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Environment, Communications, Information Technology and the
Arts References Committee
Parliament House
CANBERRA 2600

**Inquiry into the performance of the Australian
telecommunications regulatory regime**

ATUG is pleased to make a submission to this important inquiry. From ATUG's perspective telecommunications policy is at a watershed moment - we need a regulatory regime post the completed sale of Telstra that is adequate to four tasks:

- 1) Managing market power in the face of the continued dominance of Telstra and its legal responsibilities to focus exclusively on its interests of its shareholders within the constraints of the law and Telstra's licence conditions
- 2) Ensuring that policies, programs and funds are put in place to deal with issues that will not be effectively addressed by competitive forces alone. At the moment these issues focus on broadband to regional areas but there are important tasks remaining in mobile coverage and television coverage
- 3) Ensuring important consumer protections carry forward into the new environment - the USO, CSG, NRF, TIO, ACIF Consumer codes and the like
- 4) The emerging converged market for communications services - where world leading work has been done in Australia by the ACCC in 2003 but not implemented. The importance of this work is not driven solely by the further sale of Telstra but the implications above of

that event mean there is an urgency now to tackle the question of regulation for a converged market with converged players and bundled offers to end users eg currently consumers have not coverage for the pay TV part of their bundled contracts to the protection of the ACIF Consumer codes or the TIO.

In its present submission ATUG has included extracts from a number of previous submissions:

- 1) ECITA inquiry into the Telecommunications Competition Bill, 2002
- 2) ECITA inquiry into the Australian Telecommunications Network, August 2002
- 3) DCITA review of ACCC Emerging Market Structures Report, June 2003
- 4) ECITA inquiry into Telstra (Transition to Full Private Ownership) Bill, 2003
- 5) DCITA Review of the USO, February 2004
- 6) ACCC Review of Price Controls, August 2004
- 7) ACA Regulatory Philosophy Consultation, November 2004
- 8) Productivity Commission Review of National Competition Policy, December 2004

ATUG would seek to make a further submission to the Committee on the completion of a review of developments overseas in regard to accounting separation, operational separation and other regulatory tools relevant to the management of market power by a dominant incumbent operator.

Yours sincerely



Rosemary Sinclair
Managing Director
8 April 2005



ECITA inquiry into the performance of the Australian
telecommunications regulatory regime

8 April 2005

What do users say?

ATUG's views on the competitiveness of the Australian telecommunications market are based on its ongoing assessment of the perceptions of business users.

Top 100 Survey

ATUG last conducted a formal survey of Top 100 companies in April/May 2002 but very recently discussed the current position at Board level. From ATUG's perspective the findings of the 2002 survey are still current. Indeed efforts over the last 2 years by the ACCC to address the issue of dominance in the corporate market segment support these conclusions:

1. Telstra's dominance among Top 100 companies is comprehensive. 30% of those interviewed use Telstra exclusively, even though most of these companies have previously used other carriers. Moreover, most companies using multiple carriers limit their usage to two and in the vast majority of cases Telstra is the main supplier, typically capturing around 80% of the company's annual telecommunications budget.
2. Reasons for Telstra's continuing dominance relate largely to its network reach, and the economies of both scale and scope. Put simply, there are many products and services demanded by Top 100 companies that only Telstra provides.
3. Significantly, there is very little use of resellers among Top 100 companies. There is a clear and consistent preference for dealing directly with carriers that own and operate their own networks. For this reason, after Telstra, Optus emerges as the next most widely used provider and remains the only other carrier to have had a significant impact in the large corporate segment.
4. Among locally based carriers AAPT/Telecom New Zealand, PowerTel, UeComm, RSL Communications and Macquarie Corporate Telecommunications have made some inroads into the Top 100 - but to a very limited extent. Among global service providers, only BT, Equant, MCI Worldcom and Infonet rated a mention.
5. Some Top 100 companies have been willing to consider using Vodafone and Hutchison for mobile service, but these two companies have been largely unsuccessful in winning business from large corporations. This is

despite substantial direct investment by both companies in their own networks. There is also a perception among the Top 100 that mobile services is one of the main areas where competition policy hasn't worked. The basis of this assessment is that the non-Telstra networks don't have adequate rural and regional coverage (*and there is no effective roaming practice or regulation ATUG added*); and that there is insufficient price and product differentiation in mobile services.

6. While Telstra continues to attract criticism for its "complacency", "arrogance" and "public service mentality", corporate users frequently concede that these problems are less acute now than 5 years ago. Importantly, these criticisms were less frequent than the praise given to Telstra for its improved marketing, reduced prices, greater flexibility and responsiveness, diversified service offerings and efforts to improve service generally.
7. Assessments of the performance of new entrants were also mixed. The main criticisms related to lack of depth in product offerings, reliance on Telstra for network coverage and support, failure to deliver on promises, "hopeless" service and various forms of added cost and inconvenience in having to manage an independent carrier while also dealing with Telstra. Offsetting these negative assessments were views that entrants were easier to deal with than Telstra, provided services at lower cost, mitigated operating risk through network diversity, in some cases have superior capabilities based on specialisation, and, in some cases, there was a willingness to package services more attractively than Telstra (e.g. by selling dark fibre).
8. While it is fair to say that many companies see competition as being beneficial and having delivered some positive outcomes, there are four key areas of concern:
 - Telstra's continuing dominance is linked to its network reach and coverage, particularly in regional areas;
 - There is an expectation that prices should fall further;
 - Mobile and data services are two areas where competition is seen to have delivered little or no benefit, while broadband has been slow to develop due to cost and supply constraints; and

- Competition is not seen in terms of how many suppliers exist but how effective they are - and for some respondents, at least, there is a view that fewer competitors, each operating on a larger scale, is preferable to a market comprised of Telstra plus a large number of niche and small companies.

Users face a conundrum - often to get the coverage and product range they want, Telstra is the provider of choice. But the user's experience is not one of a buyer in a strongly competitive market. Users point to high prices for leased lines, high prices for fixed to mobile calls, misapplication of the Standard Form of Agreement contract and complexity as evidence of a market dominated by one supplier.

Previous submissions by ATUG relevant to ECITA's inquiry.

1) ECITA consideration of the Telecommunications Competition Bill 2002.

Development of Australia's telecommunications services is essential for social and economic development. Telecommunications is a "utility" for its end users - there is no option to not have "the phone".

Four factors have guided development in the telecommunications industry - technology, regulation, financial interests and market needs. These factors are interdependent, each influencing the other dynamically and iteratively.

Technology

The technologies of relevance are broadband transmission, wireless, 3G, and IP based switching networks. Many of the issues around access and interconnection pricing, terms and conditions will arise afresh as these new networks are developed.

Regulation

In 1991 de-regulation was introduced. In 1997 open competition was permitted because of the benefits this would bring to users in terms of price, service and innovation. These outcomes have been achieved to varying degrees, but regulation has been an important factor in this result. Competition seems increasingly fragile and

needs continued regulatory support to ensure the gains made do not disappear.

