

The Committee Secretary
The House Standing Committee on Infrastructure and Communications
House of Representatives,
PO Box 6021,
Parliament House,
Canberra ACT 2600

House of Representatives Standing Committee on Infrastructure and Communications inquiry into the
Telecommunications Amendment (Mobile Phone Towers) Bill 2011

Dear Committee Members,

As a community member who has experienced a proposal by a national carrier to install a mobile phone base station facility in their community, I welcome the opportunity to comment on the *Telecommunications Amendment (Enhancing Community Consultation) Bill 2011*. I strongly recommend to the Committee to give support of this Bill, as it will be the first step towards establishing comprehensive, accurate, fair and transparent community consultation, something that communities and their political representatives have been calling for, for well over the past 10 years.

Recommendations

1. I support the amendment to Clause 1 of Schedule 3, paragraph (g) which allows for more than one owner of relevant land to be notified by carriers. I would also recommend that negotiations and notification must be in writing and in the case of multiple owners of the site, that all information provided to any owner be provided at the same time, in writing to all other owners/occupiers, thus preventing a carrier or their agent influencing any one owner/entity. This will ensure that each owner/occupier is being provided with identical information relevant to the proposal, at the same time.
2. I support the amendment at the end of subclause 17(1) of Schedule 3 which specifies that carriers must notify any owner or occupier of land within 500 metres of an activity under Schedule 3 or Schedule 4 of the Telecommunications Act 1997.
3. I support the amendment to Subclause 17(4) of Schedule 3 which allows the expansion to the time period in which notification must be given before activities commence from 10 business days to 30 business days. Such an expansion would allow for real community feedback to occur. Communities generally have limited or no pre-exposure or knowledge of the ins and outs of telecommunication facilities, along with the legislation and codes relating to installation of facilities. Therefore community members require time to read, absorb, reflect and act on the implications that such a proposal may have in their community.
4. With reference to Item 7, it is recommended in the ACIF Code, that a precautionary approach is to be taken when siting mobile phone base station infrastructure. Dispersed within all communities are those which studies suggest may be susceptible to the adverse effects of EMR, in particular, the young and the elderly. In my opinion, it would be advantageous whilst the scientific community is still divided over the effects of EMR, to follow a precautionary approach which sees mobile phone base station infrastructure operating at much lower levels than what is now experienced in Australia. Trials are currently successfully operating in Europe. I would recommend that the cumulative EMR at sensitive sites be less than 0.1 $\mu\text{W}/\text{cm}^2$.

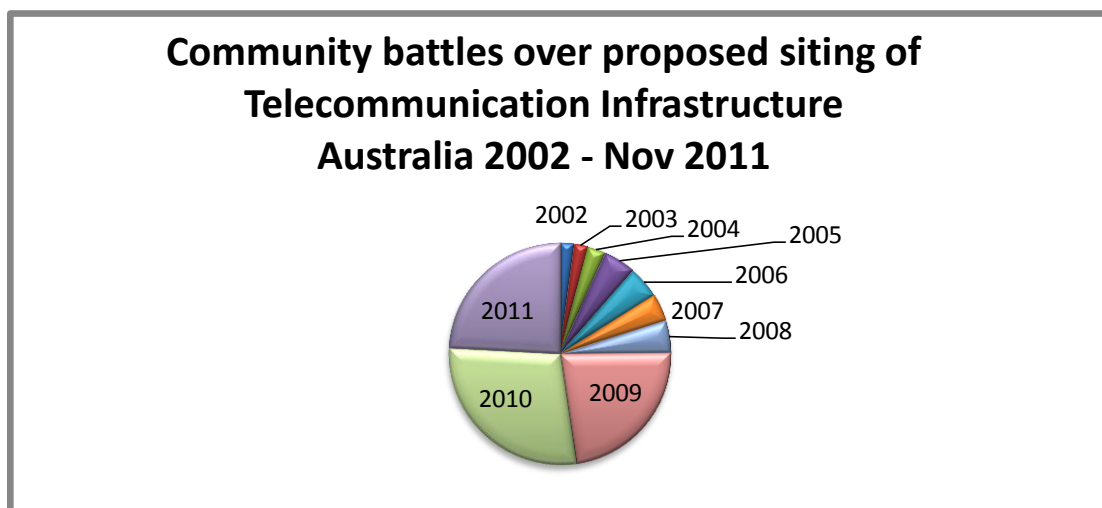
5. I support items 8, 9, 10, 11 & 12 with regards to the role of The ACMA. In particular, I believe that ACMA should be seen as a regulator of legislation governing Carriers (most important if the ACIF Code becomes enshrined in legislation) and therefore it should have no regard to the commercial interests of carriers when determining if a proposed facility should proceed. There should also be an Independent Watchdog to review any decisions made by ACMA to issue a facility installation permit. This Independent Tribunal would also review any decisions made by Councils in granting DA permits. ACMA should be required to better serve the needs of communities, not just Carriers.

