

Dissenting Report by Australian Greens Senators

1.1 The Australian Greens recognise the importance of broadband infrastructure to Australian society, economic development and aspects of environmental sustainability. We are entirely supportive of the investment of public funds in a high speed broadband network, provided that the investment serves the public interest and not the interests of dominant commercial players in the telecommunications industry.

1.2 The Select Committee's majority interim report and the dissenting report by Government Senators reflect the highly polarised nature of the debate around telecommunications in Australia, which has been marked by a history of false starts and failed ambitions.

1.3 The form of the current Request for Proposals (RFP) has been shaped primarily by the consequences of the decision to privatise the national telecommunications utility, culminating in the final T3 sale in 2006. The primary responsibility of Telstra's directors is now to increase value for Telstra shareholders, a responsibility pursued aggressively by the current management team.

1.4 In theory, the shareholders' interests will always align perfectly with the public interest, and market forces will provide services cheaper and more efficiently than a publicly owned utility.

1.5 In reality, there is a strong divergence between the public interest in a fast, inexpensive, open-access broadband network and Telstra shareholders' interest in achieving high rates of return from the advantages delivered by its incumbent position as the monopoly owner of much of the infrastructure on which its' competitors depend.

1.6 To maintain shareholder value, Telstra is seeking to leverage its fixed-line monopoly to gain monopoly control of the National Broadband Network (NBN). The network backbone is in effect a 'natural monopoly' – there is neither the desire nor the necessity to duplicate the physical ducts through which the fibre will run.

1.7 In this way the NBN is similar to the road network or electrical power grid: while services using the network may operate according to competitive principles, the owner of the network is providing an essential service against which there is no meaningful possibility of competition.

1.8 This has left Australia with a broadband service which is slow and expensive when benchmarked against comparable OECD countries, one in which metropolitan customers may be well served while those in regional areas experience patchy or non-existent services.

1.9 The interim report correctly identifies the contradictory responsibilities placed on Telstra's directors: on the one hand their fiduciary obligations to act in the interests of shareholders, while at the same time being bound by a range of legislation to provide access services to the very companies it is competing with.

1.10 The solution advanced by the majority of the industry as represented to the Select Committee, was structural separation, whereby the network owner is prohibited from offering downstream retail services.

1.11 Unfortunately, from the outset Telstra has stated that if structural separation is a condition of winning the NBN tender then it will simply refuse to bid.

1.12 On 11 November 2008, Telstra appeared before the Select Committee to express its' views:

Mr Quilty: The bottom line for us is that we have to act in the interests of our shareholders. We cannot do anything that we do not consider is in the interests of our shareholders. There is no doubt in the mind of Telstra management, and all of the analyst reports concur, that further separation of Telstra is not in our shareholders' interests. We simply cannot contemplate it.

1.13 In addition to outright rejection of any further separation of Telstra's business units, Telstra's 12 page submission to the RFP does not fulfil a number of the Government's core stated objectives:

- Telstra will accept the taxpayer's \$4.7 billion stake only as a low interest loan, rather than the Government's preferred option of taking an equity share;
- Telstra has offered to cover 80 – 90 per cent of the population – presumably the most profitable customers - as opposed to the Government's demand for 98 per cent coverage;
- Telstra has demanded a significant weakening of the legislation governing access by competitors and has sought to undermine the role of the ACCC, which has been seen as a transparent attempt to entrench its' advantages of incumbency; and
- Telstra has refused to submit a fully qualified bid until a large number of its conditions are met, leading to a debate as to whether the proposal is even a conforming bid under the RFP guidelines.

1.14 This is the essence of the dilemma faced by the Government, its expert panel and the ACCC as they deliberate over the bids received on November 26. In Telstra's mutation from a public utility into an aggressive, litigious and self-interested private corporation, we have lost effective control over an essential service.

1.15 Many of the pathways forward are fraught with the possibility of complex litigation, delays, continued absence of service in less profitable regional areas, and the expenditure of a vast sum of public money on the further entrenchment of Telstra's dominant market position, to the exclusive benefit of Telstra shareholders.

1.16 Commenting on the extraordinarily expensive end-user pricing model sketched in Telstra's submission to the RFP, Mr Terry McCrann noted:

Telstra unintentionally did us all a service. It has laid out exactly how it proposes to migrate its monopoly to the new broadband platform; and what we will pay as a consequence. There is no way any responsible government could lock in such a future.¹

Remembering the objective: the people who will use the network

1.17 The Government's objectives for the NBN project include the establishment of a network that "continues to promote the long-term interests of end-users".

1.18 While buried about half-way down the list of RFP objectives, this objective is really the primary goal of the whole exercise. It is worth noting in passing that in a debate dominated by technology, principles of competition and rates of return, discussion of the welfare of the human beings for whom the network is designed have been almost entirely subordinated. Who will use the network? What will they use it for? Will it improve peoples' lives? Will it be affordable and accessible, will it promote social inclusion or alienation, will it act to reduce social inequality or entrench it? How will it contribute to the overarching public policy goals of enabling the transition to a prosperous low carbon economy?

Regional coverage

1.19 Regrettably the RFP did not mandate that the network be 'rolled in' from areas of marginal service rather than 'rolled out' from metropolitan cores where service already exceeds the minimum 12 Mbps benchmark established for the NBN. Telstra has refused to commit to rolling the network in from under-serviced areas, preferring to concentrate on the more lucrative metropolitan markets.

1.20 It will be a travesty if after all this time, the additional injection of \$4.7 billion of taxpayers' funds – including the \$2 billion formerly quarantined for regional services – should simply entrench the metropolitan/regional telecommunications divide.

Ways forward

1.21 The majority and government interim reports are embellished with a high degree of partisan bitterness, but it is possible to discern one area of substantial

1 <http://www.theaustralian.news.com.au/business/story/0,28124,24722089-30538,00.html>

agreement across the parties: the current market structure has failed to curb Telstra's monopolistic business practices, which have harmed competition and by extension, users of the network – the public.

1.22 The Australian Greens believe that the funding commitment set aside by the Commonwealth for the NBN creates a unique opportunity to undo some of the harm caused by the privatisation of Telstra, if it restores the public interest as the primary policy objective in delivering broadband services.

1.23 In this regard the Australian Greens urge the Government to hold its nerve with regard to the RFP, and insist on taking a majority equity stake in the National Broadband Network and operating it as a competitively neutral, open-access network.

1.24 Communications expert Mr. Paul Budde reminded the Sydney hearing of the Select Committee that Governments are elected to govern, and that the public interest should always take precedence over corporate interests, particularly where essential services are concerned:

Unfortunately, we are the only country in the world that has this fantastic, enormous bully of an incumbent telecommunications carrier. No other country in the world has this. Every incumbent tries to protect its monopoly; there is no way around it.

They [Telstra] do not want to sit down, they do not want to find a solution with the rest of the industry. If that is the case, then the only thing we have to do is use that stick. The government has a stick—use the stick.

1.25 The stick, in this case, is \$4.7 billion in public funds, and the ability to legislate for a fair market structure that protects the public from the monopolistic practices of the incumbent. The essential backbone of the NBN, paid for by the public, must be retained in public ownership.

Senator Scott Ludlam

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