



Telecommunications post-97:

The process of reforming the telecommunications industry and regulatory structure is well under way, with the Government ambitious in its aim to have draft legislation passed by the end of this year.

In an effort to meet this deadline, the Minister for Communications and the Arts, Senator Richard Alston, released a discussion paper on the proposed post-1997 telecommunications legislation, conducted a telecommunications working forum in Sydney on 16 May 1996 and established an Expert Working Group to discuss and prepare drafting instructions for the revised telecommunications legislation.

Expert working group

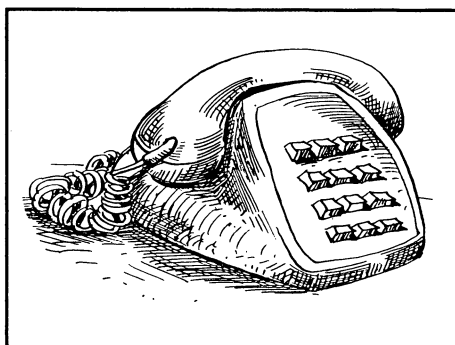
Participants in the Minister's Expert Working Group were Mara Bun (Australian Consumers' Association), Allan Horsley (ATUG), Henry Ergas (Bell South New Zealand Visiting Professor of Network Economics and Communications at the University of Auckland) and Phil Singleton (Telecommunications Industry Development Authority). Consumer participation in the working group was welcomed by consumer organisations.

As planned, the Group met for a total of six hours during the first two weeks of June. Consumer groups were concerned whether this was, realistically, enough time to adequately address the complex and conflicting needs of the parties around the table. At the time of going to press, it was understood that the need for a further meeting of the Group had been foreshadowed.

It is not known whether the outcomes of the Expert Working Group's deliberations will form the basis of a White Paper and be released for further public scrutiny prior to the preparation of an Exposure Bill.

Reform issues

The Centre is pleased to note that some aspects of the Coalition's proposals for industry reform are a marked improvement on earlier proposals, especially the lessened emphasis on industry self-regulation through the use of codes of practice.



However, the Centre still has a number of concerns relating to the industry reform proposals put forward by the Minister in his Discussion Paper of 13 May 1996.

Universal service

Election promises made by the Government included a commitment that all Australians will receive enhanced levels of service by mid-1997. Furthermore, in his address to ATUG '96, Senator Alston stated that the Government will 'preserve and enhance universal service' and that universal service is 'a matter of social equity and inclusion'.

In its pre-election policy statement, *Better Communications*, the Coalition stated that it would require Telstra to complete the Future Mode of Operation (FMO) digitisation of its exchanges by 1 July 1997 (three years ahead of the current schedule). It also undertook to require Telstra to offer ISDN digital access services where digitised exchanges are available, to bring ISDN services into the

price cap regime from 1 July 1996 and to require the ACCC to monitor ISDN prices against world benchmarks.

For those three per cent of Australian consumers falling outside the FMO program, the Coalition promised to investigate the most appropriate and low cost technical options for providing access to enhanced phone and digital information services.

However, the Discussion Paper does not refer to the Government's election commitments. Furthermore, it appears that the Government intends to direct Telstra to comply with these commitments, rather than make them part of a legislative upgrade.

The Centre believes that the promised enhancement to services should be reflected in the legislative mechanism set up to deal with the universal service issue, that is, where universal service carriers are legislatively obliged to provide the services to everyone.

It must also be ensured that major conceptual issues about universal service are not left until late in the drafting process, as happened with the 1991 legislation.

Standard telephone service

When in opposition, Senator Alston emphasised the need for a review of the standard telephone service definition, which 'should examine options such as ensuring G3 fax performance nationally, or even the national availability of a 64k bps digital link' (CUA August 1995). Senator Alston called on the former Government to ensure that the review would be completed by August 1996, else 'prospective carriers will be completely in the dark about their post-'97 obligations, discouraging investment. At the same time, customers (particularly rural



the CLC's response

customers) will continue to be denied access to technology which is becoming an important social and business input.'

The Government's Discussion Paper proposes that universal service includes the obligation to provide the standard telecommunications service (being the standard telephone service and any other prescribed service) and payphones. The standard telephone service is defined as a carriage service where one of its main purposes is voice telephony; prescribed services include the supply of a telephone with non-switching functions.

The Centre is concerned that the proposed definition does not specifically provide for consideration to be given to the inclusion of data and facsimile capability, as promised by the former government in its Policy Principles. Furthermore, the Coalition's proposals in its Discussion Paper appear to be significantly weaker than those it made in Opposition.

The Centre believes that it is necessary to upgrade the definition of the standard service. The Government must clearly state its intention to do so and the timeframe in which this will occur.