Financial Sector interests

The interest of the financial sector in the industry since 1997, when T1 was issued, has had significant influence on industry directions. It has also created unforeseen tensions between the interests of the shareholders and the interests of the end users. Currently the capital market is saying: reduce capex, improve earnings and cut costs and do not change the regulatory regime prior to T3. The impacts on users will be higher prices, reduced levels of service and possibly delayed innovation. While this provides a context for the pre-investment undertaking and exemptions provisions, the role of access based competition should not be underplayed given the difficulties presented by the combination of geography and market size in Australia.

Market Needs

The market has doubled in size from 1995 to about \$26 billion. On average residential spend has grown faster than the market overall. Households now spend on average \$1380 pa on communications services. The Top 500 companies have doubled their communications spend over the last seven years.

Market demands are changing and will create opportunities for the industry. Wireless and Internet services are clear examples. Well-priced value added services also present opportunities. The key learning from the market over the last five years is that customers want one bill for communications services. This has important implications for competition policy. Service based competition must be supported with regulation so that end users can choose between bundled offerings from a range of service providers.

ATUG POLICY CONCERNS

There are four key issues for ATUG in reviewing the proposed Bill:

- 1) Competition is not yet robust or effective in all market sectors
- 2) There is no evidence that investment is at risk from over regulation

- 3) Access to fixed network services should be open, speedy and transparent
- 4) Long-term interests of end users must remain central to the objectives of the legislation

Two underlying drivers require policy change:

- 1) The commercial value and leverage of Telstra's network is so significant as to make the creation of incentives to support even-handed commercial negotiation a critical objective for the legislation.
- 2) End users look to the ACCC for positive assurance that their long-term interests are being addressed. ATUG regards as critical the role of the ACCC in influencing and where necessary determining access outcomes. End-users doubt that reliance on commercial negotiation alone will produce the right long-term results and prefer the ACCC to have active oversight, by way of benchmark processes and information disclosure, of even "commercial" outcomes.

On two particular issues the ATUG submission provided detailed suggestions:

- 1) Access to fixed network services should be open, speedy and transparent

The central policy problem is that the Trade Practices Act has not yet achieved open, speedy and transparent access to fixed network services.

Research by ATUG into Top 100 users of telecommunications reveals that the core network is a very significant commercially valuable asset. It is a strong factor in the buying practice of this group, which spends about \$5 billion on telecommunications per annum.

The current access framework leverages this asset further through its insistence on commercial negotiation - when there is no real incentive on the access provider to do so.

This has not been ameliorated by the information powers of the ACCC or existing dispute resolution processes. In principle ATUG supports the strong policy preference for commercial negotiation. In practice strong incentives must be in place to ensure equality at the negotiating table.

Even the effective use of ADR is questionable without strong incentives that create negotiating equality between the parties.

An alternative approach, that ATUG has previously suggested, is to develop a framework for Services of National Significance. This approach would forestall most future disputes by ensuring services that are critical to robust, effective competition, such as PSTN interconnect and ULL access, are supplied on pre-determined terms and conditions without the need for extended negotiations and time-consuming arbitration and review.

The ACCC would conduct a public process to consider the declaration of certain telecommunications services to be Services of National Significance. In the event of the ACCC making such a determination, it would be required to determine with expedition the terms and conditions (including price) of the supply of these services to access seekers.

This approach could address in a systemic way issues of delay and lack of transparency which have been experienced. This is important to the development of sustainable, service-based competition with the benefits to price, service and innovation that a competitive market brings. Central to this idea is a pro-active and transparent role for the ACCC.

2. Long-term interests of end users must remain central to any decision or case management processes.

In ATUG's view, the commercial interests of individual players should come second to the long-term interests of end users and the explicit promotion of competition until there is evidence of sustainable and effective competition.

ATUG believes that long-term interests of end users will be served by **cost-oriented pricing** for both competitors and consumers.

ATUG also believes that long-term interests of end users will be better served by transparent setting, and public disclosure, of prices and price-related terms and conditions for access.

The ACCC should set benchmark prices for all network-related services at the one time, every three years. This will reduce the possibility for shifting costs between services and over time. Service by service negotiated and then arbitrated determination of prices, that are not disclosed, leads users to question whether their long-term interests are being protected.

End users look to the ACCC for positive assurance that their long-term interests are being addressed. There is very low likelihood that end-users ever being seen legally to have sufficient direct interests to warrant their direct participation in access related processes. They can only participate indirectly through the ACCC's commitment to competition and consumers.

ATUG regards as critical the role of the ACCC in influencing and where necessary determining access outcomes. End-users doubt that reliance on commercial negotiation alone will produce the right long-term results and prefer the ACCC to have active oversight, by way of benchmark processes and information disclosure, of even "commercial" outcomes.

2) ECITA inquiry into the Australian Telecommunications Network, August 2002

Two issues in that inquiry are relevant to the current inquiry:

- 1) Regulatory or other measures which might be required to bring the Australian telecommunications network up to an adequate level to ensure that all Australians may obtain access to adequate telecommunications services

End users need to know there is direct and transparent supervision of industry outcomes - hands-off regulatory tools are no longer credible.

Effective regulation will depend on information and transparency. The work being done on accounting separation for Telstra is critical to ensuring transparent, equitable outcomes and non-discriminatory treatment by Telstra of Telstra Retail vis-a-vis its competitors.

A pro-active role for the ACCC focused on transparent information, disclosure and timeliness is essential to

effectiveness. The ACCC's focus should be clearly on achieving outcomes (supporting competition, protecting end users and supervising prices) rather than managing a process.

A pro-active role for the ACA focused on transparent information, disclosure and timeliness is essential to effectiveness. The ACA's focus should be clearly on achieving outcomes for users rather than managing a process.

2) Any other matters, including international comparisons, which are deemed relevant to these issues by the Committee

A paper on recent changes to competition regulation in Europe was included at Attachment 12. At the centre of these changes is that incumbency is very powerful, such that providers with more than 25% of a market will be subjected to higher levels of regulation. The shift is away from "one size fits all" regulation.

2) DCITA inquiry into Emerging Market Structures report by the ACCC to the Government, June 2003

The ACCC's report on the wider competition effects of emerging market structures in the Pay TV market made the very serious observation that while much has been achieved from telecommunications regulation including improved service quality and significant price falls, the ongoing lack of effective competition in many telecommunications markets means consumers continue to pay higher prices and receive lower quality services across the entire communications sector than they otherwise would. ATUG's analysis of OECD pricing information in its Communications Outlook 2003 report supports this conclusion. Australia is generally in the mid price position rather than within the lowest 10 as we would expect.

