

Appendix 5

Regulatory framework

This Appendix outlines some of the major features of the Australian telecommunications regulatory regime, substantially introduced by the Commonwealth Government on 1 July 1997. The Committee addresses below those key elements of the regime that relate to telecommunications infrastructure, the main thrust of its inquiry.

Regulatory agencies

Role of the Minister

The Minister for Communications, Information Technology and the Arts has a range of powers under the telecommunications regulatory regime. The Minister, for example, has the power to:

- determine that certain telecommunications facilities supplying carriage services to the public be considered network units (s.29 Telecommunications Act);
- impose licence conditions on individual carriers, classes of carriers or all carriers (s.63 Telecommunications Act);
- give directions to the ACA in relation to its functions and the exercise of its powers;
- can direct the ACCC to undertake a public inquiry in relation to anti-competitive conduct under Part XIB of the Trade Practices Act or the declaration of services under Part XIC of that Act (s.496 Telecommunications Act);
- may determine price-related terms and conditions in relation to declared access services (s.152CH, Part XIC, Trade Practices Act);
- determine pricing principles to give guidance to the industry. The preferred approach is to rely, as far as possible, on the broader regulatory regime and ongoing guidance from the ACCC;
- give ministerial directions to Telstra under s.9 of the Telstra Corporation Act 1991; and
- give directions to carriers in relation to service standards and consumer safeguards Under the Telecommunications (Consumer Protection & Services Standards) Act 1999.

Notwithstanding its majority ownership of Telstra the Government does not have any control of the day-to-day operations of Telstra which are the responsibility of the board and management of that company.

Australian Consumer and Competition Commission

The 1997 reforms inserted into the *Trade Practices Act 1974* specific provisions to deal with anti-competitive conduct in relation to telecommunications and to establish an access regime to give competitors access to key infrastructure and services. Responsibility for administering these competition provisions was vested with the Australian Competition and Consumer Commission (ACCC), Australia's national competition regulator.

The ACCC's powers to regulate anti-competitive conduct include the collection of information to monitor competition in the telecommunications industry. To ensure that competitors understand its intentions, the ACCC has developed guidelines that it will use in exercising its powers to deal with anti-competitive conduct. The ACCC reports annually on competitive safeguards within the telecommunications industry.

A basic requirement of any national telecommunications network is that users of the network enjoy 'any-to-any connectivity' between the parts of the network operated by different carriers and service providers. Satisfying this basic requirement necessitates ensuring that those owning and controlling key elements of the network are required to provide interconnection with their competitors' facilities on reasonable terms.

The ACCC has the power to 'declare' services for the purposes of the telecommunications-specific access regime under the Trade Practices Act. Once a service has been 'declared' it is in effect brought within the regulatory net. Carriers and carriage service providers of declared services are generally required to provide interconnection with, and access to those services for, any requesting access seeker on reasonable terms and conditions. Where commercial negotiations fail to establish agreed terms and conditions for access the ACCC may set terms and conditions through arbitration.

Services are declared only after the ACCC has conducted a public inquiry, or on the recommendation of the Telecommunications Access Forum (TAF) subject to the ACCC being satisfied there has been sufficient consultation with potential access seekers and consumer representatives. Infrastructure owners of services that are not declared are under no obligation to provide access to access seekers.

Telecommunications Access Forum

The legislation provides for a Telecommunications Access Forum (TAF). It is a non-government industry body in which all carriers and carriage service providers may participate. The role of the TAF is to recommend to the ACCC that certain services should be declared and to develop a Telecommunications Access Code that sets out model terms and conditions for use in voluntary access undertakings. The ACCC has designated the Australian Communications Access Forum Inc (ACAF) to be the TAF. The access Code was approved in January 1998.

