

TELSTRA CORPORATION LIMITED

Submission to the
Senate Environment, Communications, IT & the Arts
Legislation Committee Inquiry
into the provisions of the

**Telecommunications Legislation Amendment
(Regular Reviews and Other Measures) Bill 2005**

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Executive Summary

Telstra considers that the *Telecommunications Legislation Amendment (Regular Reviews and Other Measures) Bill 2005* (“**Bill**”) is effective to achieve the government’s stated objective of implementing the government’s response to the recommendations of the Regional Telecommunications Inquiry in relation to regular reviews of telecommunications services in regional, rural and remote Australia, and to facilitate imposing a local presence licence condition on Telstra.

Section 1 of this submission summarises the objectives of the Bill and the underlying recommendations of the Regional Telecommunications Inquiry.

Section 2 outlines the operation of the provisions of the Bill relating to the local presence licence condition. It is noted that the Minister already has broad powers to impose licence conditions on Telstra, and that the provisions of the Bill facilitate the exercise of these powers.

Telstra notes the statements in the Explanatory Memorandum to the Bill that the local presence licence condition will promote decentralised decision-making, representation for regional and rural interests within Telstra and support through Telstra activities for broader regional community development. While Telstra endorses the invaluable role of empowered local managers and the need to ensure that all business decisions are informed by local circumstances, Telstra considers that it is also important to recognise the benefits that regional, rural and remote customers receive from access to Telstra’s national experience, systems and economies of scale. In relation to the statement that the Bill seeks to promote representation for regional interests within Telstra’s management, Telstra endorses this statement on the understanding that this is intended to be solely a reference to the interests of customers within these areas.

Telstra is proud of the achievements of Telstra Country Wide to date in driving real service improvements for customers in regional, rural and remote areas. Telstra considers that the Telstra Country Wide model has shown the real benefits that can be delivered for customers through an appropriate blend of local knowledge, empowered local management and access to national resources, experience and expertise. This approach has led to tangible improvements for customers in relation to targeted infrastructure investment, access to services and resolution of service concerns.

Section 3 outlines the provisions of the Bill establishing the Regional Telecommunications Independent Review Committee (RTIRC), and providing for regular reviews of the adequacy of telecommunications services in regional, rural and remote areas. These provisions establish a mechanism for independent review of service provision to regional, rural and remote Australia in a way that will ensure transparency and government accountability in relation to this issue. Telstra endorses the proposed requirement that where the RTIRC recommends that the government take a particular action, the RTIRC must assess the costs and benefits of that action. Similarly, Telstra endorses the five year time period proposed for reviews conducted by the RTIRC and submits that it is essential that the life of local presence plans prepared by Telstra under the local presence licence condition, and any reporting required under the local presence licence condition, is also co-ordinated with the frequency of reviews by the RTIRC.

Section 4 briefly outlines the general consumer regulatory safeguards of which the arrangements in the Bill will form part. The effect of these safeguards is to provide reassurance to customers in regional, rural and remote areas in relation to such issues as the

universal service obligation, service levels on connections and repairs of standard telephone services, price controls, network reliability and access to priority services for customers with special needs.

Section 1 - Objectives of the Bill

The objectives of the *Telecommunications Legislation Amendment (Regular Reviews and Other Measures) Bill 2005* are set out in the Second Reading Speech to the House of Representatives on 10 March 2005 by the Parliamentary Secretary to the Treasurer.

In the Second Reading Speech the Parliamentary Secretary to the Treasurer stated that the legislation was “part of a package that delivers on the government’s commitment to implement its response to recommendations of the regional telecommunications inquiry.” (Hansard p6)

The recommendations of the Regional Telecommunications (Estens) Inquiry referred to in the Second Reading Speech are Recommendations 8.1 and 8.2 (in relation to the obligation on Telstra to maintain a local presence), and 9.1, 9.2, 9.3 and 9.4 (in relation to the need for regular reviews).

In summary, Estens Recommendations 8.1 and 8.2 stated that Telstra should be required to maintain an ongoing local presence in regional, rural and remote Australia, develop and publish a local presence plan setting out the range of activities and strategies that it would deploy in regional Australia to achieve this, and regularly report against the plan.

The government responded to these recommendations by stating that it would impose a licence condition on Telstra to maintain this local presence, develop a local presence plan, and report against that plan.

Estens Recommendations 9.1, 9.2, 9.3 and 9.4 stated that the government should put in place a process for regular independent review of telecommunications services in regional, rural and remote Australia, and assess whether important new service advancements are being delivered equitably in those areas. It was further recommended that future governments be legally obliged to respond to the recommendations, and justify responses that are not in accord with the review recommendations.

Importantly, Recommendation 9.1 stated that government funds should be made available to support service improvements in regional, rural and remote Australia where those services would otherwise not be delivered commercially within a reasonable timeframe.

Section 2 - Local Presence Licence Condition

Schedule 1 of the Bill inserts a new section 66 into the *Telecommunications Act 1997*, providing that a local presence licence condition on Telstra may empower the Minister or the Australian Communications Authority to make decisions of an administrative character.

The Minister already has extensive powers under section 63 of the Telecommunications Act to impose licence conditions on any carrier, and has made extensive use of these powers as the need has arisen.