The impact of ineffective competition (and regulation) on users is significant. For example, a recent assessment of the effect of lack of effective competition in the market for fixed to mobiles calls puts a figure in the order of \$750 million per year, on the cost to consumers of excess fixed to mobile charges.

It is of real concern to users that the ACCC believes that

significant competition concerns remain in a number of sectors and that the progress of competition in telecommunications markets is slowing.

Users place significant weight on the ACCC's views on these matters, given the obvious self-interest of the telecommunications industry and the difficult conflict of interest for the Government.

In his speech to ATUG 2003, the then ACCC Chairman, Dr Allan Fels, made a number of sobering observations about the state of competition and the potential for proposed remedies to deal with slowing competitiveness in telecommunications. These concerns are again reflected in the June 2003 Report on Emerging Market Structures and in the current Chairman, Graeme Samuel's speech to ATUG 2005.

The central policy issue is market power - derived from a ubiquitous fixed network, national coverage, and control over inputs essential to the provision of downstream services.

Information asymmetry, resource asymmetry and input dependence mean the real effectiveness of protective tools such as s46 or Part XIB is in practice doubtful - as we saw with the 2004/2005 Broadband Competition notice. The inability of the ACCC to obtain court robust evidence from competitors who depend on Telstra services for their business is not surprising.

Hence the need for strong access regulation and anti-competitive conduct rules, and the need for careful review of any ACCC recommendations which propose to strengthen competition in telecommunications.

To quote from the ACCC Emerging Markets report of 2003:

"The Commission believes the communications sector in Australia is now at a crossroad.

The future promises even more change. Developments such as the further digitisation of Telstra's copper network and the impending digitisation of the Telstra HFC network have the potential to deliver new or improved services to homes and businesses

These services not only have the potential to revolutionise home entertainment, but will have a significant impact on the business, education and health sectors, by delivering technology such as video-conferencing and other enhanced applications that are likely to increase the efficiency of Australian businesses.

However, Telstra's control of both a copper and a cable network and the lack of competitive discipline it faces as a result of this dual ownership, means Telstra is in a position to largely dictate the type of services that consumers will be able to access and the time at which these services become available.

Digitisation and the ability to offer broadband services over existing networks also present a real opportunity for genuine competition in the delivery of broadband services, if the Commission's recommendations in this report are accepted."

ATUG's perspective is that when telecommunications was fully de-regulated in 1997 there was a widespread expectation that infrastructure alternatives to Telstra's copper network would be developed in major cities and larger regional centres.

In reality, this type of competition has not materialised to the extent hoped. Competition has largely been at the retail level of the market rather than at the infrastructure level.

Because of this, access regulation and anti-competitive conduct regulation remain important in promoting competitive markets.

Changes to the Trade Practices Act in 2002 were designed to augment the regulatory accounting framework by introducing:

- Current cost accounting
- Ongoing imputation tests
- Ongoing monitoring of wholesale and retail provision of services

These were designed to ameliorate these effects of dominance through "accounting separation" but it seems to ATUG that the ACCC's cautions about the effectiveness of these changes, expressed by the then Chairman, Professor

Allan Fels in his speech to ATUG 2003, have subsequently proved to be correct:

"However, we should be cautious in creating false expectations about this regime (accounting separation). There needs to be a clear understanding that accounting separation is not designed to, and cannot force, a change in a carrier's underlying incentives or conduct. The extent to which it improves the competitive environment therefore depends not only on the degree of transparency it provides, but also the other regulatory tools to respond to competition problems identified.

Further, both in implementation and on-going compliance, Telstra's full cooperation in committing appropriate resources to this process will be vital to ensuring the regime works as well as possible.

To return to the OECD again, in 2001 it argued that that in the absence of structural separation, successful regulation is dependent on the regulator being given appropriate instruments of control, information and resources, (OECD, *Policy Brief - When should regulated public utilities be broken up?*, August 2001, p.3)

The Government's recent accounting separation amendments and introduction of undertakings and benchmark terms and conditions for core services aimed to strengthen these parts of the law.

In fact the ACCC reports unwelcome gaming of the undertakings process (both in the fixed and mobile parts of the market) and the increased number of access disputes on the mobile termination issue suggest to ATUG that the philosophy of light touch regulation may not be adequate to the realities of this industry.

The ACCC Chairman outlined the features of operational separation (now being considered as a replacement for accounting separation) in the ATUG speech in 2003:

"Whilst on this topic, it is worth discussion operational separation or ring fencing, as currently applies in some energy markets:

- This builds on accounting separation, with some further changes to the firm's organisational structure.

- It has the effect of physically separating the various business of the carrier - the network business would be separate from the retail business, with separate management, and some form of internal transfer pricing used to manage the relationship between the entities.
- It would provide a stronger requirement on an integrated carrier to refrain from discriminatory behaviour - stronger than accounting separation. And it would be easier to monitor.
- But, as with accounting separation, it does not change the underlying incentives for the firm as a whole."

In the Emerging Market Structures Report, the ACCC's view is that the current ownership by Telstra of both a copper network and the largest HFC network reduces the opportunities for competition between existing infrastructures.

The ACCC report goes on to say that significant competition and efficiency benefits would result from divestiture of Telstra's HFC network, by introducing a new infrastructure competitor into the market, and establishing conditions for increased rivalry and innovation in the supply of a full range of telecommunications services.

Overseas experience and independent analysis (including by the OECD) strongly suggest that the enhanced competition between independent networks should improve broadband price and service offerings and thereby increase the take-up of broadband services.

Locally, the Broadband Advisory Group also noted the importance of infrastructure competition for the provision of broadband services. This is reflected in international comparisons of broadband penetration, which suggest a correlation between broadband take-up and competition between independent network providers.

The OECD notes that a major reason for Canada's rapid development of broadband services is competition between different networks owned by independent carriers.

The ACCC report noted that divestiture of the HFC network by Telstra may also reduce the need for more interventionist approaches aimed at improving the competitive environment, such as actual separation of

Telstra's wholesale and retail businesses or separation of the local loop from the rest of Telstra's business.

In the face of the Government's determination not to consider divestiture of the cable network, the issue for ATUG is still how can the long-term interests of end users be addressed through regulation and government policy - the questions before the Committee in this inquiry.

4) ECITA Senate Inquiry into the provisions of the Telstra (Transition to Full Private Ownership) Bill 2003.

ATUG's submission was made on the basis of the Government's stated preference to sell down its holding in Telstra, given its stated position that the current telecommunications regime is delivering effective competition and that arrangements are in place to ensure that Australians have access to adequate telecommunications services.

ATUG's assessment of the telecommunications market, supported by reports from organisations such as the ACCC and the ACA, is that there are still significant concerns with market power and evidence of market failure in telecommunications.

There must be adequate ongoing, independent review and adjustment mechanisms in place to ensure that the current set of changes are implemented satisfactorily and that adjustments can be made as appropriate in the future. The role of the ACCC and the ACA as independent regulators focused on consumer benefits is critical.

