

NEIGHBORHOOD CABLE LIMITED

**SUBMISSION TO
SENATE INQUIRY
INTO BROADBAND
SERVICES**

5 February 2004

Neighborhood Cable Limited

Submission to Senate Committee inquiry into Broadband Services.

1. Introduction

In making this submission to the Senate inquiry, Neighborhood Cable speaks from the perspective of a company that has invested more than \$60m in building high-bandwidth, high-speed cable networks in three regional cities. Its shareholders have done so as entrepreneurs, acting in the same spirit of commercial daring that built steamships and railways in the 19th century: they have risked their money and their effort for profit.

In this case, the shareholders' commercial judgment is based on a belief shared by the entire developed world. It is that much of the prosperity of countries, regions, communities will depend on how quickly, completely and effectively they join the new information economy.

Broadband carries the load in that economy.

Neighborhood Cable assumes, uncontroversially, that a broadband network is destined to be as much a public good as efficient air, road and rail transport systems. Australia is a long way behind most developed countries in the introduction and uptake of broadband technology. In the OECD, it ranks behind Portugal in 21st place, and it seems likely that it will fall even further behind.

One major reason for this poor showing is the lack of infrastructure-based competition in Australia. A wealth of evidence from Europe and North America supports the claim that healthy infrastructure-based competition between telecommunications and cable TV networks stimulates the uptake of broadband.

Neighborhood Cable assumes also that any government of Australia would be remiss if it did not use all the instruments available to spread affordable broadband as widely as possible.

It is from these standpoints, and in particular from the position of being a non-metropolitan provider of telecommunications services, that our submission proceeds.

The contents of this submission are directed primarily to reference criteria (b) "impediments to competition and to the uptake of broadband technology" and (d) "... the impact and relationship between ownership of content and distribution of content on competition".

2. The competitive environment

The reason for the low level of infrastructure-based competition in Australia is, of course, Telstra's command of large sections of the telecommunications sector. The high cost to private enterprise of building networks in less densely populated regions cements this dominance and prevents true competition in the broadband market in Australia.

In a world where commercial competition has come to be seen as economically healthy and of social benefit, the monolithic stature of Telstra in the Australian communications market seems more suited to another age.

In the cities, Telstra lives with some tiny competitors. In regional Australia, Telstra has a monopoly on the infrastructure that carries services (backhaul) and of the infrastructure that

delivers services to individual users (last-mile services). Resellers without infrastructure exist at the mercy of the seller.

For Neighborhood Cable, its large investment in infrastructure makes it free of Telstra's last-mile services. But the high cost of backhaul transmission is a tight collar on existing regional providers, making network expansion difficult. For new entrants to the industry, it is a massive disincentive.

Widespread regional access to broadband will remain a dream if last-mile and backhaul prices are set at uncommercial levels by the monopolist.

3. Content and competition

On top of its domination of the telecommunications infrastructure, Telstra has expanded its stakeholding in the pay-TV industry, with its ability to bundle its telecommunications products with Austar's pay-TV product.

Telstra's market dominance allows it to dictate to the rest of the market what can be offered to consumers. This is unhealthy both for consumers and competition.

Telstra's ownership of both the telecommunications and the cable TV networks makes competition impossible. Added to this is the integrated nature of Telstra's network with its retail operation. This excludes other operators from negotiating terms of access that would allow them to develop their own businesses.

Beyond its control of most of the telecommunications industry, through its shareholding in Foxtel, Telstra is now also in a dominant position in the media industry. It is now able to dictate what programs are to be supplied and to whom.

As a result of the Foxtel deal, Telstra/Foxtel will now be able to move into the broadband-driven interactive media market. It has announced that part of its current \$550 million upgrade to digital will be applied to developing interactive TV.

The transfer of all Optus's content to Foxtel, making that company the sole content provider in Australia, will need to be monitored to ensure that it does not create major access problems for the independent operators.

Under one of the conditions imposed by the ACCC, Foxtel is compelled to make its content available to other operators. Some competing enterprises may, however, find that the high cost of obtaining content from Foxtel, or unrealistic terms and conditions imposed, may make it extremely difficult to remain profitable.

Neighborhood Cable objected to Telstra's notification to the ACCC of its third-line forcing conduct over the bundling of Austar's pay-TV product with Telstra's telecommunications services on the basis that this amounted to anti-competitive conduct.

As Telstra pay TV would be simply reselling the standard Austar offering, the public would not benefit from any of the classic results of true competition.

In its submission to the ACCC (summarised below), Neighborhood Cable laid out a number of objections that are relevant to this inquiry; in summary these were:

Business efficiency. There are no grounds for claiming any improvement in business efficiency. Telstra pay TV will simply be billing its customers instead of Austar billing the same customer.

Increased competitiveness. Giving the same product two brand names creates no more competition. What regional Australia desperately needs is vigorous and sustainable competition. The notification sought to promote the opposite.

Rationalisation. The argument of public benefit through more efficient allocation of resources or lower or contained production costs through rationalisation is dubious. In fact, there is likely to be a duplication of resources as one service provider divides to become two with no change to the product.

