

**Senate Environment, Communications, Information Technology and the Arts
Legislative Committee Inquiry**

**Telstra (Transition to Full Private Ownership) Bill 2005.
Telecommunications Legislation Amendment (Competition and Consumer
Issues) Bill 2005
Telecommunications (Carrier Licence Charges) Amendment (Industry Plans
and Consumer Codes) Bill 2005
Telecommunications Legislation Amendment (Future Proofing and Other
Measures) Bill 2005
Appropriation (Regional Telecommunications Services) Bill 2005**

Submission from the Communications, Electrical and Plumbing Union

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SECTION 1. FUNDING THE FUTURE?

The Telecommunications Legislation Amendment (Future Proofing and Other Measures) Bill 2005 and the Appropriation (Regional Telecommunications Services) Bill 2005

The somewhat hubristically named Telecommunications Legislation Amendment (Future Proofing and Other Measures) Bill 2005 and the Appropriation (Regional Telecommunications Services) Bill 2005 together represent the Government's response to the concerns of its rural and regional constituency. This includes the establishment of a mechanism to ensure regular reviews of regional and rural telecommunications services and the creation of a \$2 billion Communications Fund to meet needs identified by these same reviews. A further \$1.1 billion has been committed from budget for immediate spending on telecommunications services, chiefly on the provision of broadband access.

The CEPU supports regular reviews of the state of national telecommunications capabilities, both in regional and rural areas and elsewhere. It notes, however, that in line with the model established by the Besley and Estens Inquiries, the Regional

Telecommunications Independent Review Panel (RTIRC), will have a recommendatory function only and, contrary to the recommendations of the Estens Inquiry, there is no onus placed on government to justify rejection of any RTIRC proposal.

There is also a danger that the link established here between the RTIRC process and expenditure of the Communications Fund may have the effect of constraining the RTIRC recommendations within the limits of what it knows is “do-able”, given the monies available from the fund at any one time. It could be argued that this will provide a useful discipline on RTIRC findings. On the other hand, it may inhibit the RTIRC from identifying funding needs which it is beyond the scope of the Communications Fund to remedy. That such needs will arise is, in our view, indisputable.

Indeed, the CEPU’s chief objection to these elements of the Government’s package is not the RTIRC review process or the establishment of a Communications Fund *per se*, but rather the proposition these measures can secure the communications future of rural and regional Australia. They quite clearly cannot. Not only is the size of the fund inadequate to meet immediately identifiable, let alone future, needs but, more fundamentally, the whole approach to service provision is flawed. It represents a continuation of the strategy of targeted funding which has proven itself a weak countermeasure to the commercial pressures now operating on Telstra, the consequences of which are at last being acknowledged by the carrier and by government.

“Targeted Funding”: An Inadequate Strategy

Since coming into office in 1996, the Federal Government has successfully used such an approach to buy political consent to the sale of successive tranches of Telstra. The CEPU does not dispute that it has brought significant benefits to particular rural and regional areas. But, as rural and regional lobby groups continue to testify, it has not provided any comprehensive answer to the service deficiencies experienced in non-metropolitan Australia.

These stem, in large part, from the impacts of cost-cutting on the Telstra network. They can only be addressed through systematic and large scale investment, not only at the outer edges of existing networks but throughout large areas of the country, where ageing copper affects service quality and limits broadband availability.

This copper needs to be progressively replaced by fibre (or, in some instances, wireless) to form the basis of the national Next Generation Networks of the future. Such investment in turn requires a supportive regulatory climate – or, at least, one which does not create actual disincentives for such spending. Lastly, policy realism requires the recognition that Telstra’s scale and reach means it must provide the backbone for such a programme.

An Alternative Approach: Telstra’s \$5.7 billion proposal

Telstra, in its August 11th proposal to the Federal Government, has provided estimates of the costs of an initial national network upgrade, sufficient to provide significantly higher bandwidth to all Australians (but not, of course, such speeds as are possible with fibre-to-the home).

Like any figures offered in the current highly politicised environment, these are no doubt open to challenge. Nevertheless, they do appear to represent a more considered estimate of what sums might be needed to develop specific network capabilities than anything else that has appeared in the national debate. They are patently more anchored in commercial and technological realities than the entirely arbitrary \$3.1 billion package that the Government has put on the table.

Indeed it must be asked whether part of the explanation for the Government’s rather intemperate response to this proposal lies in its very specificity, which has the effect of raising some unwelcome questions as to the adequacy of the Government’s “targeted funding” strategy.

Telstra has estimated that for \$5.7 billion, the PSTN could be upgraded to deliver bit rates of 6Mb/s to 87% of households (metropolitan and regional/urban) and 1.5Mb/s to the remaining 13%. Of this sum, \$3.1 billion would be invested by Telstra and \$2.6

billion from government, the latter to be open for competitive tenders (in line with the HiBIS model). In other words, the Government's contribution, if expended over the proposed three to five year programme, would empty the proposed Communications Fund.