There have been important gains for users from competition in telecommunications and there are important consumer safeguards already in place. But there significant opportunities for further improvement to ensure users do not pay too much for telecommunications services and enjoy the service quality and service innovation we expect from effective competition.

ECITA Competition in Broadband Services, October 2003

Broadband is the current new telecommunications service which is demonstrating the flaws in Australia's regulatory regime for telecommunications competition.

In the October 2003 inquiry, ATUG reviewed Australia's position against countries in the APEC region and in the OECD. An updated review indicates that Australia is still performing worse than expected on availability, speed offered and price structures. In Japan and France where there is effective access to ULL services at prices that provide margin for competitors, increases in broadband access and uptake have been dramatic.

An effectively competitive market in Australia would also be producing higher speeds, better availability and better pricing structures.

ATUG believes that the Australian market is not effectively competitive due to lack of robust infrastructure competition, and ineffective access to the infrastructure that does exist.

In terms of speed Australia is not seeing the sort of innovation one would expect if competition were working well. Most offers in Australia are at 256kbps, whereas in Japan speeds of 8Mbps to 12 Mbps are part of the competitive landscape.

The ineffectiveness of the competition notice launched by the ACCC in April 2004 and withdrawn in March 2005 in changing behaviour and incentives in a timely manner raises important questions about the effectiveness of Part XIB of the Trade Practices Act. An alternative approach would be to require the company which is the subject of the Competition Notice to lodge the fine until the Notice is withdrawn, as per the Tax Office requirement that assessments are paid while an objection is reviewed.

5) DCITA Report to the Minister on the USO Review, February 2004

The Regional Telecommunications Inquiry (Estens) found that the existing framework of legislated consumer safeguards is effective, and provides a strong level of protection for telecommunications consumers, and that compliance with legislated safeguards by carriers and service providers is generally high.

The RTI made a number of other findings and recommendations, which bear directly on the issue of provision of USO services. It strongly supported the consumer protection

provided by the universal service regime in relation to the STS, but found that the regime is not an effective mechanism for providing broad consumer access to a range of services in the future. The Report made a number of recommendations as to how other advanced services should be supported and promoted in the future.

ATUG Comments to the USO review were:

1. The role of a Universal Service Obligation in ensuring access to telecommunications services for the community is a well established regulatory feature of liberalised telecommunication regimes around the world. It should remain in place for the purposes of providing a "safety net" for users.
2. The extension of the USO to encompass new services such as mobiles and broadband has been discussed and rejected as a policy lever at the EU and OECD. ATUG supports this position **provided Government continues to assist with targeted funding in non-commercial areas.**
3. Discussion on funding USO obligations have resulted in "fit for purpose" schemes ranging from countries such as the UK where BT (and Kingston in Hull) cover the costs of their USO obligations, to the Australian model where a USO levy is placed on all carriers with eligible revenue.
4. The ACA Telecommunications Report 2002-2003 at page 177 makes the point that 94 participating persons will fund the USO costs for 2002-03 but that AAPT, Optus Mobile, Optus networks, Telstra Corporation and Vodafone are expected to contribute 95.4% of the total cost - about \$57 million of the levy receivable of \$68 million. Telstra itself contributes \$166 million of the \$234 million USO costs. (ACA Table 10.11). **ATUG believes the costs and complexity of this funding scheme outweigh the benefits.**
5. The central funding question is whether there is a net cost. From a financial perspective, ATUG believes that the Access Rebalancing strategies endorsed in the Price Control Regime, recent information from the ACCC Initial Reports Relating to the Accounting Separation of Telstra, growing revenues from new services such as narrowband Internet and broadband raise fundamental questions about the existence of a "net cost".

6. From a market perspective, ATUG's research into the Corporate market shows "For most top 100 companies the number of carriers they are prepared to use is small, often only two or three; sometimes they say there is no real choice at all. Underlying this outcome is a strong preference to use larger carriers operating their own networks." The key criteria for the sample studied were coverage, product range and technical depth. This study suggests that there is significant commercial value in owning ubiquitous infrastructure.
7. ATUG's research into SME customers reveals strong preference to source all communications services from a single supplier. The fixed phone and fax services are still regarded as the most important communications services. This study also suggests that there is significant commercial value in owning ubiquitous telephony infrastructure.
8. The ineffectiveness of the contestability pilots indicates that there is no role for the USO scheme in developing competitive infrastructure.
9. Over the last few years, it has become clear that competitive infrastructure outside urban areas and inter-capital routes develops only when there are new technologies with significantly lower cost structures and/or Government funding (Federal and State) is provided as part of the capital requirements.
10. Targeted funding support will continue to be required in the future to support the rollout of new generations of technology. Government support for extending mobile coverage, for untimed local call access to the internet in extended zones and the range of Broadband Funding Programs for regional Australia are current examples of such programs.
11. Given the requirement for Government funding for many of these projects and general agreement that the USO should not be extended to mobiles or broadband provision, ATUG believes carriers building competing infrastructure should not be required to contribute to the USO funding scheme.

12. As well as the development of targeted funding models over the last few years, the regulatory framework has been appropriately adjusted to reflect the unfolding reality that "one size fits all" regulation is not the best way to develop competition. For example, The National Reliability Framework and the Accounting Separation regime are targeted solely at Telstra's performance in key areas. The ACA report, *Review of the Telecommunications Customer Service Guarantee Arrangements*, found that blanket application of the CSG may be a barrier to entry into the fixed phone market and can reduce potential consumer benefits including price, quality, choice and innovation. An exemption scheme was introduced which only applies to telephone companies with a small share of the market in a specified geographic area. Telstra, as universal service provider for the whole of Australia, is not eligible for an exemption under the changes.
13. ATUG believes it is timely to reconsider the funding of the USO in view of increased direct government support for remote areas and newer technologies, the need to support the development of competing infrastructure in commercially marginal areas and user feedback which indicates that a high value is placed on ubiquitous infrastructure. ATUG supports a much simpler system and believe this will deliver benefits to competition and end users.

6) ATUG submission to the ACCC Review of Price Controls, August 2004

This review is the most recent review of the effectiveness of competition in telecommunications markets and ATUG canvassed a range of tools to enhance the effectiveness of the regulatory regime in achieving long term benefits for end users.

From ATUG's perspective the Price Control Regime has three outcomes:

To encourage competition by allowing rebalancing of prices between access and usage which will encourage efficient investment and infrastructure competition

To deliver consumer protection by ensuring price increases for access are offset by price decreases for usage, and are managed over a suitable time frame

To ensure low income consumers have affordable access to a telephone service.

The Price Control Regime sits within a framework of regulation for telecommunications services, including the Trade Practices Act, Access Provisions and Anti-Competition provisions, the role of the Australian Communications Authority in regard to information and monitoring, the TIO and ACIF, the industry self-regulatory body.