Tendering for Universal Service

The Government intends to legislate to allow alternative methods of allocation of universal service providers for particular geographic areas, such as by tender. The Centre acknowledges problems with the current system of universal service provision and believes that innovative approaches to allocating responsibility for universal service need to be investigated. However, schemes such as tendering raise very real and prac-

tical difficulties which need to be given close attention before they are given legislative sanction.

The TIO Scheme

Under arrangements proposed in the Discussion Paper, carriers will be required to enter and comply with the TIO scheme; service providers would only be required to comply with the scheme. However, AUSTEL will be given the power to direct service providers to enter the scheme, although the grounds on which such a direction might occur are unknown. It may be presumed, though, that direction would be seen as a penalty to the service provider.

The Centre believes that there is a strong case to be made for the compulsory registration or membership of service providers with the TIO scheme. This could be seen to be in the interests of service providers in the promotion of their services, as well as in the interests of consumers in knowing that a degree of accountability, compliance and enforceability will flow from such membership or registration.

Codes of practice and standards

It is the Government's intention that the new legislation will provide for an industry that is largely self-regulating. This will be achieved by establishing a codes of practice regime, with AUSTEL empowered to make mandatory standards on some matters. It is proposed that AUSTEL would have the power to direct compliance with a code or to declare a standard if there is widespread non-compliance. The Centre welcomes the fact that the Government's Dis-

cussion Paper places less emphasis on the use of codes of practice in the regulation of the industry. Instead, the Government proposes that some of the more serious consumer concerns will be protected by legislation or by a recognised standards regime. The Centre also notes and welcomes the Government's commitment to the development and implementation of a Customer Service Guarantees scheme under the Telstra privatisation package.

However, there are several issues arising from the use of codes as a means of consumer protection. These include the fact that the track-record in code development to date has been far from impressive (eg, the mobile churn code). This indicates a need to establish strict, but realistic, timeframes for the development of the codes, taking into consideration the priority that should be given to the various codes and their likely degrees of complexity.

In order to safeguard the interests of consumers, AUSTEL's powers regarding direction of compliance with a code or the development of a standard where the code fails must be spelled out clearly in the legislation.

The consumer voice

As the reform process heads towards 1 July 1997, the need for continued and funded representation and advocacy of consumer needs will not diminish. In fact, it may be more necessary than ever before, with an increasingly complex and competitive market and new regulatory arrangements.

Consumers need and are looking for a resourced means of constructive participation and not token observation in the new telecommunications regime. □

Sue Ferguson



Telecommunications regulation:

This is an updated version of the table appearing in the August 1995 edition of *CU* which incorporates the Liberal Government's proposed post-1997 regulatory regime.

	1975	1989	1991	1997 (proposed)
Regulator(s)	Cth Postmasters-General's Dept. to 1975; then ATC/Telecom.	AUSTEL, TPC.	AUSTEL; TPC/ACCC from 1995; SMA from 1993.	Specialist branch of the ACCC (competition aspects); merged AUSTEL and SMA (technical); ABA (content) .
Telecoms. Providers	Cth Postmasters-General's Dept. to 1975 then ATC/Telecom (domestic); OTC (international) from 1946; AUSSAT (satellite) from 1981.	Telecom, OTC, & AUSSAT. Some providers of 'value added services' (VAS) & 'private network services' (PNS).	Telecom & OTC merged to form AOTC. AUSSAT sold to private 2nd carrier (Optus). 3 mobile carriers licensed (Telstra Optus Vodafone). Service providers under class licences.	No limit to the numbers of carriers or service providers. Elimination of regulatory barriers to entry for new carriers and service providers. Redefinition of 'carrier'.
Ownership	Carriers state-owned.	Carriers state-owned; service providers privately owned. Trade Practices Act 1974 (TPA). Foreign Acquisitions & Takeovers Act 1975 (FATA).	Telstra state-owned. Other carriers & service providers privately owned. Limits on foreign participation in other carriers. TPA. FATA. From 1992 Broadcasting Services Act limit on carrier participation in satellite pay TV.	One-third of Telstra to be sold in Govt's present term of office. 35% reserved for foreign investors; 5% limit on individual foreign shareholdings. No restrictions on ownership of service providers or other carriers.
Scope for Competition	Limited exceptions to the statutory monopoly.	Some competition in customer premises equipment; 'VAS' & 'PNS'.	Duopoly in network infrastructure; triopoly in mobile services; open markets in other services.	Infrastructure provision open to service providers as well as carriers.
Reserved Rights	Most rights reserved to ATC/Telecom. Exemptions in favour of transport authorities, land owners & occupiers for installations capable only of operating within the land or premises, persons authorised by ATC/Telecom, AUSSAT, OTC, ABC, SBS & licensed broadcasters.	Any service for primary communications carriage between 2 or more 'cadasterally separated' places or persons reserved to carriers - Telecom (within Aust.); OTC (between Aust. & other places); AUSSAT (domestic satellite-based facilities).	General carriers: provision of reserved line links & ancillary facilities; satellite-based facilities; payphones. Mobile carriers: provision of mobile services. All reservations subject to exceptions.	No infrastructure or services reservations.
Access to Land	ATC/Telecom: extensive rights to enter, alter & build upon land subject to obligations to minimise disruption & pay compensation.	Telecom, OTC & AUSSAT: extensive access powers subject to obligations to give reasonable notice & to compensate.	Carriers: extensive access powers, subject to obligations to give reasonable notice & to compensate.	Introduction of new National Code from 1 July 1996. Elimination of current carrier exemptions from planning and environmental laws. Introduction of Land Access Code from July 1996.
Competitive Safeguards - Inter-connection	N/A.	Carriers obliged to connect 'VAS' & 'PNS' to their networks, unless not technically feasible or service declared unlicensed by AUSTEL.	Carriers right to obtain network interconnection & carriage, on reasonable terms & conditions. Service providers rights to tariffed basic carriage services (BCS) on non-discriminatory terms; right to connection of services not supplied by another carrier; power in AUSTEL to require 'unbundling' of services.	Development of a telecommunications access code, granting carrier and service provider access to carrier networks, including carrier access to 'full carrier functionality' (high level signalling systems). Pay TV operators subject to compulsory interconnect scheme from 1 July 1997.