Australian Communications Authority

The Australian Communications Authority (ACA) is responsible for administering a range of technical and service standard issues relating to telecommunications, as well as managing the radiofrequency spectrum. The ACA licenses telecommunications carriers and reports to the Minister for Communications, Information Technology and the Arts on the performance of carriers and service providers. The ACA works closely with the Australian Communications Industry Forum encouraging industry to develop voluntary codes of practice and technical standards where they are in the public interest and do not impose undue financial and administrative burdens on industry participants. Industry codes may be registered by the ACA, which then enables the ACA to require an industry participant to comply with the Code.

The ACA administers the universal service obligation (USO) and customer service guarantee (CSG), provisions of the Act. The ACA has the capacity to enhance service standard arrangements should self-regulation fail, including the ability to set mandatory customer service standards. The ACA also administers the national numbering plan.

The ACA represents Australia's communications interests abroad through participation in the work of international organisations, such as the International Telecommunication Union, for technical standardisation and coordination of services between countries.

Australian Communications Industry Forum

The Australian Communications Industry Forum (ACIF) was established in May 1997 as a peak industry body to facilitate and manage telecommunications self-regulation. ACIF's main role is to develop and administer industry technical and operating arrangements that promote both the long-term interests of end-users and the efficiency and international competitiveness of the Australian communications industry. Its primary functions include development of industry codes of practice for registration by the ACA and the timely production of technical standards, specifications, plans and guidelines that the industry and community need.

Customer Service Standard Protections

The Telecommunications Act 1997 and the Telecommunications (Consumer Protection & Services Standards) Act 1999 strengthened existing obligations and placed new obligations on the telecommunications industry with regard to service standards. These telecommunications specific safeguards are in addition to general safeguards conferred under the Trade Practices Act, general fair trading legislation and customer rights under contract law. The safeguards extend to a range of measures aimed at ensuring that customers are provided with a reasonable and reliable standard of service.

Three of the telecommunications specific safeguards relate to the reliability of the network; the Customer Service Guarantee, the Network Reliability Framework and

priority assistance. Other protections include the Telecommunications Industry Ombudsman scheme, the USO, the Internet Assistance Program, price controls on various Telstra services, the requirement for untimed local calls; access to emergency call services; caller number display; and itemised billing.

Customer Service Guarantee

The Customer Service Guarantee (CSG) is intended to protect residential and small business customers from poor telephone service. The CSG Standard specifies timeframes for the connection of specified services, the repair of faults and the attendance of appointments by service providers. Customers are entitled to compensation if these timeframes are not met.

The requirements for connection a service vary depending upon where the customer is located and the proximity to available infrastructure and capacity. Where there is no connection in place and the customer is close to available infrastructure and capacity the connection must be made within:

- 5 working days in an urban area;
- 10 working days in a major rural area; or
- 15 working days in a minor rural or remote area.

A fault which has been reported must be repaired by the end of the:

- next working day in urban areas and for some faults in rural and remote areas;
- second working day in rural areas; and
- third working day in remote areas.

Phone companies are not required to meet CSG timeframes if natural disasters or extreme weather conditions cause mass disruptions of services, or where a phone company makes a reasonable offer of an interim or alternative service.

A Fact Sheet prepared by the ACA on the Customer Service Guarantee can be accessed through its web site at <http://www.aca.gov.au>

Priority Assistance

In February 2002 Sam Boulding, a child living in north-eastern Victoria, suffered a severe asthma attack and died. During this emergency his family were unable to call for assistance using either of the telephone services provided to the family home because of the latest of a series of faults on those services. Although the inquest subsequently found that there was no evidence that a reliable telephone service would have altered the outcome, this incident raised considerable public concern about the reliability of telephone services and Telstra's fault management system. As a result Telstra revised its procedures and the Government took action to ensure that priority was given to the needs of customers who are affected by life-threatening medical conditions.