In terms of assessing the effectiveness of Price Controls, users look to Telstra accounting numbers, as these represent "hard currency" transactions. (See Attachment - slide 7, data for 2004, 2003, 2002, and 2001 as reported by Telstra).

Access (+65.5%) and Fixed to Mobile (+29.3%) revenues have underpinned total PSTN revenue growth of 13.6% from 2001 to 2004, compared to increases in overall sales revenue growth of 11% for the same period (\$18bn679 to \$20.737bn).

In 2001, each PSTN access line earned \$15.58 per month. In 2004, each PSTN access line earned \$26 per month.

By the end of the current Price Control period (July 2005) the need for rebalancing, and the associated effects of the Access Deficit Contribution on wholesale pricing, will have been met and arguably overtaken by increases in line rental charges. It is worth noting that business line rental prices already recover the costs of supplying the service.

ATUG notes the ACCC view that the need for Access Deficit recovery will be over by 2006/07 and that a TSLRIC-based price for PSTN services should be adopted.

ATUG would suggest that the Telstra 2004 Financial Highlights indicate that, at an average \$312 per annum per access line for 2003/04, the beginning of 2005/06 (coincidentally the beginning of the new Price Control period) should see the end of any need for an Access Deficit Contribution for any access line.

It seems to ATUG that new sources of revenue such as broadband (whether retail or wholesale) may mean that even today, there is currently no Access Deficit to be recouped.

There is no doubt that end users benefit from robust competition. There is also no doubt telecommunications is still in transition to competition, particularly in regard to "last mile" services. The real objective is to encourage strong competition in the provision of access services. This should be done via the Access and anti-Competition provisions of the Trade Practices Act. In the face of market failure or market dominance, the Price Control Regime should continue to be used to control prices, thereby protecting competition and consumers.

ATUG Comments on the ACCC Price Control Review Terms of Reference

Residential Line Rental and Local Calls

These should be retained in a Price Control basket.

Fixed to mobile calls

These should be the subject of a separate basket.

Given Telstra's continued dominance in local access services ATUG believes residential line rental and local calls, and fixed to mobile calls should remain under price controls, albeit with separate caps

The relevant caps should be CPI-X for local access services and the actual ACCC mandated price reduction (in cents/min) for mobile termination, for the retail fixed-to-mobile basket. Given continued cost reductions being targeted and achieved by Telstra, users expect to see real benefits accrue to them, the "X" factor.

Line rental for business customers

These services could be removed from the Price Control regime, **but only if the access provisions of the Trade Practices Act can be applied to deliver wholesale prices for local access which encourage further competition.** Business users would welcome the opportunity to negotiate line access prices, given that the current prices are already above the recovery cost. The ACCC's ULL Indicative

pricing should provide a further incentive for competitors to enter the access market.

ATUG suggests introduction of a wholesale price "cap" for local access services equal to the ACCC determined cost to Telstra of providing access lines to ensure competition develops. This would be similar to the current benchmark approach to mobile termination rates - and should be introduced ahead of a full TSLRIC assessment. This can be reviewed quarterly as part of the Accounting Separation Reporting Regime.

Basic Residential Package

The ACCC should have ex ante approval powers for a "basic" residential local access package. This would allow competitive offers to develop but would ensure consumers who did not meet the low-income threshold but who did not want the confusion of bundled offers (see ACA Consumer Satisfaction Report, 2004) to have a clear, simple, cost based package of local access services.

National and Long Distance Calls

Competition seems strong in these areas and ATUG suggests these services could be removed from Price Controls, subject to development by the ACCC of new indicative prices to reflect the absence of an Access Deficit Contribution, and monitoring by the ACCC of wholesale pricing, competition and retail price developments. Competition should be stronger when the Access Deficit Contribution is eliminated from inter-connection prices and end users should benefit from this. Progress can be reviewed quarterly as part of the Accounting Separation Reporting Regime. Consideration may need to be given to adjusting the Anti Competition provisions of the Trade Practice Act to allow for swift action if there is evidence of anti-competitive behaviour in these markets.

The duration of any such arrangements

The next period for Price Controls should be three years, with implementation reviews every 12 months, and rollback to previous arrangements should this prove necessary. The development of strong infrastructure based competition in local access over this time frame is highly unlikely given

the reaction of the capital markets to telco sector investment at present.

The means of implementation of any such arrangements

The relevant retail caps should be CPI-X for local access services and the actual ACCC mandated price reduction for mobile termination for the fixed to mobile basket.

Given continued cost reductions being achieved by Telstra, users expect to see some benefit accrue to them, the "X" factor. The price control regime could be an effective tool to ensure mandated termination reductions are passed on to consumers.

Whether any complementary arrangements are required to work in conjunction with the future price controls and, if so, their nature; and

Given that services-based competition in local access services will continue for some time to come, the access provisions of the Trade Practices Act should be applied to derive wholesale prices for the line rental component of the local access service to encourage further competition.

The ACA should be directed to ensure that licence and spectrum fees do not impede the development of competitive local access services.

The second issue is whether the provisions of the Trade Practices Act are strong enough to deal with anti-competitive behaviour, if competition accelerates in the local access services via wireless or broadband.

ATUG was disappointed when the broadband market, which had been seen as an example of a "born competitive" market, stumbled as Telstra adjusted its own retail prices ahead of offering competitive wholesale prices to its wholesale customers.

The ACCC would have to be able to move very quickly in the face of increases to wholesale prices or significant reductions to retail prices (which, we note, would make a complete mockery of the last 10 years of re-balancing).

Mechanisms for assessing and enforcing compliance

From a user's perspective, compliance should be assessed by reference to the prices actually paid for services. The ACCC Annual Telecommunications Reports, the ACCC Market Indicator Reports, wholesale market price monitoring through Accounting Separation Reports and monitoring of bundling, can be used to assess the impacts on competition and consumers.

ATUG understands that enforcement of price control obligations is managed via licence conditions. ATUG suggests that Part XIB powers may also be relevant given the potential impact on competitors in the face of evidence of non-compliance.

Parliament should formally respond to ACCC concerns, expressed in its Annual Reports on Telecommunications, about the adequacy of industry market structure where this is adversely affecting competition and consumers. For a number of years now, the ACCC has been highlighting its concerns about the effectiveness of competition in telecommunications. In the 2002-2003 reports, the impact of this on consumers was demonstrated clearly- consumers with market power (corporate users) are in a position to exercise some influence on the market, but small business and residential consumers have no such power and are at present reliant on regulation as a proxy for effective competition. When the ACCC identifies market structure problems, and evidence emerges of negative impacts on consumers, the Government needs to respond with appropriate policy and, where needed, legislation.

The current state of competition

The ACCC's Market Indicator Report 2002-2003 paints the picture - Telstra has 87% of access revenues; 77% of local call revenues; 71% of domestic long distance revenues; 62% of international long distance revenues; 74% of fixed to mobile revenues.