Recent Australian history

	1975	1989	1991	1997 (proposed)
Competitive Safeguards - Pricing	N/A	Carriers prohibited from discrimination against 'VAS' & 'PNS' providers on price, performance or terms of supply, except so far as cost-justified.	Carriers BCS tariffs subject to disallowance by AUSTEL. Restrictions on departures from tariffed rates, inter-carrier fees set by AUSTEL or negotiated subject to AUSTEL arbitration, with reference to cost-based pricing principles.	No blanket proscription of price discrimination in wholesale or retail markets. Wholesale: pricing subject to Ministerial guideline and arbitration. Retail: ACCC may impose tariff notification/disallowance requirement on service providers exercising a substantial degree of market power.
Competitive Safeguards - Information	N/A	AUSTEL power to obtain info relevant to performance of its functions or exercise of its powers; broad accounting separation requirement.	Mandatory tariff filing for BCS offerings; reporting obligations; AUSTEL info-gathering powers; accounting separation under COA/CAM manual; register of access agreements.	ACCC power to require tariff filing from carriers and those service providers exercising a substantial degree of market power, with a discretion to keep information confidential.
Retail Price Control	Telecom required to publish rentals & charges in <i>Gazette</i> . Ministerial approval required for variations affecting 'standard telephone services' rentals, charges for calls within Aust. & charges for telegram transmission.	Minister could determine that a 'reserved service charge' was subject to price control arrangements, including price caps & notification & disallowance procedure.	CPI-X% price caps on 'baskets' of Telstra' retail services. Increases in prices of some other retail services subject to notification & disallowance process.	All existing price caps to be maintained; price controls outlined by Labor government's statement of August 1995 to be adhered to. ISDN to be brought into the price cap regime from 1 July 1996.
Industry Policy	Australian preference arrangements administered by Telecom.	Industry development arrangements 'to build a dynamic, export oriented industry integrated into world market opportunities'.	Significant network roll-out obligations imposed on new carriers through licence conditions. Various industry devt programs (FTA, IDA, Partnerships for Devt.). Telecoms Industry Devt Authority (TIDA) estab. 1992.	Broadband infrastructure providers to be brought within the ambit of industry development licence requirements.
Universal Service	ATC/Telecom obliged to 'make its telecoms. services available throughout Aust for all people who reasonably require those services'. Minister could direct Commission as to performance of its functions & exercise of its powers, as necessary in the public interest.	'Community service obligation' on Telecom.	'Universal service obligation' on Telstra to ensure that standard telephone service' & payphones are 'reasonably accessible to all people in Aust on an equitable bases, wherever they reside or carry on business; other carriers contribute according to shares of timed traffic.	Review of 'Standard Telephone Service'. No national coverage requirements imposed on new entrants; however, all carriers to contribute to Universal Service Levy.
Untimed Local Calls	Yes.	Yes.	Yes, at customer's option.	Right of untimed local calls extended to include business customers.
Ombudsman	Cth Ombudsman est. 1977	Cth Ombudsman	Telecoms. Industry Ombudsman (TIO) est 1993	TIO scheme 'retained and extended'. Carriers and service providers so directed by AUSTEL are required to enter the scheme; all carriers and service providers required to comply.