Background Information

Groundswell of Community Concern:

Since the introduction of mobile phone base stations there has been a growing call from communities and from local, state and federal representatives for greater community consultation in the siting of mobile phone base station facilities (See Attachment 1).

The number of media reports on communities having to battle telecommunication infrastructure proposals by Carriers and their agents has also increased – see graph below. The graph represents media articles on community battles relating to proposed sitings of Telecommunication infrastructure. However, it does not represent all community battles, as not all communities have had media reports outlining their community concerns.



ACIF Code & Community Consultation

Currently the ACIF Code is only applicable to those facilities that fall in the category of 'Low Impact' (a term referring to the height of infrastructure/antennae). This Code is a guideline only and includes words such as 'should', not must. I believe that generic and correct definitions of wording should be used across documents relating to mobile phone base station infrastructure:

- **Tower** - The word tower can be misleading as it can conjure visions of a tower, when in reality, it also covers antenna's on buildings, light-poles etc.
- **EME** – correct term is Electromagnetic Radiation – EMR should be used for accuracy.
- **Sensitive Site** – definition is given in the ACIF Code but it is not enforced. I believe that further clarification is needed on this point to specifically define what sensitive sites are.
- **Consultation** – often referred to as notification. The ACIF Code refers to consultation as: *means a process whereby Carriers seek to inform other parties about a proposed project at particular premises with the intention of giving those parties an opportunity to respond to the proposal and to have their responses considered.* P6, PUBLIC COMMENT DRAFT (DR C564:2011) AUGUST 2011.
- **Considered** – no definition given, yet it is a crucial step in the process of consultation and feedback. Nowhere in the Code does it outline how this consideration occurs. There are no

specified criteria to determine what weight is given to community responses. The community has no way of knowing how its responses were considered. The current legislation allows for Carriers to 'consider' community feedback on a proposal that it most probably has a signed lease for, in other words, for all intents and purpose, it is deciding its own wishes. Even the ACMA'S own site states that 'the Carrier is obliged to consider community comments' but then it goes on to say that 'not all comments must be accepted or acted upon' (see Attachment 2). Consider could just mean allowing ones' eyes to merely fall over the words of the community responses and the Carrier then simply deciding to proceed – is this what 'having regard to' means in the ACIF Code? Is it right that a company who will be gaining commercially from a proposal should have total say in whether their proposal should go ahead or not? ACMA does state on its website that it is 'relatively rare for a relocation to occur' (See attachment 2). One is not surprised that relocation is a rare occurrence. Surely this is because the Carrier, who has everything to gain, is also the party who considers the community feedback.

- Notification – is often referred to as 'consultation'. This is not an accurate definition.
- Have regard to – this is a term used in the ACIF Code and by ACMA. These words need to be replaced by the word 'must'. I have already made this request in my submission to the ACIF Code review. The Draft new code keeps the words '..have regard to...'. What is the formula/definition for 'having regard to'? The code should be embedded within legislation and apply to all mobile phone base station installations **and** existing site upgrades.

The example below highlights how current legislation provides no protection for communities.

The following is an excerpt from Telstra's own website

[http://www.telstra.com.au/abouttelstra/advice/eme/wireless-community-consultation/bardon/?red=/eme-bardon#bardon-and-electromagnetic-energy-\(eme\)](http://www.telstra.com.au/abouttelstra/advice/eme/wireless-community-consultation/bardon/?red=/eme-bardon#bardon-and-electromagnetic-energy-(eme))

What Telstra is doing to keep Bardon connected

In order to maintain the level of mobile services to the Bardon area, Telstra has been working on plans for a replacement facility since late 2008.

Last year Telstra proposed to replace the existing Main Avenue facility with a new facility in Gerler Street. This proposal attracted significant community feedback and opposition.

In response to the community's feedback, Telstra now proposes a revised solution to maintain Next G™ services in Bardon. This proposal consists of three Next G™ facilities installed on existing infrastructure in the suburb.

Telstra has named the three proposed new sites:

- ▶ Bardon Central
- ▶ Bardon South
- ▶ Bardon East

Telstra also states in their Corporate Citizenship Report 2010; pages 22 & 23: (See Attachment 3)

In 2009/10, a number of communities, including Bardon in Brisbane and Summer Hill in Sydney, expressed concern about EME in response to Telstra's consultation on new mobile base station proposals. Telstra responded to these concerns through extended consultation, proactive community engagement and, where possible, working with the community's feedback on the proposed site location and design.

I believe the above statements from Telstra to be inaccurate and misleading. Feedback included 800+ signed petitions objecting to the proposal, 200 written feedback submissions and a number of letters sent to Telstra CEO and Board. Despite all this significant feedback and opposition (*Telstra's own words*), **Telstra lodged a plan to proceed with their proposal with Brisbane City Council on November 11th 2009.** I also note that in a letter to Senator Scott Ludlam (3/11/09 – 18 days after the

close of community submissions) that Telstra CEO, Mr Thodey wrote (see Attachment 4)

For these reasons, Telstra will not be considering an alternative site.

