SENATE ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE

INQUIRY INTO THE *TELECOMMUNICATIONS AMENDMENT (MOBILE PHONE TOWERS) BILL 2011*

SUBMISSIONS OF TELSTRA CORPORATION LIMITED

9 March 2012

1. INTRODUCTION

On 14 September 2011, the *Telecommunications Amendment (Mobile Phone Towers) Bill 2011* (the **Bill**) was introduced into the Federal Parliament with the aim of amending Schedule 3 to the *Telecommunications Act 1997* (Cth) (**Telecommunications Act**). Schedule 3 sets out carriers' powers and immunities in connection with access to land.

On 13 February 2012, the Senate Environment and Communications Legislation Committee **(Senate Committee**) extended an invitation to Telstra Corporation Limited (**Telstra**) to present submissions to the inquiry on the Bill.

Telstra would like to thank the Senate Committee for this opportunity, and for consideration of Telstra's views.

This submission sets out Telstra's concerns regarding the Bill and the likely implications if it was to become law. **Annexure 1** is Schedule 3 of the Telecommunications Act marked up to show the amendments proposed in the Bill, with commentary from Telstra.

2. GENERAL COMMENTS

When introducing the Telecommunications Act to parliament in 1997, the Minister explained with respect to Schedule 3:

> . . . from 1 July 1997 government policy strikes the right balance between encouraging investment in infrastructure to meet the growing demand for new telecommunications services and facilitating further competition while also addressing the legitimate concerns of local communities about the effect of the roll-out of telecommunications infrastructure in their local environment.[1]

The Bill has the potential to substantially disrupt the telecommunications land access regime that has been in place since 1997. As a consequence, if the Bill was to become law, the provision of basic telecommunications services to the Australian community would be significantly impeded.

3. SUMMARY OF TELSTRA'S KEY CONCERNS

A summary of Telstra's key concerns about the amendments to the Telecommunications Act proposed in the Bill are set out below. These are considered in greater detail in the following sections.

3.1 Broad scope of proposed changes and unintended consequences:

The Bill is said to address concerns regarding mobile phone towers. However, its impacts extend beyond this, possibly unintentionally, to all types of radiocommunications

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[1] Warwick Smith (then Minister for Sport, Territories and Local Government and Minister Assisting the Prime Minister for the Sydney 2000 Games), second reading speech for the *Telecommunications Bill 1996*, 5 December 1996.

infrastructure and to undermine the whole telecommunications land access scheme. The repeal of all immunities from State laws for all activities authorised by Schedule 3, the exclusion of radiocommunications infrastructure from low-impact facility status and the extension of the notification period from 10 days to 30 days would significantly impact all aspects of network maintenance and deployment. Telstra is concerned that a limited understanding of the telecommunications land access regime, combined with ambiguous drafting, means that the Bill is unfocused and may well include limitations on carriers' powers not intended by Senator Brown.

3.2 Repeal of limited exemption from State and Territory laws for all telecommunications infrastructure

The Bill proposes to repeal the limited exemption from State and Territory Laws relating to, amongst other things, town planning, environmental assessment and use of land, for all activities authorised under Schedule 3. As a result, where carriers are relying on Schedule 3 to authorise their activities, they would have to assess the activity for compliance with State town planning laws (and perhaps obtain development approval) as well as following the onerous notification/consultation/objection processes the Bill proposes should be included in Schedule 3 and an amended Telecommunications Code of Practice. The telecommunications land access regime works because it is an alternative to the State processes. With the immunities repealed, two separate (and onerous) approval regimes would apply simultaneously, rendering the telecommunications land access scheme largely unworkable.

3.3 Elimination of land access powers in respect of the installation of all radiocommunications facilities

As noted, it appears that the Brown Bill has the effect of excluding all radiocommunications facilities from the possibility of designation as a low-impact facility. This is done through an expanded definition of "tower". It may be an unintentional outcome. However, if enacted, it would be a considerable constraint on a carrier's ability to maintain and develop both its cellular mobile network and its fixed radio network. Customer services impacts would be inevitable**.**

3.4 No regard to the industry code – Deployment of Mobile Network Infrastructure (ACIF C564: 2004)

The drafting as to additional community consultation in relation to radiocommunications infrastructure in the Brown Bill suggests that Senator Brown is unfamiliar with the Communications Alliance Limited industry code, Deployment of Mobile Network Infrastructure (ACIF C564: 2004) (**Mobile Infrastructure Industry Code**). The Mobile Infrastructure Industry Code is registered by the Australian Communications and Media Authority and has force under the Telecommunications Act as an "industry code". The Mobile Infrastructure Industry Code has just been through its second five year review. A joint working party comprised of carrier, local government and community representatives have agreed revisions to the Mobile Infrastructure Industry Code which allow for the provision of more extensive information to stakeholders and better communications more generally, including through a website which is to include detailed project information. Public comment on the revised Mobile Infrastructure Industry Code, renamed the Mobile Phone Base Station Deployment Code (DR2564:2011), closed in early September 2011. The new Mobile Phone Base Station Deployment Code is now in final form and is due to be formally registered in mid-2012. Telstra has found that the development of the Mobile Infrastructure Industry Code has allowed it to stay in touch with community attitudes and modify its processes to address these, where possible. Some of the consultation arrangements included in the Brown Bill have already been included in the new Mobile Phone Base Station Deployment Code.