The ACCC's Annual Reports into Price Changes for Telecommunications Services, 2002-2003, show an unwelcome trend of price increases for some services and some customer groups, during the period of a more relaxed Price Control Regime.

One of the objectives of reform to telecommunications was the international competitiveness of the telecommunications

industry and, indeed, Australian businesses in general. The OECD's Communications Outlook 2003, especially Chapter 6, Pricing Trends, indicates that Australian users, both residential and business, pay more for telecommunications on a US\$ PPP basis than relevant comparisons such as Canada, major trading partners such as Japan and Korea, and most of the G7 countries.

ATUG refers also to the ACA's 7th Annual Consumer Satisfaction Survey. ATUG regards this as an important contribution to the Price Control debate, adding as it does an objective perspective from end users on competition and prices. At page 10, the report states,

"As in all previous years, fixed phone line rental was the areas in which respondents were most likely to say the price they paid was too high. Although the proportion of respondents who thought fixed lines prices were too high was slightly lower than in 2003, it still represented the majority of both household respondents and small business customers - 67% and 65%, respectively. This finding was made before the April 2004 announcement that Telstra would be increasing fixed line rental costs."

The ACA report also contains useful information on the end user experience with bundling. At page 22,

"Overall satisfaction was a medium level among small business respondents (81%) and a low level among household respondents (78%).

Among small business respondents, the main reason by far for dissatisfaction was confusion over which discounts apply to which services. However, as a cause of dissatisfaction among household respondents this was second to little reduction in costs, closely followed by inflexible packaging of service in bundles."

On satisfaction with competition, the report says at page 29,

"In general satisfaction with the current level of competition in fixed line telephone services and the price competition for both fixed line and mobile phone services decreased in 2004. As in previous years,

respondents in 2004 were more satisfied with the current level of competition for fixed line services than with price competition for either fixed line or mobile phone services.

While 69% of household respondents were satisfied with the current level of competition for fixed line services, only 50% were satisfied with the level of price competition for these services. Among small business respondents, 64% indicated satisfaction with the current level of competition for fixed line services, whereas only 54% were satisfied with the level of price competition for these services."

The ACA concludes, at page 31,

"Both small businesses and households continue to have low satisfaction with the information that telecommunications companies generate about their fixed line and mobile service offerings. Consumers find this information hard to access and understand.

Many of the areas in which low satisfaction was recorded are subject to ongoing work by industry regulators and forums. The survey revealed low to very low consumer satisfaction with notification of changes to contract terms and conditions. At present ACIF is developing a code aimed at developing a balanced contractual environment for both consumers and service providers.

Another area where consistently low levels of consumer satisfaction have been recorded is in the level of price competition for telecommunications services."

Access "holidays"

A key objective of government policy over the next five years in ATUG's view must be the fostering of infrastructure competition in local access services. The ACCC, the ACA, the Department and ACIF must all be focused on achieving increased competition in local access.

Users have supported this direction by paying for rebalancing, hopefully looking after their long-term interests in doing so.

Recent discussions about tweaking the Access Regime to support Telstra's rollout of Optic Fibre local access, miss the point, in ATUG's view. The real issue is what we need to do to encourage the development of competitive local access, whether by fibre, broadband or wireless. ATUG would not want to see another "cable rollout" where access is denied and no real infrastructure (commercially independent) competition is achieved.

ATUG understands that within a two-year period the costs of laying fibre and copper will be similar. Thus for greenfields sites and brownfields sites that require replacement or upgrading for business reasons (such as to meet the CSG or NRF requirements), costs will be essentially the same. The vision we expect to see is fibre being used to create an alternative network, not an up to date local access bottleneck.

The other problem with "tweaking" the access regime in the way suggested (i.e., through an access holiday), on the basis of technology, is that we could wind up with parts of the network subject to Trade Practices Act access provisions and parts which were not. The FCC has dealt with this issue already in the IP context saying that simply installing IP in parts of the network does not avoid regulatory obligations. Australia should follow this lead.

The impacts of rebalancing during the life of the current Price Control Regime can be seen in the following table:

Telstra Corporation
 Full year 03/04 Financial Highlights 2004, Table 5, and
 Annual Report 2003, Table 2, for 2003, 2002, 2001 numbers

| 2001-2004 % | 2004 | 2003 | 2002 | 2001 |
|---------------------------|----------------------|--------|--------|----------------------|
| Access revenue +65.5% | 3237 (15.6%) | 3083 | 2880 | 1955 (10.5%) |
| Access lines -8.6% | 10.37m (\$312 pa) | 10.31m | 10.40m | 10.46m (\$187 pa) |
| Local Calls \$ -19.6% | 1504 | 1567 | 1643 | 1915 |
| Calls -12% | 9397 | 9794 | 10269 | 10696 |
| NLD \$ -11.5% | 1121 | 1162 | 1216 | 1267 |
| Minutes -6.2% | 8520 | 9161 | 9170 | 9082 |
| IDD \$ - 21% | 266 | 307 | 336 | 338 |
| Minutes -6% | 651 | 740 | 781 | 693 |
| F2M \$ +24% | 1597 (7.7%) | 1517 | 1419 | 1287 (6.8%) |
| Minutes +29.3% | 4226 37.79c/m | 3944 | 3691 | 3268 39.38c/m |
| Total PSTN \$ +13.6% | 7984 | 7916 | 7755 | 7025 |
| Total Sales \$ +11% | 20737 | 20495 | 20196 | 18679 |
| Mobile revenue \$ +19% | 3455 | 3227 | 3242 | 2906 |
| Mobiles +47% | 7604 | 6569 | 5942 | 5176 |
| Minutes +16% | 6145 avg/min56c | 6335 | 5780 | 5277 avg/min 55c |

Implications of new and emerging technologies on price control arrangements and of price controls on new and emerging technologies

There is no doubt that new services, both reliable and reasonably priced, have the potential to change the competitive landscape in telecommunications.

As we head into the Information Age user goals keep moving. Broadband (including wireless) is part of the story, IP networks and VoIP services will be among the choices facing users over the next five years. Any-to-any connectivity and reasonably priced access will be as important in this new world as they are now. A focus on promoting competition and swift action to deal with anti-competitive behaviour will be needed for some years ahead.

7) ACA Regulatory Philosophy consultation, November 2004

ATUG had the following comments to make on the ACA's Regulatory Philosophy draft:

ATUG believes reference should be made also to the Trade Practices Act which governs competition in telecommunications, general promotion of competition and consumer protection. The link between ACA responsibilities eg spectrum licensing, consumer information and SPAM to name a couple of examples, and ACCC responsibilities ought to be explicit in ATUG's view.

In regard to **independence**, ATUG is not clear that the ACA is completely independent of Government, with some matters needing to be referred to Government for approval or reported to Government.