I note our community raised over \$20 000 to fight the initial Telstra proposal.

I note that we supported a resident of 27 Gerler Street who decided to challenge the validity of the purported lease between the Body Corporate of Gerler Mews and Telstra.

I note that the resident took their complaint to the Qld Body Corporate and Management Commission.

I note that Telstra was identified as a party to the proceedings.

I note that all submissions to the Qld BCMC were to be received by 4/12/09.

I note that a letter from a leading Australian Law Firm on behalf of Telstra was sent to at least two members of the Body Corporate Committee (dated 25/11/09) instructing them to sign a new lease, with the added information that they could be taken to court if they did not sign the new lease (and be up for court costs etc). I note that they were given approximately 24 hours to sign. I note that this occurred during the period given for the delivery of submissions to the QLD BCMC. No apology for this unwarranted and devious bullying behaviour has ever, to my knowledge, been received by these two unit owners.

I note that Telstra also submitted their case to the Qld BCMC.

I note that on Dec 22 2009, the Adjudicator handed down an interim decision that saw the validity of lease to be believed to be void and ordered that no work be done on the site re: Telstra's telecommunications facility.

I note that on (March 31 2010) the Qld BCMC handed down its final order stating that the validity of the lease to be void.

I note that the Qld BCMC allowed for an appeal period against the decision. I note that Telstra did not lodge an appeal.

I note that, after the community spending \$20 000 and after a community member attaining legal advice from the Qld BCMC, that Telstra did not proceed with their initial proposal at 27 Gerler Street.

Despite what Telstra's website and Corporate Citizenship Report 2010 say, it is clear from the CEO's letter to Senator Ludlam and from their intention spelt out in the Consultation Report for 27 Gerler Street, submitted to Brisbane City Council on November 11 2009, that Telstra did not work with community feedback. I believe Telstra completely ignored it. Current legislation requires that Carriers need only 'tick the boxes' to comply and not require actual consideration.

Intended action regarding proposed work

Telstra has considered and responded to all submissions received during the consultation process and can confirm that the proposed design complies with all the relevant statutory and regulatory requirements. Based on these considerations, Telstra intends to proceed with the proposal as notified.

Role of the ACMA

It was very disappointing to find an ACMA training manual on the internet (see Attachment 5), which was suggestive of a biased role within ACMA rather than one of a truly regulative role. Again, I believe ACMA should be seen as a regulator and administrator of government legislation and not as an agent working on behalf of the Carriers. I note that if there was a similar presentation made to assist communities, I could not find it.

The ACMA also needs to take an active role in ensuring that there are effective procedures and penalties to see that the ACIF Code is adhered to by the Carriers. In my opinion, too many times the Carrier is given a 'second chance' or a verbal warning, as each breach is treated case by case, as a stand-alone matter. Patterns seem to be occurring, such as inaccurate EME reports, low impacts becoming high impacts, poor consultation. It would appear to me that Carriers are not encouraged to change their ways (through the application of penalties by ACMA), they simply move on to a new community and repeat their performance. The penalties need to have a meaningful impact on Carriers

and their Agents to encourage best practice. As far as I know, no financial penalties have ever been levied. This may be related to how many complaints/breaches are fully investigated.

Conclusion:

The experience of the Rainworth /Bardon community highlighted the inequalities of resources between the Carrier and the community. On the one hand the Carrier has endless access to finance and manpower whilst the community, from a standing start and with a very tight timeframe, had to rely on its own conscripted talent to find all of what is needed to level the playing field and to give the community a voice. Additionally in our case (and no doubt in many others) it was necessary for us to raise in excess of \$20 000 at very short notice to mount a successful challenge to the validity of the alleged lease process. It was this issue and this alone that forced Telstra to look elsewhere. This stands in contrast with Telstra's own words quoted in their Corporate Citizen Report 2010.

Communities across Australia should not have to stop their daily lives, in order to battle Carriers. Communities are not unreasonable; they have a vested interest in the lives of their community. I have attached a letter from South Australian MP, Mr Tony Piccolo (see Attachment 6). His address to the South Australian Parliament outlines the nature of this game – a game that at the moment is being played on a most uneven playing field. It is my hope, and the hope of politicians (past and present) who have voiced their concerns over this issue, along with hundreds of communities across Australia that this inquiry will begin to bring about a fair, effective and positive change for all stakeholders, not just for Carriers and their agents. The Carriers have had enough time to demonstrate their ability to have open and transparent consultation with communities. There is much evidence to suggest that they are unable or unwilling to do this. Communities across Australia are being ignored.

Thank you for your time and efforts in considering my above recommendations and comments. If you require any further information, please do not hesitate to ask.

Yours faithfully,

Anne Tredenick