3.5 Undermining community confidence in the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)

Operating radiocommunications facilities is a highly regulated activity. The *Radiocommunications Act 1997* (Cth) sets up a licencing scheme and regulates radio frequency electromagnetic energy (**EME**) through the terms of the licence conditions it imposes. ACMA has also prescribed EME exposure limits for its licensees in the *Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard* 2003 (**Radiocommunications Standard**). The ARPANSA *Radiation Protection Standard – Maximum Exposure Levels to Radiofrequency Fields – 3kHz to 300GHz* (**Australian Standard**) is incorporated into the Radiocommunications Standard. ARPANSA is a Commonwealth Government Authority and is entirely independent of the telecommunications carriers. There seems to be a suggestion in the Brown Bill that the existing regulatory system is inadequate. The Brown Bill proposes an amendment to the *Australian Radiation Protection and Nuclear Safety Act 1998* (Cth) to mandate a review of the Australian within 6 months and five yearly intervals thereafter. This, together with the references to the precautionary principle, the exclusion of an activity which may have the effect of increasing EME from the definition of maintenance activity and the position taken regarding community consultation creates the impression that, in Senator Brown's view, the community is at risk through inadequate regulation by the Commonwealth Government Authority which is entrusted with the task of establishing the appropriate standards for Australia. This is an unscientific approach and could lead to unnecessary anxiety in the community.

3.6 The Bill's consultation model is unworkable

The Bill proposes a consultation model whereby carriers are required to give 30 days' notice of any maintenance or low-impact installation activity to all owners and occupiers of land within 500 metres of the location of the wireless activity. Telstra undertakes approximately 10,000 maintenance or low-impact installation activities every year in reliance on the Telecommunications Act. Under the Bill the number of individual Notices required to be provided for each activity would be increased by tens, hundreds or even thousands in urban areas. Telstra estimates that it would be required to prepare an additional 400,000 Telecommunications Act notices annually. These notification requirements, together with a tripling of the length of the current notice period, would result in very significant delays in network maintenance and development, and massively increased costs. Telstra submits that the changes proposed in no way justify the massive increase in costs and service disruptions that will result if the proposal became law.

3.7 The system does not need radical reform

Carriers roll out infrastructure in response to customer demand – a demand which is increasing. People expect improved network coverage and improved service levels that provide the speed and reliability they desire. Streamlined land access powers have made it possible for telecommunications networks to be rolled out at a reasonable cost and in reasonable time frames while minimising impacts on local communities to the greatest extent possible. For the network to continue to expand, carriers must be able to continue to rely on an effective and efficient telecommunications land access regime. Telstra and the other carriers are aware that issues with local communities can arise in relation to specific projects from time to time. There is no doubt the industry could have performed better in connection with some network deployment activities in the past and that it needs to continue to improve its performance in this area. In the new Mobile Base Station Deployment Code, Telstra has voluntarily taken on additional obligations of disclosure and consultation, so as to better respond to community expectations. However, while there have been disputes from time to time, the system works well in the vast majority of situations. To limit the land access scheme in the manner suggested in the Brown Bill would alter the balance between legitimate concerns of local communities and the conditions for sound investment in telecommunications infrastructure, to the detriment of carriers, the community and the economy generally.

3.8 Other matters

In addition to these key concerns, there are several other substantial issues raised by the Bill which Telstra believes to be problematic and which it wishes to draw to the attention of the Committee. These are discussed below under section 9.

4. REPEAL OF LIMITED EXEMPTION FROM STATE AND TERRITORY LAWS FOR ALL TELECOMMUNICATIONS INFRASTRUCTURE

The Bill proposes to repeal the limited exemptions from State and Territory Laws relating to, amongst other things, town planning, environmental assessment and use of land, for all activities authorised under Schedule 3. This would completely overturn the current system of land access for all telecommunications infrastructure. The impact would not be confined to the "mobile phone towers" referred to in the title of the Bill.

If the limited immunities were to be repealed, carriers relying on Schedule 3 to authorise their activities would have to:

- assess the activity for compliance with State town planning laws and obtain development approvals as necessary; **and**

- follow the onerous notification/consultation/objection processes the Bill proposes should be included in Schedule 3 and an amended Telecommunications Code of Practice.