In regard to its **community** principle, ATUG also believes ACA's commitment to public disclosure in all aspects of its decision making, monitoring and reporting should be reflected in the Regulatory Philosophy statement. Notification should go beyond the immediate parties to the decision.

ATUG believes the ACA has an important **community** information role. ATUG supports collection by the ACA of consumer data on awareness and satisfaction but would prefer to see an outcome of this work in the form of recommendations to relevant parties. ATUG supports the production of information kits for consumers of telecommunications services as part of this commitment to community.

In regard to **responsiveness**, the ACA's responsibility here should go beyond responding to approaches and enquiries. The ACA monitors the industry and its outcomes and reports annually to government. Where this reporting identifies relevant and emerging matters, the ACA's role should extend to proposing solutions - whether for Government, industry, end users, the ACA or other regulatory and self-regulatory bodies to discuss and implement.

ATUG believes the Regulatory Philosophy statement should be reviewed again after the **merger of the ACA and ABA**. This

may be brought forward with joint Board membership arrangements recently announced.

ATUG would like to see more explicit reference to the ACA's commitment to innovation and outcomes for end users of telecommunications services to mirror the Telecommunications Act and the telecommunications provisions of the Trade Practices Act. Decisions on matters such as spectrum should reflect the overarching purpose of the telecommunications policy - to promote competition in the long-term interests of end users.

ATUG would like to see explicit reference to the ACA's role in regard to regional telecommunications. Activities such as USO, NRF, and CSG compliance among others go to a special responsibility the ACA for this particular group of end users.

8) ATUG submission to Productivity Commission Review of National Competition Policy, December 2004

For end users of telecommunications services, the Productivity Commission's review of National Competition Policy and in particular progress and problems in the telecommunications market, is very important at a time when new technologies such as wireless (for voice and data), 3G mobile, IP platforms and fibre networks bring the promise of innovation and effective competition. The issue for end users is how to ensure the rhetoric becomes reality.

Over the last seven years of open competition the telecommunications industry has developed from monopoly to duopoly to regulated competition, but has not yet achieved fully effective competition in any market due to the continued bottleneck nature of last mile access.

The access regime of the Trade Practices Act should have provided the first rung of a "ladder of investment". The idea is that companies will use mandated access to build customer bases that will support the subsequent rollout of independent infrastructure, which is the basis of effective competition.

Unhappily over the last 7 years of supposedly open competition, a number of companies who thought they were on this ladder of opportunity found themselves on a ladder of legal process, having to rely on the access and anti-

competitive behaviour powers of the ACCC to go to the next rung.

Equity markets have been part of this painful learning experience and for them lessons from investment in telecommunications infrastructure linger longer.

A number of companies have spent significant amounts of capital building independent infrastructure (even ahead of a customer base e.g. AAPT, Next Gen Networks, IP 1, Comindico, TransAct, PowerTel/Request, UeComm, Hutchison, Macquarie Corporate, Flowcom among others) but have had to rely on arbitration and litigation over many years to achieve real access i.e. on workable price and non-price terms and conditions. A number have finished up being bought at fire sale prices by larger players.

Even with broadband, a market which was seemingly "born competitive" with an expectation at the outset that market shares would be more widely spread than the usual fixed network services, the ACCC has had to issue competition notices to Telstra to get action, the most recent one of which is still in force (as at December 2004, subsequently withdrawn March 2005).

This short history of telecommunications competition becomes more relevant as debate heats up about how and when Australia will get the wireless, 3G, IP and fibre networks users need to deliver real, not bonsai, broadband and stronger competition in voice services, where margins are still very high.

Australia lost an opportunity in the early nineties to deliver effective competition in last mile access and the benefits this brings to end users, by allowing Telstra to duplicate the Optus HFC rollout. The negative impact of this on Australia's broadband uptake is the subject of continuing comment by the OECD and the ACCC.

As we saw with the HFC cable network - effective infrastructure competition doesn't emerge when different types of infrastructure are commercially converged.

Some commentators are focusing their questions on how to adjust the Trade Practices Act to ensure Telstra has the incentive it needs to build out these new networks. For ATUG, the real question is whether our regulatory framework

will encourage the **new entry** and innovation users need for an effectively competitive market.

Experience suggests that "tweaking" access regime alone is not enough - effective anti-competitive behaviour provisions are an important part of the story.

Innovation

The end game for telecommunications users is strong and effective competition. New technologies are part of the answer and must be encouraged, not least through the telecommunications regulatory regime. Users are looking for pro-competitive outcomes, not more of the same on a different playing field.

Professor William G Shepherd spoke to the ACCC Annual Conference in 2004 on the effectiveness of regulation. Professor Shepherd reviewed US experience in regulating natural monopolies and anti-trust policies since 1900 before coming to the following conclusions:

"..recognise that much more is at stake than mere efficiency. The public interest involves many important goals. Innovation is probably the biggest one.

For over two centuries, innovation has been the great source of rising productivity, progress and welfare. X-efficiency has also been important, and so is the healthy competitive process itself. Also significant are freedom of choice, and fairness in the results, and the sound economic basis for democracy. The regulators' choices need to promote all of these, not just allocative efficiency."

And further,

"Fully effective competition.

To be genuinely effective, competition needs to have intense, sustained mutual pressure among competitors, with no monopoly or collusion. For a high probability of good results, the practical basis is:

1. At least 5 'reasonably comparable" rivals. (That number may vary slightly with the situation, but the need for "enough" strong rivals is fully affirmed by literature)

2. None of those firms must hold a dominant position, with 40% of the market or more (ATUG NOTE: the EU uses 25% as an indicator of significant market power)
3. Entry by new competitors must be easy to do."

If our aim is innovation and shared markets, then infrastructure competition is essential. ATUG's support for the Commission's draft recommendation goes to our concern for genuine infrastructure competition - not just between technology platforms but between commercial entities.

OECD Findings on Competing Infrastructure.

The OECD report on Broadband and Telephony over cable television networks (DSTI/ICCP/TISP(2003)1 (attached) outlines the importance of infrastructure competition at page 4,

"...One conclusion that can be drawn from this work is that the broadband markets in one-third of OECD countries are being held back where the cable networks are not providing independent competition with the PSTN. This is evident in the differences in the level of service, pricing and take-up of services. In these cases, all options need to be considered including separating cable networks from incumbent PSTN operators. There may be cases where this is not necessary if these cable networks were developed in an open market (i.e., not under a monopoly or duopoly applying to the telecommunications market."

In regard to broadband the OECD is clear, (pg 19)

"39. The ownership of cable television networks by incumbent telecommunications carriers has had quantifiable impacts on the development of broadband access. The average take-up rate for cable modems on networks owned by telecommunications carriers is just 2.6%. By way of contrast the average for independently owned cable networks is 10.7%. In other words, if their home is passed by an independently owned cable company, users are four times more likely to take the cable modem service."