Moreover, this is a modest proposal which would provide Australian households with very respectable, but by no mean leading edge, broadband speeds. How much more would it cost to provide 20Mb/s, or indeed to extend fibre to the home?

Lastly, Telstra's figures relate to the cost of a capital works programme, not the ongoing costs that might be associated with providing these services where they needed to be subsidised. We may assume from the structure of the proposal that Telstra believes that it could achieve a commercial return on its \$3.1 billion, provided the regulatory settings allow it to. But where Government funding is required, just what will be guaranteed? What would its \$2.6 billion contribution buy? If it is only the network capability, but not affordable services over that network, then more funds will need to be found for ongoing subsidies – if, that is, services are to be available in more than name only.

Telstra's proposal appears to be a dead letter at the moment. But even without being adopted, it has, in the CEPU's view, revealed the hollowness of the Government's "future proofing" claims.

SECTION 2. WILL COMPETITION PROVIDE THE ANSWER?

The Telecommunications Legislation Amendment (Competition and Consumer Issues) Bill 2005

At the time of writing, the Telecommunications Legislation Amendment (Competition and Consumer Issues) Bill 2005 was not yet available for public comment. This somewhat limits the opportunity for informed discussion of the Bill. The CEPU's comments on what it assumes to be its contents (suggested by the Inquiry's second term of reference) are therefore necessarily provisional and limited to what we

understand to be the broad thrust of the proposed measures, rather than their specific detail.

The centre piece of the proposed changes to competition regulation is the imposition of “operational separation” on Telstra. The CEPU understands that the Bill will not take the severe form proposed earlier this year by the ACCC. This, in the Union’s view, would have involved significant implementation costs and created obvious inefficiencies, while not obviating the need for ongoing regulation of access pricing or ensuring that this process was significantly less contentious.

Moreover, unlike the “operational separation” of British Telecom (the costs and benefits of which are yet to be gauged), the requirement of Telstra was not to be offset by any regulatory relief in other areas.

It would appear that the approach adopted by Government is, rightly, focussed less on structures and more on outcomes than that advocated by the ACCC, with Telstra being required to ensure pricing “equivalence” between the products it offers its wholesale customers and those it offers itself. The Union supports such an approach as the lesser evil, with the proviso that such a requirement apply only to regulated (i.e. declared) access services and that it not deny Telstra (and hence its retail customers) the opportunity to benefit from the economies of scope and scale open to it as a large, multi-product firm.

That said, the final impact of the operational separation provisions cannot be assessed without knowing the final arrangements, some of which, we understand, will not be available until Telstra itself submits an implementation plan to the Minister. Some details already in the public domain are, however, a cause for concern.

The Union does not consider, for instance, that further powers over pricing should be placed in the hands of the Minister, as we believe has been proposed. The CEPU opposed the extensive discretionary powers given to the Minister by the final version of the *Telecommunications Act 1997*, based on our fear that these invited intervention in the regulatory process in response to short-term political pressures.

Further, the creation of such pricing powers raises the question of the relationship between the established mechanisms for price regulation, both wholesale and retail, and the new operational separation regime. In particular, any overlaps between this regime and Parts XIB and XIC of the *Trade Practices Act* will need to be dealt with if the end result is not to be further regulatory confusion.

More fundamentally, however, the CEPU questions whether the creation of this further layer of regulation will do anything to address the problems facing competition policy in this industry. In the Union's view, these are ultimately an expression of the economics of the industry itself, particularly as they are played out in a relatively small market with the demographic characteristics peculiar to this country. They are exacerbated by pricing structures still anchored in the era of public sector monopoly.

The CEPU has recently addressed these issues in its submission to the ECITA References Committee Inquiry into the Australian Telecommunications Regulatory Regime and does not wish to revisit them extensively here, except to note how they bear on the provision of services in regional and rural areas.

It is one of the ironies of the current situation that the pro-competition lobby managed to convince at least some members of the National Party that radical structural interventions into Telstra would lead to a flowering of competition in "the bush". Nothing, in the Union's view, could be further from the truth. Measures such as structural or indeed operational separation can do nothing to change the daunting character of regional and rural markets which, taken as a whole, offer relatively lean pickings to profit maximising firms. With the possible exception of some of the larger regional centres, there is simply not the population volume or density to make extensive fixed infrastructure replication economic – or not, at least, on the basis of current technologies and related costs.¹

¹ The degree to which wireless will provide sustainable competitive options in regional and rural areas remains an open question. The fact, however, that of some 43,000 customers connected through HiBIS, only 11.2% have been through fixed wireless, suggests it has not to date been a viable alternative to copper (58.3%) and satellite (29.4%), even at the modest speeds required under that scheme (256/64kb/s). The structure of Telstra's recently announced BigPond Wireless Broadband, service, which is priced 30% higher at entry level than its DSL equivalent and offers no unlimited downloads, suggest similar conclusions.