The telecommunications land access regime works because it is an alternative to the State processes. With the immunities repealed, two separate (and onerous) approval regimes would apply simultaneously, rendering the telecommunications land access scheme largely unworkable.

5. ELIMINATION OF LAND ACCESS POWERS IN RESPECT OF THE INSTALLATION OF ALL RADIOCOMMUNICATIONS FACILITIES

The change in the definition of "tower" is one of most significant proposals in the Brown Bill. The new definition appears to exclude all radiocommunications facilities from possible designation as a "low impact facility". At present, carriers may install a “low impact facility” under the authority of the Telecommunications Act. However, the Act states that a "tower" cannot be included in the definition of "low-impact facility". The *Telecommunications Low-impact Facilities) Determination 1997* (Cth) (**Low Impact Determination**) sets out in detail the types of infrastructure which is regarded as a "low impact facility".

The Brown Bill brings antenna, aerial, dish, other attachments, mounting piece, bracket, header, spacer, remote radio unit and similar attachments into the definition of "tower". The revised definition covers critical elements of every radiocommunications network. By expanding the definition of "tower", the Brown Bill imposes the existing constraints in the Telecommunications Act applicable to towers to equipment which is currently regarded as distinct from a tower. The proposed definition seems to bring antenna, aerial, and dish within the definition of "tower", even when they are not attached to a tower, mast or pole.

This expanded definition of tower, together with proposed prescription that the Minister may not determine that the installation of a "tower" is a low-impact facility (clause 6(5)), means that all radio transmitting facilities would be excluded from the Low Impact Determination. The impact of these amendments is set out below:

- Cellular Mobile Network: Exclusion of radio communications facilities from the Low Impact Determination would have a huge impact on Telstra's ability to develop the mobile telephone network. In addition to obstructing the rollout of common mobile facilities, it would affect in-building systems and low power pico and micro cell facilities that boost coverage in busy areas. Customer service impacts would be inevitable.

- Fixed Radio Network: This network is entirely separate from the Cellular Mobile Network. It provides the primary network for delivery of standard telecommunications services in area where remoteness or terrain prevent the installation of cabling. The radio network operates as a back-up system in other areas. If Telstra is unable to extend and manage this network under the Telecommunications Act powers, the cost of network deployment would necessarily increase considerably as projects move through State planning law processes and occupation rights are negotiated with land owners. The whole process would add many months to every project. Customer service impacts would be inevitable.

- Local government: Local government would become the consent authority for a large number of additional infrastructure classes in respect of which they have never been required to make development decisions. The local government resourcing levels will need to be increased. At least in the short term considerable delays can be expected in the granting of approvals, leading to delays in infrastructure rollout.

The breadth of the proposed definition of "tower" seems to have unintended consequences. Senator Brown's position would be more readily understood if the classes of infrastructure of particular concern were more clearly targeted in the Bill's drafting.

6. NO REGARD TO THE INDUSTRY CODE – DEPLOYMENT OF MOBILE NETWORK INFRASTRUCTURE (ACIF C564: 2004)

The Brown Bill proposes:

- to expand the class of people who will receive notice under the Telecommunications Act in respect of activities "which relates to a facility in which electromagnetic radiation will be transmitted beyond the boundary of the land" – owners an occupiers of land within 500 m of the proposed activity; and

- that a Code of Practice be developed which imposes requirements as to the nature of information to be included in notifications in relation to facility in which will emit EME and establishes a system for complaints to be referred to ACMA.

In section 8 below, Telstra makes submissions regarding the notification model proposed from a practical perspective. In this section Telstra makes submissions as to its concern that the new notification and complaint regime proposed has no regard to the carriers' current obligations under the Mobile Infrastructure Industry Code.

Since 2002, a separate and additional community consultation regime has applied specifically to the deployment of mobile network infrastructure where it does not require planning approval under State or Territory law. The Mobile Infrastructure Industry Code is registered by the ACMA and has force under the Telecommunications Act as an "industry code".

The Mobile Infrastructure Industry Code was originally developed jointly by industry, Commonwealth and local government, and community stakeholder groups through the Australian Communications Industry Forum in 2002. It was a response to community concerns regarding the level of consultation in relation to the deployment of mobile communications infrastructure. It sought to fill in the gap left by the Telecommunications Act notification requirements. That is, it required carriers to notify and consult in relation to proposals for the installation of mobile communications infrastructure more broadly than just the owners and occupiers of the affected land, which is the extent of the notification required under the Telecommunications Act.

