take part in the inquiry process and they must be allowed to scrutinise and debate the contents of the final report. This desire was echoed by the Australian Telecommunications Users Group, Consumers' Telecommunications Network and the National Farmers' Federation.[5]

There are a number of other issues in relation to the inquiry process the Democrats have concerns about. These include:

- Who is to determine the performance criteria, and how?
- Who is to undertake the inquiry? Will it be one person appointed by the Minister, or a panel of persons? What qualifications will they have?
- What historical timeframe will the inquiry investigate Telstra's performance?
- At what level, if less than 100 percent compliance, will the inquiry accept as a satisfactory level of Telstra's performance for the sale of the remaining 50.1 percent to progress?

Generally, the Democrats believe that the performance of Telstra is only one factor to be taken into account in considering full privatisation and parliament should determine, by separate legislation, each proposed tranche of the sale.

Recommendation 9: Any inquiry into Telstra's performance must be a public process which must include the calling of submissions from the public, the conduct of public hearing and the tabling of the inquiry's report before the Parliament.

Regulatory and Competition Issues

Telecommunications commentator, Mr Stewart Fist opposes the 'en bloc' privatisation and say that this would further entrench Telstra's market dominance. He argues that the only way to implement competition is to divest Telstra of the local loop – the network infrastructure between a customer's premises and the local exchange. Mr Fist says:

> Telecommunications is not a standard production industry which can be left to its own devices or regulated by simple means. It involves interconnection of all players and so competitors must also be collaborators and have a high

[5] A. Horsley (Australian Telecommunications Users Group Ltd), Evidence 3 February 1999, p. 6; Submission No. 12 (Consumers' Telecommunications Network), p14; W. Craik (National Farmers' Federation), Evidence 3 February 1999, p. 33.

dependency on each other. In such circumstances the incumbent player with control over the key monopoly elements will always dominate.

There is no evidence to suggest that Telstra's market position is likely to decrease in the near future. Should any more of Telstra be privatised, market share and competition issues require careful analysis and consideration.

Other issues relate to local call costing, disclosure provisions, and other anti-competitive measures.

Recommendation 10: that any proposal for the further sale of any pat of Telstra, regardless of the outcome of an inquiry, be the subject of legislation to be passed by the Parliament.

Conclusion

The Australian Democrats oppose the sale of the remaining two thirds of Telstra. The Democrats believe that government has a significant role to play in the supply of telecommunications infrastructure because it is an essential service. We do not see government ownership (or part ownership) and regulation of a telecommunications company as incompatible or illogical. The Parliament is the maker of the laws and regulations under which the company operates not the Government of the day. To suggest otherwise underplays the power and role of the Parliament. It assumes the Government has a direct role in regulation and control, rather than the public sector.

The Democrats oppose the sale of the remaining two thirds of Telstra because:

- it is policy driven by ideology rather than sound public sector outcomes.
- it will have negative consequences for public sector debt. The sale means that only wealthy Australians and large businesses will enjoy sharing in Telstra's profits, to the detriment of programs requiring funding through recurrent expenditure.
- linking the proceeds of the sale of Telstra to the retirement of debt and a 'social bonus' is no more than political pork barrelling designed to secure support for the Government and its policies rather than a legitimate linkage between the sale and levels of current expenditure. The question of whether the retirement of debt and the funding of social programs are desirable is independent of the sale of Telstra, and should remain so.
- The one-third sale of Telstra resulted in substantial job losses and reduction of services, particularly in rural areas.

The Democrats believe that customer service guarantees should be strengthened including those which relate to the:

- universal service obligation (including legislative reviews);
- empowerment of the ACA to make and enforce codes and standards;
- empowerment of the ACA to determine the definition of the standard telephone service, and amend it as required;
- placement in legislation, the requirement that every customer must be informed of their entitlements under the CSG, prices, terms, conditions and performance conditions.
- protection and expansion of untimed local calls
- provision of payphones and free directory assistance
- universal service obligation waiver provisions and appropriate sanctions
- building into the CSG performance monitoring criteria for all telecommunications service providers. It has to relate to more than connections and faults
- reviews of expenditure of telecommunications carriers on capital equipment

The Democrats make the following recommendations:

Recommendation 1: The remaining two-thirds of Telstra remain in public ownership.

Recommendation 2: that the Customer Service Guarantee performance standards be the subject of constant review by the Australian Communication Authority and that the ACA be empowered to amend CSG performance standards without receiving Ministerial direction. This should occur regardless of Telstra's ownership status.

Recommendation 3: that service providers provide details of the CSG to their customers as a matter of course. Service providers should automatically pay compensation to customers in instances of CSG breaches.

Recommendation 4: that the price of the 64kps ISDN or equivalent service and the comparable satellite service, supplied as a part of the USO, be capped at an affordable level.

Recommendation 5: that the definition of the standard telephone service be broadened to include mobile telephony and Internet access. This should occur regardless of Telstra's ownership status.

Recommendation 6: that regular reviews of the USO be guaranteed in legislation. This should occur regardless of Telstra's ownership status.

Recommendation 7: that a permanent panel of review be established, comprising industry, consumer, legal and departmental representation to conduct regular reviews of the USO.

Recommendation 8: that the current wide ranging Ministerial power of direction contained in section 9 of the *Telstra Corporation Act 1991* be retained.

Recommendation 9: Any inquiry into Telstra's performance must be a public process which must include the calling of submissions from the public, the conduct of public hearing and the tabling of the inquiry's report before the Parliament.

Recommendation 10: that any proposal for the further sale of any pat of Telstra, regardless of the outcome of an inquiry, be the subject of legislation to be passed by the Parliament.

Senator Lyn Allison