It is Neighborhood Cable's experience that the vast majority of 'new' customers to a pay TV service are simply churn from an alternative provider. It is likely that most of Telstra pay TV's new customers will simply be churned from Austar. This is an inefficient allocation of resources.

Employment opportunities. It is unlikely that any significant number of new jobs will be created. Austar subcontracts installation and sales resources and it is likely that Telstra pay TV will do the same. Given that the vast majority of new Telstra pay TV customers would be ex-Austar and not require any new hardware or installation resource, the prospects for new jobs would be minimal.

Cost savings. Significant industry cost savings are unlikely: supply chains among all of the parties are well established and unlikely to change in any way that could promote cost savings or lower prices.

More competitive marketplace. All of the parties to the notification are intertwined. For example, a Telstra pay TV customer receives a signal from a satellite transponder that Foxtel (50 per cent owned by Telstra) jointly pays for with Austar to offer a channel that Foxtel and Austar together produce and to which they own exclusive rights. Far from promoting competition in the industry, Telstra's simply rebranding of a service it already sells to same market should be viewed as a concentration of product in the hands of one supplier.

Equitable dealings. The past conduct of Telstra and Foxtel towards potential competitors strongly suggests that the parties to this notification have no intention of promoting equitable dealings in the market. There are no provisions or undertakings in their notification or supporting documentation to suggest otherwise.

Economic development. The anti-competitive nature of this notification will suppress and stifle competition and the development of regional pay TV. More importantly, it will stunt the growth of telecommunications services. This, in turn, will discourage capital investment in these industries in regional Australia. No argument supporting immunity from third-line forcing on the basis of stimulating economic development or capital investment can possibly be sustained.

Improvement in services or choice. Since the service Telstra pay TV proposes to offer in regional Australia is identical to the product already offered by Austar, claims for continued immunity from third-line forcing on the basis of improving or expanding services or consumer choice are spurious. The opposite is true. The consolidation of the pay TV industry that will result will impede the development of competitive services or products in both pay TV and other telecommunications services.

Better informed public. Apart from allowing Telstra to engage in a marketing campaign to bundle customers, it is unlikely that this notification would make the

public better informed about anything related to their pay TV or telecommunications providers.

Neighborhood Cable, from its grassroots perspective in regional Australia, argued that granting immunity from the third-line forcing provisions of the Trade Practices Act will substantially reduce or eliminate competition in telecommunications services in regional Australia. The conduct will be detrimental to the research and development, innovation and technology development into which so much work, time and money has been invested, primarily by progressive local governments, across regional Australia.

Regionally based technology centres, business incubators businesses who are reliant on communications, are all at risk if the competitive supply of telecommunications services contracts. This will lead to a migration of the skilled jobs, so desperately needed in regional Australia into the capital cities, which may have the required level of competitive services.

Telstra's ability to cross-subsidise, combined with its overwhelming power at all levels in the market, makes the prospect of attracting regionally based innovation much more difficult than if the immunity were to be revoked and Telstra compelled to behave in a more pro-competitive manner.

The recent launch of Telstra's 'unlimited' broadband product does nothing to attract new broadband subscribers or to increase the availability of broadband services, particularly in regional Australia. It merely promotes churning of customers from other service providers to a Telstra broadband service and forces other market participants to match Telstra's pricing, irrespective of the quality of the service on offer.

Neighborhood Cable argued that the success of Telstra's application for exemption, would result in their being little or no incentive for any new investment in regional Australia for competitive pay TV or, more importantly, telecommunications services.

Despite the objections of Neighborhood Cable and many others, the ACCC granted Telstra an exemption from the third-line forcing prohibitions of the Trade Practices Act, allowing it to bundle Austar's pay-TV content with its telecommunications services.

The maintenance of this immunity risks further damage to the fragile regional telecommunications market and the hard work of dedicated and committed organisations to attract investment in technology, infrastructure and employment to the regions.

4. Consumer understanding of broadband and domain name portability.

This part of the submission addresses criteria b) and impediments to uptake in broadband.

Competition in broadband services cannot be discussed without some certainty about what the term means. It is important to know whose benchmark has, to date, been accepted as "broadband".

It is a commonplace today that the second generation of internet services, those using ADSL connections, should not continue to be called broadband. The contrast with narrowband is simply not sharp enough. Presently, regional Australia believe that the slow second-generation ADSL technology *is* broadband.

It is not.

It may well be broadband enough for some private users not inconvenienced by slow operation speeds. But for businesses of all sizes and for hospitals, clinics, universities,

colleges, schools, councils, libraries, and other institutions, speed is the essence of the internet.

Because consumers' knowledge about broadband is limited, few appreciate the differences between broadband ADSL and broadband over fibre. Not to inform consumers in regional Australia of the difference between second-generation and superior technologies is to mislead them and denies them genuine choice.

Customer confusion is compounded by a trend for national communications providers to launch national campaigns, despite, in many cases being unable to deliver the product in non-metropolitan areas, or being only able to deliver it in a form that has inferior capabilities. Regional consumers are lulled into assuming that this is 'broadband'. Neighborhood Cable remains competitive, but its product is often evaluated by the consumer against technically inferior 'broadband', and the consumer considers this evaluation to be 'apples' with 'apples'.