The Communications Alliance Ltd is now responsible for the Mobile Infrastructure Industry Code, and is presently managing the Code's second five year review. The final form of the reviewed code, known as the "Mobile Base Station Deployment Code (DRC564:2011)" (**2012 Code**), has been prepared and made available to the public via the Communications

Alliance Ltd webpage, pending its final registration (see http://www.commsalliance.com.au/mobile-phone-tower-information).

Until registration is complete, the existing Mobile Infrastructure Industry Code remains the applicable code. The 2012 Code is intended to come into effect in mid-2012.

Features of the current Mobile Infrastructure Industry Code which will be carried forward into the 2012 Code include the following:

(a) for new projects that do not require planning approval under State or Territory laws:

  (i) carriers must first prepare a consultation plan which requires the carrier to consider, for each relevant installation, potentially interested or affected stakeholders, including neighbours, schools, kindergartens, hospitals and local parliamentarians. This group becomes the focus of carrier consultation. The consultation plan must be provided to the local council for comment;

  (ii) carriers are required to advise identified stakeholders of the proposed installation in writing and invite comments. It is not necessary, however, for carriers to check land title details etc in all cases. Notification by letter drop is acceptable; and

  (iii) carriers must include a report on the predicted electromagnetic emission levels from the facility (adopting the calculation model prescribed by the Australian Radiation Protection and Nuclear Safety Agency) in the notification materials; and

(b) for new installations on an existing site that does not require development consent, carriers must update the report on the predicted electromagnetic emission levels from the facility, notify the local council and publish a notice in a local newspaper.

The 2012 Code will also require carriers to make information regarding each proposal for a new base station site available on a website. The 2012 Code also provides for an extended 15 day community consultation period (originally 10 days). As a voluntary measure, Telstra has implemented this longer consultation period for all new sites ahead of the formal registration of the 2012 Code from January 2012.

The community groups involved in the development of the 2012 Code did not seek broader notification than that provided for in the Mobile Infrastructure Industry Code. Rather the focus was on the depth and detail of the information carriers are required to provide. The geographically broad community consultation sought in the Bill is not a priority for the community groups with whom Telstra engages on a regular basis.

Telstra has found that the development of the Mobile Infrastructure Industry Code and the 2012 Code has allowed it to stay in touch with community attitudes and modify its processes to address these, where reasonably possible. The Mobile Infrastructure Industry Code goes a long way to providing the enhanced community consultation sought by the Bill.

7. UNDERMINING COMMUNITY CONFIDENCE IN THE AUSTRALIAN RADIATION PROTECTION AND NUCLEAR SAFETY AGENCY (ARPANSA)

The Brown Bill seems to undermine community confidence in ARPANSA and the current regulatory scheme imposed in connection with radio frequency electromagnetic radiation (or EME) in at least two ways:

(a) by seeking to amend the *Australian Radiation Protection and Nuclear Safety Act 1998* (Cth) to require a review of the Australian Standard within six months and every five years thereafter; and

(b) by excluding from the definition of "maintenance", any activity that increases the EME emitted by the facility.

Telstra notes that ARPANSA is a Commonwealth Government Authority, entirely independent of carriers, which is charged with responsibility for protecting the health and safety of people, and the environment, from the harmful effects of ionising and non-ionising radiation. Ensuring the adequacy of the Australian Standard is already a central part of ARPANSA' s function. The proposed changes to the *Australian Radiation Protection and Nuclear Safety Act 1998* requiring mandatory reviews of the Australian Standard suggests a lack of rigour and diligence on the part of ARPANSA which does not exist.

Turning now to the narrowing of the scope of authorised "maintenance" under Schedule 3 to the Telecommunications Act, Telstra notes that the inherent purpose of all radiocommunications facilities is to emit radio frequency electromagnetic radiation (or EME). The emissions from Telstra's equipment and that of other carriers are at specifically licensed frequencies and operate at power levels far below the maximum levels permitted under the Australian Standard.

When undertaking maintenance works, carriers are permitted to replace existing equipment with similar scale equipment. The Telecommunications Act powers in connection with maintenance activities have allowed the orderly upgrade of existing equipment as technology changes. For the most part, replacement radio transmitters will not result in substantially increased electromagnetic emissions. However, increases in EME can occur, and should, in Telstra's opinion, be permitted within the scope of the maintenance power if the other conditions are satisfied.

If the EME profile of the site changes through a maintenance activity, under existing regulation carriers must nevertheless:

- comply with the *Radiocommunications Act 1997* (Cth) and the Radiocommunications Standard and ensure, in all circumstances, that the general public is not exposed to EME levels contrary to the Australia Standard;
- prepare a new Environmental EME Report which will be uploaded onto the RF National Site Archive, as required by the Mobile Infrastructure Industry Code (and its successor); and
- notify the community in the manner prescribed by the Mobile Infrastructure Industry Code (and its successor).