Under a carrier licence condition introduced by the Government, Telstra is required to develop and maintain an effective priority assistance service. As the primary universal service provider, Telstra is also required to make priority assistance available to all eligible customers on request. Priority assistance is available to customers where a member of the household:

- has a diagnosed life-threatening medical condition; and
- there is a high risk that the condition could rapidly deteriorate to be life-threatening ;and
- access to a telephone would assist to remedy the life-threatening situation.

Telstra is required to ensure that a priority customer is given the highest level of service that is available. This includes:

- a 24-hour maximum timeframe for service connection and fault repair in metropolitan and rural areas and a 48-hour timeframe in remote areas;
- an interim service if a priority service cannot be connected or repaired within these timeframes;
- an enhanced fault repair service for recurring and multiple faults; and
- specialised credit management processes to ensure that the customer always has access to the emergency call service and Telstra customer service.

Network Reliability Framework

The Network Reliability Framework (NRF) commenced in January 2003. The NRF requires Telstra to maintain minimum levels of network reliability. Under the NRF a telephone service cannot experience more than three faults in 60 days or more than 4 faults in a year. Telstra is legally required to report regularly to the industry regulator, the Australian Communications Authority (ACA), on faults on its network at a number of levels, ranging from region based reports to reports on individual phone services. Where reasonable fault levels are exceeded Telstra is required to investigate and, where appropriate, take remedial action. The ACA monitors remedial action taken at an individual level and may issue directions requiring Telstra to undertake remedial action at a regional level.

In evidence to the Committee Telstra stated that since the commencement of the NRF it had maintained an average service availability of greater than 99 per cent across all service measures.¹

Universal Service Obligation

In remote and sparsely populated areas of Australia the provision of telephone services may not be commercially viable, because the costs of supplying the service

1 Bill Scales, Group Managing Director, Regulatory Corpoartte and human Relations, Telstra, Committee Hansard, 6 August 2003.

may exceed the revenues earned from supplying the service at similar prices to those charged in urban areas. The Universal Service Obligation (USO) is intended to ensure that standard telephone services, payphones and prescribed carriage services are reasonably accessible to all Australians on an equitable basis, wherever they reside or carry on business.

The Universal Service Obligation (USO) is enshrined in Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. It requires that services be provided by the Universal Service Provider, currently Telstra, who is then compensated through the Universal Service Levy which is imposed on all carriers. Telstra is required to supply a telephone service to places of residence and businesses upon request. The service is subject to normal commercial charges and to Government price caps where these apply. The obligation includes the provision of a suitable handset where requested by the customer and comparable services must also be provided for people with disabilities.

Part 3 of the Act extends this type of protection to the provision of data services under the Digital Data Service Obligation (DDSO). The DDSO requires Telstra to provide access to a digital data service equivalent to 64 kbps to 96% of the Australian population. This requirement is normally satisfied through the provision of ISDN services.

The needs of the remaining 4% of the population are met through the Special Digital Data Service Obligation (SDDSO). This requires a designated provider to supply customers who cannot receive ISDN with access to an approximately equivalent service, normally via a one-way satellite service. A subsidy is available to help the subscriber meet the cost of equipment and installation. Telstra and Hotkey are the Special DDSO providers.

Internet Assistance Program

The Internet Assistance Program (IAP) was established following the Telecommunications Services Inquiry. That inquiry found that a small but significant number of customers, particularly in rural and remote areas, were either unable to access the internet or experienced slow speeds. The Program was established as a three year joint initiative between the Commonwealth Government and Telstra which commenced on 2 July 2001.

The IAP was intended to help Internet users obtain a reasonable speed from their dial-up Internet service. The program is primarily aimed at helping Internet users obtain an equivalent data speed of 19.2 kbps and offers dial-up users access to a free online help and technical support service.

Telecommunications Industry Ombudsman

The Telecommunications Industry Ombudsman (TIO) provides a free, independent investigation service for residential and small business customers who have been unable to resolve certain complaints directly with their telecommunications carrier, service provider or Internet service provider