As noted above, these problems of scale are exacerbated by the impact of legacy pricing structures on competition. Although there is no *per se* prohibition on price de-averaging (except for local calls), retail price control structures have limited Telstra's ability to move away from uniform pricing. Retail line rental charges are \$29.95 a month no matter where a customer is located and irrespective of the actual costs of access provision. In rural and remote areas and on the outskirts of regional centres, these costs are, of course, often much higher.

Telstra's estimate of average network costs in rural areas in 2004-05 is \$160.05 a month and for provincial areas \$30.33.² Even if these estimates were to be revised downwards substantially, they suggest the very extensive subsidies which still exist in the provision of access in non-metropolitan areas – on average over \$1200 a year for rural customers. Here is a far more intractable barrier to competitive entry than (say) the HiBIS scheme, the target of much criticism from the industry because of the high proportion of its funds which have been won by Telstra. But who is going to suggest that rural and regional retail access charges be moved closer to cost in the name of the competitive experiment?

Finally, we might consider the implications of these figures for broadband competition in rural areas based on access to the Telstra copper network. Recent estimates have suggested that ADSL providers will need to generate average revenues of some \$100 per month per customer to establish a viable business.³ But this sum, even if it could be achieved, would just cover Unbundled Local Loop (ULL) charges in rural areas (presently set by Telstra at \$100 per month).

Of course ULL charges could be pushed lower by regulation, but, once they are pushed below cost, subsidies designed for rural and regional customers will simply be transferred to companies. Even if we were to ignore the obvious inefficiencies involved in such a scenario, we must ask whether it is likely to bring any long-term benefit to rural Australians. Alternative providers would still struggle to achieve the

² *Public version of Telstra submission in support of monthly ULL charges undertaking date 13th September 2004*, p.5.

scale necessary for success. And Telstra would have no incentive whatsoever to upgrade its infrastructure.

Conclusion.

For well over a decade, governments have sought to persuade the public that all will benefit equally from policies of privatisation and liberalisation. The experience of rural and regional Australia in relation to services such as banking has already shown this is not so. In the area of telecommunications, however, the true face of neo-liberal policy has for a time been masked by the continuation of cross-subsidies embodied in current pricing structures and, at the margin, supported through the USO scheme.

This mask is now slipping. The present Government's own inquiries on national telecommunications services have reported wide-spread dissatisfaction with the standard of services available in non-metropolitan areas. They have pointed to deficiencies in the national fixed network in these same areas, the result of under-investment. Calls for the upgrading of the USO to be extended to embrace advanced services have been repeatedly rejected. And now Telstra itself is pointing out the obvious – that the social role it has performed to date is at odds with the demands of financial markets.

For some years, policy makers appear to have hoped that some miracle would deliver them from the consequences of this conflict between social policy and neo-liberal economic goals. The CEPU well remembers the time, not long gone, when Low Earth Orbiting Satellites were expected to resolve USO problems. Then there were the “new market models” of the Besley era – competitive tendering for the USO and the seeding of regional telecommunications companies from the Networking the Nation programme. Much public money flowed into the sand in support of these ideologically-driven experiments and the public has little to show for it.

The legislation now before the Senate reveals a similar inability or unwillingness to acknowledge the real scope of the challenge. It represents an attempt to finesse the

³ Lynch, G., “Only Telstra can make broadband pay, says Citigroup”, *Communications Day*, 3 March

sale of Telstra through offerings to the most clamorous sections of the Government's constituency and of the industry, rather than a comprehensive response to the problems – essentially ones of investment –now clearly facing policy.

How and where will the funds be found to extend New Generation Networks throughout Australia and what role will Telstra play in that process? What policy and regulatory measures (if any) need to be taken to ensure that Australian telecommunications capabilities keep reasonably in step with the rest of the world?

The CEPU believes that it is time these issues were explored candidly with the community. We have no doubt that the result would be to confirm the public in its already strong view that Telstra continues to hold the key to Australia's telecommunications future and, for that reason alone, should remain in public hands.

But, as the Union has argued elsewhere,⁴ what is also needed is a comprehensive review of current policy and regulation to establish a framework suited to the 21st century needs of all Australians. In the CEPU's view, this would include an examination of whether the fragmentation of regulatory responsibilities produced by the *Telecommunications Act 1997* is well-suited to meeting those needs.

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⁴ Submission to the ECITA References Committee Inquiry into the Australian Telecommunications Regulatory Regime, April 2005