The proposed exclusion of activities which result in an increase of EME from the definition of maintenance activities in Schedule 3, gives rise to several concerns:

- The lack of utility of the proposal. The "harm" it seeks to address is already well regulated by the Radiocommunications Standard and the Mobile Infrastructure Industry Code, as described above.
- The breadth of the exclusion. Literally, it seems that the repair of a radio antenna so that it is restored to full power is caught by the exclusion.

- The burden it would place on carriers. If a carrier is unable to rely on the maintenance power in respect of activities that result in an increase in EME beyond the predictions for the original facility, it will need to obtain development approval for such works. To come within the maintenance power, the new facility must be of a similar size to the existing facility. The need to obtain town planning approvals to address the change in the EME profile is an unreasonably onerous measure in light of the fact that the Mobile Infrastructure Industry Code already regulates the change in the EME profile.

Ultimately, therefore, these amendments that impose additional requirements where the EME profile will change, suggest a deficiency of carrier compliance with the current Australian Standard and associated regulation or a deficiency in the Australian Standard itself. This is manifestly not the case and, as such, there is no reason to undermine public confidence in the existing system of regulation of EME.

8. UNWORKABLE CONSULTATION MODEL PROPOSED BY THE BILL

8.1 Notification of land owners and occupiers within 500 metres

A major objective of the Bill is "to strengthen the requirements for community consultation in relation to the installation of telecommunications facilities". It seeks to do this, primarily, by a requirement that carriers give 30 days' notice of maintenance or low-impact installation activities which "relate to" radiocommunications infrastructure, to owners and occupiers of land within 500 metres of where the activity is to occur. Telstra notifies approximately 10,000 maintenance or low-impact installation activities associated with radiocommunications facilities each year. Assuming, conservatively, that there are 40 owners and occupiers within a 500 metre radius of each activity Telstra undertakes in reliance on the Telecommunications Act, under the Bill, Telstra would be required to provide in the order of 400,000 additional Telecommunications Act notices annually.

A notification obligation of this breadth will cause considerable inconvenience to the community. Householders would be inundated with irrelevant Telecommunications Act notices as each owner and occupier within 500 metres of, for example, a new antenna on an existing facility, is notified. The cost to Telstra of having to notify so many land owners and occupiers would be massive.

8.2 Scope of the activities subject to the requirement

The Bill would impose the 500 metre notification requirements on all maintenance activities and all low-impact facility installations which "relate to" radiocommunications infrastructure. As noted above, Telstra undertakes approximately 10,000 such activities each year. The range of activities caught by the new notification requirements in the Bill is very broad and extends beyond facilities which themselves emit EME. The notification requirement applies to an "activity which relates to a facility in which electromagnetic radiation will be transmitted". As a result of the inclusive drafting, the proposed notification provisions will apply to any activity which relates to a radiocommunications facility, including the installation of incidental structures. Some typical activities are listed below:

Installation of low-impact facilities (Division 3)		**Maintenance activity (Division 4)**	
(a)	Installing a fence around existing radio communications facilities	(a)	Upgrading old technology antennas
(b)	Installing antennas on a mount on a roof top	(b)	Reinforcing a lattice tower damaged by corrosion
(c)	Extending an existing tower by	(c)	Lifecycle replacement of antennas,

Installation of low-impact facilities (Division 3)		Maintenance activity (Division 4)	
	five metres (once only in rural or industrial areas)		batteries and feeder cabling
(d)	Installing solar panels to provide power to a radiocommunications facility	(d)	Like for like (height and displacement) "swap-outs" of towers and monopoles to increase structural capacity

Telstra submits that there would be no benefit to any sector of the community from the onerous notification arrangements proposed by the Bill. Telstra acknowledges that community consultation plays an important role with respect to some of the activities set out above, and this is provided through the Mobile Infrastructure Industry Code. However, Telstra does not believe that additional community consultation is necessary, or even sought by communities, in respect of most of its activities.

8.3 A telecommunications land access and activity notice is not the mechanism to improve consultation

Telstra is concerned that the notification requirements proposed by the Bill do not take into account the legal effect of a notice of intention to access land under the Telecommunications Act. A Telecommunications Act notice gives carriers a legal right to enter and occupy the land specified in the notice. One consequence of this is that the notice must accurately identify the land owner and occupier. Telstra is required to undertake title searches and other measures to verify ownership and occupancy as part of the preparation of each notice. Undertaking this careful work for the 400,000 additional notices that are likely to be required if the Bill is to become law will incur costs disproportionate to the benefit to the notice recipients.