Greater consumer understanding of the product and consumer led demand for high speed broadband is important for genuine competition, so that the consumer can distinguish between and recognise the different qualities in the various 'broadband' products offered to them.

As was the case with the limitation on portability of telephone numbers in the mobile phone market, the lack of domain name portability for residential subscribers is also an obstacle to customer acquisition.

5. The future

Unless those who need it gain access to genuine broadband, they will not be able to join the new information economy in the way they should. They will be left behind.

There is no health for Australia in Australians selling second-rate communication products, old stock, to their own people. Regional Australia should be clamouring for true high-speed internet access. In its ignorance, it is not.

If broadband is acknowledged as a public good and the fastest possible provision of true broadband services as of national importance, then government needs to focus on making it happen.

This could be done by Telstra acting with all speed to roll out a genuine national broadband network.

The clear alternative is for government to support new and established private enterprises to build regional telecommunications infrastructure. Funds already provided need to be focused on supporting these ventures. These companies are not one-idea dot.com visionaries. They are and will be engaged in a major act of national infrastructure building.

The federal government has made available pools of funding for the development of regional telecommunications. But for many reasons this has not delivered any tangible benefit to regional Australia and has not improved access to broadband services.

Funding generally goes to community groups or non-profit bodies, but these groups do not support a business case or provide any services to consumers. The result is that funding given to these groups invariably finds its way back to Telstra for the sole purpose of improving its mobile phone coverage.

The availability of funds is uncertain as the types of funding assistance constantly change, as do the bodies responsible for distributing the money and the criteria for access.

Government assistance must be approved by the responsible body before any expenditure is incurred by those seeking funding. Funding is not available to reimburse money spent.

Private enterprise also finds it near-impossible to plan business projects in a way that will attract government funding. Business plans must be completed within set times to maintain competitiveness. However, the government's timelines for the provision of funding are constantly extended. The result is that while private enterprise must spend to meet its business plans, in so doing it disqualifies itself from access to government funding.

The federal government's funding programs are now focusing on subsidising customer premises equipment (CPE) rather than building infrastructure (as under HiBIS). Again, the implementation of these proposed programs has been delayed.

CPE is obviously welcomed by the industry. But it is a help, not a solution. The solution is infrastructure construction.

This view is supported by industry commentators, analysts and by reports commissioned by and submitted to government.

Neighborhood Cable has demonstrated that the conclusions of overseas studies and the findings of previous commissions of inquiry hold true: infrastructure-based competition does promote broadband take-up. Neighborhood Cable's penetration rates are significantly above the national average, at present languishing at around 7 – 8 per cent.

Based on the company's analysis of its available markets, in Mildura, Neighborhood Cable had 24 per cent penetration within 24 months of the introduction of its cable broadband services.

In Ballarat, Neighborhood Cable had 13 per cent penetration within 12 months of introducing its cable broadband services.

Government also needs to review the legislative framework under which infrastructure builders can access and secure tenure on existing infrastructure. For example, a carrier is entirely dependant on the utility whose infrastructure it must rent in order to construct a network. There is generally only one utility company which has the potential to create a significant imbalance of bargaining power. This can result in the unreasonable shifting of costs and liabilities and insecurity of tenure over the long term.

Carriers ability to secure reasonable access over privately owned land also affects network expansion. Carriers should enjoy the same rights of access as do the utilities. Individual landlords over whose property (eg a roof top) access may be required, can simply withhold their consent or provide it with no security of tenure, thereby impeding the connectivity of other customer premises.

A more cohesive approach is also required to assist infrastructure builders in their relationships with municipalities, statutory authorities and the like. Indeed a 'one stop shop' for the negotiation and determination of licenses, permits, fees and specifications would greatly simplify the current processes, leading to reduced costs and a more certain financial picture for prospective investors in infrastructure construction.

Better dispute resolution is also important: the current means for resolving an impasse, or access to remedies for disputes that may arise are time consuming and expensive.

Conclusion

The development of the broadband market and the establishment of a competitive environment in the telecommunications industry are becoming more and more crucial for the good of the Australian economy and for society as a whole.

Without effective competition, Australia, particularly regional Australia, will be denied access to the global economy. It will not have the tools or the skills or experience to compete in the information age.

The only way to ensure that this does not occur is for the government to stimulate competition in broadband services by:

- investing in the construction of new telecommunications infrastructure capable of delivering genuine broadband services to as much of Australia as possible;
- stimulating investing in this area through incentive schemes;
- subsidising infrastructure establishment and network extensions costs;
- subsidising companies in the early years of operation in regional markets not as densely populated as the metropolitan areas;
- subsidising some operating expenses such as distance-priced backhaul;
- reviewing the legislative framework currently regulating carrier infrastructure construction and relationships.

The policies such as these will repay the community a hundredfold. They will enable all of Australia to take part in the rapidly-dawning new world economy.