ATUG Research

ATUG's 2002 study into Top 100 buyers of telecommunications services and more recently ATUG's 2004 Regional Broadband Roadshow which visited 22 centres in regional Australia

confirm that end users understand the significance of infrastructure competition to the effectiveness of telecommunications markets and to innovation, quality and prices.

ATUG has been supporting competition in telecommunications since 1981, on the basis that a competitive industry would deliver better benefits to end users in terms of prices, service levels and innovation than monopoly providers.

The driver for ATUG's interest has been to ensure that Australian business, government and consumer users are not disadvantaged in comparison to their overseas counterparts in terms of cost structures, productivity and service capability, and innovation.

ATUG thinks it is worth taking a stocktake on where we are up to with competition in telecommunications before deciding next steps and for this reason supports the Productivity Commission's draft recommendation. ATUG believes there are important areas where current arrangements should be strengthened before proceeding with the further privatisation of Telstra.

In the 7 years since open competition, while there has been good progress towards competition, user experience has revealed two major problems in relying on competition alone to deliver public interest outcomes in telecommunications:

- 1) market power - which has remained an issue even in potentially more competitive geographic markets such as urban areas and still requires significant regulatory attention for certain services and in certain markets e.g. wholesale broadband offers
- 2) market failure - which has been an particular issue in non-competitive geographic markets such as regional, rural and remote areas, and will continue to require significant regulatory attention and government funding e.g. mobile and broadband services in regional Australia

User concerns about market power and market failure need responses in the following areas:

- The role of Parliament in monitoring the effectiveness of competition in telecommunications and securing public benefit outcomes from this industry

- The need for continued Government focus and funding in areas that are non-competitive and underserved
- An ongoing commitment to the role of the ACCC, its telecommunications sector specific powers and its focus on the long-term interests of end users
- Strengthening the role of the ACCC to include increased powers in regard to wholesale access prices and anti-competitive behaviour,
- Enhancing the role of the ACA to one of ensuring pro-competitive outcomes and effective consumer protection

Other matters

ATUG also wishes to make a few remarks on matters raised in other submissions.

One is the prospect of integrated firms leveraging market power into potentially competitive markets. From an end users perspective this is exactly what Telstra is doing with its bundled retail offerings - where fixed, mobile and Internet services are bundled at the retail end. The ACCC has this matter under review and its continued concern is highlighted by the increased regulation recently applied to the Corporate Customer market for telecommunications services.

The argument about economies of scale and scope applies where common infrastructure is used to deliver multiple services. The over-build of competitive infrastructure (Optus cable) by Telstra is not an example of economies of scale or scope but anti-competitive conduct, in ATUG's view. The fact that Government policy permitted this inefficient investment in infrastructure does not support continuation of a situation which continues to have the effect of stifling competition. Optus' recent divestiture of its "content" interests is a pertinent local example of why it is not always necessary for carriers to have a position in content businesses.

The suggestion that market forces will drive structural separation depends on markets being effectively competitive, a core assumption ATUG would contest and a circular argument at best. From ATUG's perspective, the market for telecommunications is not effectively competitive and it is hard to see how further regulation without structural change is going to change this situation.

In regard to examples of innovation in telecommunications prior to deregulation, ATUG would suggest that examples such as Computerphone (with its 64kbyte memory) and Viatel actually support the need to introduce competition. End users would argue that these products were an indication that Telecom did not understand the customer market, rather than being positive examples of innovation from an integrated, monopoly provider.

ATUG would use innovations in mobiles and broadband in markets outside Australia to make the case for measures to deliver stronger competition. More competition, not less will drive innovation.

ATUG watches developments in technology in Asia as a benchmark for what users should be offered in Australia. CommunicAsia in Singapore in June each year provides a snapshot of developments in the world's most dynamic telecommunications market. APECTel meetings in March and September also provide a background view of developments in the production, promotion and use of telecommunications technologies for economic, social and government service delivery outcomes.

Asia's lead in the OECD broadband league table is driving the development of entertainment and business applications to make e-commerce and e-lifestyle faster and easier. The focus by Korea on high-speed and now wireless broadband, and by Japan on fibre to the home, lift the stakes higher again.

The value of competition to all stakeholders in the telecommunications industry is undisputed - the increased availability, use of and spend on telecommunications that accompanies liberalization and innovation is evident around the world. The benefits of this capability to productivity and growth have been well documented by the OECD, Australian government agencies and private sector research companies.

Mobile, wireless, broadband and IP technologies have the potential to take competition in telecommunications to the next stage by allowing cost effective infrastructure and new applications to be deployed in competition with legacy, fixed wire networks.

The ACCC has been highlighting its concerns with market

structure in the telecommunications industry for over two years. OECD evidence is clear that infrastructure competition is critical to the development of broadband. Canadian experience tells us that competition between copper and cable has been key to the development of broadband. The time has come for a debate on the substance rather than the politics of these issues. The legacy of decisions taken with cable networks must not be carried forward into the fibre generation.

OFCOM Review

The suggestion that life has moved on since the Hilmer recommendations may be true but the progress envisaged by these reforms has not been achieved in telecommunications. Technology has changed rapidly but the response in other jurisdictions is not to suggest that the original aims are currently misguided but rather to face the fact that the current market and regulatory structure is unsustainable, per OFCOM's review:

"Faced with the technology shift to digital, it is becoming clear that the current market and regulatory structure is unsustainable. It is that challenge that OFCOM's Phase 2 proposals seek to address.

"Telecommunications is an important economic sector in its own right. It also has a growing impact on our lives as individuals, on businesses in terms of efficiency and customer service and on the United Kingdom's competitiveness as a knowledge-based economy...

On the final question posed - whether structural or operational separation of BT Group plc, or full functional equivalence, still remained relevant issues - the answer from the Phase 1 consultation was that, yes, they were still relevant; more so perhaps than we had anticipated. However, the large majority of industry respondents expressed caution about the prolonged uncertainty and disruption to the sector that would be involved in the process which would determinatively answer the structural separation question, namely an Enterprise Act market investigation and subsequent referral to the Competition Commission. If genuine equality of access could be made to work, the overwhelming majority of responses suggested that it would be a far preferable outcome. Equally, however,

they shared Ofcom's view that the status quo was unsustainable."

ATUG has included a full extract from the report as an attachment to this submission. The detailed review identified by OFCOM is needed in Australia before the further privatisation of Telstra.

Conclusion

ATUG supports the Productivity Commission's recommendation that:

"The Australian Government should widen the scheduled 2007 review of the telecommunications-specific, anti-competitive conduct regime to include consideration of the appropriateness of the structural configuration of Telstra. Consistent with NCP requirements, if the Government proceeds with the full sale of Telstra prior to that date, this review should also be brought forward and its findings considered before the sale arrangements are put in place."