Because a notice invokes the authority of the Telecommunications Act to affect the rights of landowners and occupiers, the Telecommunications Act (through the Telecommunications Code of Practice), sets up a process through which unresolved objections to Telstra's access may be adjudicated by the Telecommunications Industry Ombudsman. It also creates a right of compensation for financial loss and damage in affected land owners and occupiers.

Telstra submits that formal rights of objection and compensation should not be available to owners and occupiers of other land potentially quite distant from the land to be accessed. There is a real potential that such rights could be abused with the intent of causing Telstra additional cost and delay under the objection and TIO referral process. Telstra agrees that it is desirable for near neighbours to have notice of the installation of certain facilities. However, Telstra submits that the Telecommunications Act notification provisions are not the appropriate mechanism to achieve this. In relation to mobile network infrastructure there is already an effective process of community consultation through the Mobile Network Infrastructure Code, as discussed above.

8.4 Increased notice period

The Bill seeks to increase the period for giving of notice under the Telecommunications Act from 10 days to 30 days. For some projects, a 30 day notification period would be possible. However, for most minor repairs and network enhancements, the imposition of a lengthy notification period would materially obstruct Telstra's ability to respond to customer demand and carry out standard network maintenance. As indicated above, Telstra notifies 10,000 maintenance and low-impact activities annually. Scheduling these around weather, project readiness, and staff and equipment availability is a considerable logistical challenge. However, Telstra is able to maintain, and even improve, its level of

responsiveness because it is able to organise workflows with reasonable flexibility. An increased notification period will substantially impede this ability.

8.5 Practical examples of the impact of the Bill

The following examples show how a particular proposal is dealt with under the current regime, and identifies the impacts if the same project was to be regulated in the manner proposed in the Bill.

Example 1

Proposed installation of one low-impact antenna and mount on an existing roof mounted facility located in a residential zone

Current scheme

At the time of the installation of the original facility, Telstra negotiated a lease with the property owner who waived his entitlement to receive notice of future works in the leased area under clause 17(5) of Schedule 3 to the Telecommunications Act. Under the Mobile Infrastructure Industry Code, Telstra is required to give notice to the Council (by letter) and the public (by advertising in a local newspaper) providing not less than 10 days for submissions (15 under the 2012 Code). Assuming there are no submissions, Telstra may immediately undertake the works. Telstra has a work plan in place and the installation is carried out the day after the notification period ends, in eight hours.

In total the work is carried out 11 business days after notification, at a total cost of $10,000 including notification, design, equipment and installation. The notification costs are approximately $800.

If the Bill becomes law

Under the Bill, Telstra would be required to give 30 days' notice to all land owners and occupiers of land within 500 metres of the proposed installation. This 500 metre radius encompasses a number of medium and high density residential dwellings. Telstra would be required to identify and give notice to the land owner and occupier of each dwelling and business. This would require a total of 5,000 notices to be given, at a cost of $1,250,000.

29 days after giving notice, Telstra receives 100 objections relating to impact on the objectors' land. Telstra is required by the Telecommunications Code of Practice to make reasonable efforts to consult with each objector within five business days of receiving the objection and to seek resolution by agreement with each objector within 20 business days. The total cost of responding to these individual objections is approximately $100,000.

Telstra is able to resolve 95 of the objections, but is unable to resolve five objections. 25 days after receiving the objections, Telstra informs those five objectors of its intention to carry out the activity as notified, as it would be economically and technically unfeasible to change the activity.

Nine days after receiving Telstra's response, two objectors require Telstra to refer their objection to the TIO. The TIO reviews the objections and five months after referral, informs Telstra that it may carry out the activity as intended. The cost to Telstra in managing these two referrals is $20,000. Telstra's civil contractor is unavailable to carry out the installation until 20 days later.

In total, the installation is carried out seven months after giving notice, at a cost of $1.37 million plus the civil costs of $9,200.

Telstra estimates it will undertake about 1,000 similar projects each year over the next three years. It is a reasonable assumption that 0.05% of these, being 50 projects, would result in the level of objection used in the example. This is an additional cost of $6.85

million for one small aspect of Telstra's annual works.

8.6 Excessive costs arising from the Bill's consultation model

Based on current experience, Telstra estimates that each individually addressed Telecommunications Act notice will cost not less than $250 to prepare and distribute. An additional 400,000 notices a year would result in a cost to Telstra of $100 million annually. This figure does not include the costs of dealing with higher numbers of follow up inquiries and objections, which would also be many millions of dollars annually. The costs to Telstra of the consultation model proposed by the Bill are huge, and as described above, are not justified. The desired level of consultation will be undertaken pursuant to the Mobile Infrastructure Industry Code which is regularly reviewed to meet community expectations.

8.7 The Bill's consultation model gives the same rights to distant neighbours as affected land owners

When Telstra gives notice under the Telecommunications Act, it is advising land owners and occupiers that Telstra is intending to access and, in some cases occupy, their land, under the authority of the Telecommunications Act. While Telstra is not required to seek the consent of the relevant land owners and occupiers, the Telecommunications Act confers on them rights of objection and compensation for financial loss and damage. It is not appropriate for the Telecommunications Act to confer these same rights of objection and compensation on land owners and occupiers whose property rights are not directly affected. Clause 17 of Schedule 3 of the Telecommunications Act is not the mechanism through which enhanced community consultation should be delivered.

9. OTHER CONCERNS WITH THE PROPOSED AMENDMENTS IN THE BILL

9.1 Prohibition on tower extensions

The Brown Bill seeks to exclude tower extension from the definition of "low impact facility" (by repealing clauses 6(5), (6) and (7)). Presently, the Low Impact Determination permits the extension of an existing tower by 5 metres, once only, in industrial and rural areas (but not in residential and commercial areas and areas of environmental significance). Any further tower extensions require statutory planning consent. Permitting once-off extensions of 5 metres allows carriers to better utilise existing towers in industrial and rural areas, and thereby reduces the need to build new structures. In fact, the ability to extend towers by 5 metres significantly contributes to Telstra's ability to provide improved coverage, capacity and call quality in a timely and cost effective manner. Further, because existing towers are typically between 20 metres to 30 metres in height, an extension of 5 metres has little visual impact from ground level. The ability to extend an existing tower enhances carriers' ability to use existing infrastructure efficiently. Therefore, losing this ability will have an adverse impact on both carriers and the community.

9.2 Facility installation permits

(a) Facility installation permits have never been sought

The Bill provides for amendments to clause 27 of Schedule 3 of the Telecommunications Act. This clause deals with the criteria for issue of facility installation permits. Telstra has never sought a facility installation permit and is not aware of other carriers doing so.

(b) No facility installation permit within 200 metres of a "community sensitive site"

The Bill proposes to amend the criteria for issue of a facility installation permit to prevent the installation of a telecommunications facility within 200 metres of a "community sensitive site". This term is undefined. The inclusion of an undefined

term in the Telecommunications Act will create uncertainty and confusion for telecommunication providers in the application of the Act.

Telstra submits that it is inappropriate to seek to limit the ACMA's discretion in issuing a facility installation permit by the imposition of this 200 metre requirement. A facility installation permit would only be sought in extreme circumstances, and if the reasons a location is sought are sufficient to justify a facility installation permit on other grounds, they may also be sufficiently compelling to permit the installation of a facility more proximate to a community sensitive site than 200 metres.

Further, because a facility installation permit can apply to any type of telecommunications facility, it is quite possible that the facility the subject of the facility installation permit may have no impact at all on a community sensitive site. For example, a cable installation that is not a low-impact facility (because it is an area of environmental significance, for example) is likely to have no impact at all on a school 195 metres away. The imposition of arbitrary and unscientific buffer zones is likely to impose sub-optimal decision-making constraints on a body that has considerable expertise in the area.

9.3 Business impacts may be a relevant consideration

At two points in the Bill it is proposed that the ACMA have no regard to certain business or financial interests of the carriers, including Telstra:

- The Bill includes amendments to clause 27 in relation to the grant of a facility installation permit. Clause 27(4) directs the ACMA have regard to, amongst many other things, the "economic importance of the facilities in the context of the telecommunications network to which the facilities relate". The Bill seeks to insert a new clause, 27(4A), which would preclude the ACMA from having regard to the "revenue, profit, market share or any financial interest of a carrier" when forming view as to this matter.

- The Bill includes an amendment to clause 48, which specifies that the ACMA may inform members of the public about the kinds and location of designated overhead lines, telecommunications transmission towers and underground facilities. The Telecommunications Act, as drafted, requires the ACMA to have regard to the legitimate business interests of carriers in making this information available. The Bill seeks to limit the scope of this obligation through the insertion of the words "other than matters relating to competition between carriers".

Carriers' financial interests and consideration of inter-carrier competition are factors that are relevant to some of the decisions the ACMA is to make under Schedule 3. In no instance are these matters determinative. The ACMA has a wide discretion and must have regard to a range of matters when making the decisions required under clause 27(1(b)) and clause 48(2) of Schedule 3. However, when making decisions that affect Telstra's business, Telstra submits that it is appropriate and necessary for the ACMA to be able to do so with an understanding of the business context of its decision making.

9.4 Land and access obligations on carriers more onerous than utilities providers regulated under state law

The telecommunications industry is heavily regulated at both State and Federal level. The Federal telecommunications land access regime provides for significant community consultation prior to the installation or maintenance of telecommunications facilities. Land access for other utilities is simpler, it seems, because they are solely regulated at State level (leaving aside the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth), which applies infrequently). Electricity, water and gas providers generally enjoy many statutory exemptions from State and Territory based planning laws and are not subject to additional layers of Commonwealth regulation. For day to day activities,

electricity, water and gas providers have a less onerous notification/public consultation process to follow than Telstra does under the Telecommunications Act and associated instruments.

Telstra submits that the consultation requirements imposed on the telecommunications industry should not be amended as proposed by the Bill. The land access regime it presently operates under is already more stringent than that which applies to other utilities providers regulated under State and Territory law.

9.5 Local Telecommunications Network Plan

The Bill proposes the addition of a clause 48A to the Telecommunications Act which would require carriers to prepare a Local Telecommunications Network Plan detailing the carrier's proposed telecommunications network layout for the next 5 years. The scope of this clause in terms of facilities type and the onerous nature of the obligations it imposes, makes it completely unworkable.

This clause applies to all telecommunications network facilities – cabling, trunk radio, mobile network. It requires an annual assessment by carriers of its plans for the coming five years for each local government area across Australia. This raises a number of significant concerns:

- the gargantuan nature of the task;
- the inability of carriers to make accurate forecasts for the next 5 years in advance, which renders the plan largely pointless; and
- the dubious usefulness of the information provided, even if it is accurate.

Certainly, by no measure would the benefit to local government/communities be commensurate with the effort required on the part of carriers to prepare these plans.

Further concerns:

- Carrier plans for extending mobile coverage are dynamic, subject to amended funding availability and do not extend beyond a practical 2-3 year horizon.
- "Infill" facilities are required when and if it is demonstrated that a part of the network is suffering congestion. The carriers cannot reliably predict where the customers will require increased capacity beyond the current planning visibility of 2-3 years.
- The Mobile Infrastructure Industry Code already requires carriers to consult as to future plans in connection with mobile base stations with relevant local governments, although not to the unworkable extent that is proposed in the Brown Bill. This need for communication between carriers and relevant local councils has therefore already been addressed by carrier self-regulation.

Newly proposed wireless facilities can be identified via a local search on the Radio Frequency National Site Archive.

9.6 Application of Schedule 3 to entities other than carriers:

The Bill provides for the addition of a Part 1A which provides that "the obligations imposed by this Schedule on a carrier are also imposed on entities other than carriers that install or maintain facilities". If this drafting is intended to cover contractors carrying out work on behalf of carriers, it is redundant. Clause 43 of Schedule 3 states that a carrier's powers under Schedule 3 extend to its employees and contractors. When exercising these powers, employees and contractors of the carrier are necessarily bound by Schedule 3 in the same manner as the carrier.

If Senator Brown intends this amendment to bring non-carrier EME emitters (State emergency service networks, taxi companies, broadcasters, private citizens etc) within Schedule 3, then this intention should be more clearly stated. However, even so, this would be an unnecessary duplication of legislation which is addressed by either the *Radiocommunications Act 1992* (Cth) or statutory planning law, or both.

10. FINAL COMMENTS

The system does not need radical reform. The current telecommunications land access regime has been in place since 1997, with the Mobile Infrastructure Industry Code introduced in 2002. Telstra submits that the existing regime is sufficiently flexible to allow for the appropriate balance between the provision of telecommunications infrastructure for the benefit of community, and protection of community interests over time. While there has been some dispute from time to time, the system largely works well in the vast majority of situations. This is demonstrated by the low level of formal complaints:

(a) Over the past three years, there have been an average of seven unresolved objections in relation to Telstra's land access required to be referred to the TIO from a total of 44,000 Telecommunications Act notices issued annually;[2]

(b) In the past financial year, three complaints were made to the ACMA regarding Telstra's compliance with the Mobile Infrastructure Industry Code in respect of two low-impact facility installation proposals.[3] Industry wide, there were 13 complaints in relation to five low-impact activity proposals.[4]

To limit the land access scheme in the manner suggested in the Bill would alter the balance between legitimate concerns of local communities and the conditions for sound investment in telecommunications infrastructure to the detriment of carriers, the community and the economy generally. Further, the provision of basic telecommunications services to the Australian community would be significantly impeded.

Accordingly, in formulating the report on the Bill, Telstra requests that the Senate Committee have regard to the issues raised in this submission. Further, given that apparently minor changes to Schedule 3 to the Telecommunications Act can significantly impact the workability of the scheme, Telstra requests the opportunity to make further submissions in relation to any additional or different amendments recommended by the Standing Committee.

Telstra would be pleased for the opportunity to further discuss these concerns with the Senate Committee.

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2 This information is based on Telstra's own records.

3 This information is based on Telstra's own records.

4 Australian Communications and Media Authority, Annual Report 2010-2011, p 85.

ANNEXURE 1