As discussed in the Explanatory Memorandum to the Bill, the key purpose of the new section 66 is to clarify that a local presence licence condition imposed on Telstra can empower the ACA to make an administrative decision.

Telstra interprets this as flagging an intention that at some point the decision to approve Telstra's local presence plan under the licence condition may be one that is delegated to the ACA or its successor. Telstra's key concerns in relation to the process for approval of the local presence plan are that the decision is made in a way that:

- gives due regard to the terms of Estens Recommendation 8.1 that the local presence requirement on Telstra should not be unduly prescriptive or burdensome, and should be broadly compatible with Telstra's commercial interests;
- is transparent and drives appropriate accountability;
- gives Telstra the necessary commercial flexibility to respond to customer needs and focus on customer outcomes;
- ensures that regulatory intervention only occurs in situations of demonstrated market failure; and
- minimises unnecessary bureaucracy and the extent to which resources are diverted into bureaucratic processes and away from meeting real customer needs.

As previously stated, Telstra has accepted the Estens Recommendations, and looks forward to working with the government in relation to implementation of an appropriate licence condition.

Telstra takes the opportunity of this Senate inquiry to respond to a number of issues raised in the Explanatory Memorandum to the Bill.

The Explanatory Memorandum states that "the local presence plan requirements are aimed at ensuring the continuation and further development of Telstra endeavours in regional, rural and remote Australia through promoting ... decentralised management and decision-making within Telstra; representation for regional and rural interests within Telstra's executive management structure; ... and support through Telstra activities for broader regional community development." (page 5)

Telstra considers that the best service outcomes for customers in regional, rural and remote Australia will be driven by an appropriate blend of giving these customers access to Telstra's national experience, systems and economies of scale, whilst ensuring decisions are adequately informed by local circumstances on the ground, through empowered local managers. While Telstra remains committed to a model of appropriate decisions being made by empowered local managers who understand the customer and service circumstances on the ground, if taken to extremes and applied in an indiscriminate way, decentralised management and decision-making may not always be in customers' best interests, and may instead result in poorer and potentially inequitable service outcomes and more expensive services.

In relation to the statement in the Explanatory Memorandum that the local presence plan requirements should promote representation for regional and rural interests within Telstra's executive management structure, Telstra interprets this as intending that the interests of regional, rural and remote customers should be represented within Telstra's executive management. It is entirely appropriate that executive managers continue to be accountable for representing the interests of regional, rural and remote customers.

A similar point can be made in relation to the statement in the Explanatory Memorandum that the local presence plan requirements should promote support through Telstra activities for broader regional community development. Telstra accepts and is proud of the fact that its telecommunications service activities in regional, rural and remote areas have positive flow-on effects for the economies of these areas. The telecommunications services that Telstra provides are vital to economic development, and Telstra's investment in infrastructure, sales and service all have positive flow-on effects for local economies. Further, Telstra understands that its success is conditional on the health and success of the communities it serves. This understanding is reflected in Telstra's ongoing contributions to local communities through various local sponsorships across the nation. However, Telstra submits that its formal responsibility for "broader regional community development" should only be read as relating to the effects on local economies of Telstra's telecommunications service activities.

Finally in relation to the local presence licence condition, Telstra notes that section 63(13) of the Telecommunications Act specifically provides that a licence condition is a disallowable instrument. Accordingly, in order to preserve this important Parliamentary accountability, Telstra suggests that proposed new section 66 should specifically provide that any requirement imposed by a subsidiary instrument under the licence condition should also be a disallowable instrument.

Section 3 - Regular Reviews

Telstra considers that the regime which the Bill will create through a new Part 9B to the *Telecommunications (Consumer Protection and Service Standards) Act 1999* will be effective to achieve the government's objective of implementing Estens Recommendations 9.1, 9.2, 9.3 and 9.4.

The regime to be created will feature a regular independent review of the adequacy of telecommunications services in regional, rural and remote parts of Australia, with a legislated requirement on the government to table the report of the Regional Telecommunications Independent Review Committee (RTIRC) in Parliament, and respond to any recommendations addressed to the government.

Telstra endorses the requirement in the proposed section 158Q(4) that where the RTIRC recommends that the government take a particular action, the RTIRC must assess the costs and benefits of that action. Telstra considers that this approach will promote rational fact-based decision-making in a way that encourages efficient application of the community's resources.

Similarly, Telstra endorses the five year time period set-out in proposed section 158P(3). It is important that these reviews are conducted at a frequency that allows adequate time for implementation of recommendations between reviews.

The reviews conducted by the RTIRC will consume resources of the government, the regulatory agencies supporting the RTIRC's functions, and the bodies such as Telstra who input into RTIRC reviews, so it is important that the reviews have the opportunity to assess developments over an appropriate implementation period.

In order to ensure efficient application of resources, Telstra considers that it is essential that the life of local presence plans prepared by Telstra under the local presence licence condition, and any reporting required under the local presence licence condition, are also co-ordinated with the frequency of reviews by the RTIRC. It would be inefficient and duplicative to require Telstra to divert resources into reporting to unco-ordinated review cycles under the RTIRC regime and the local presence licence condition regime.

Finally, Telstra notes the terms of Estens Recommendation 9.5 that the government should provide funding for future service improvements in regional, rural and remote Australia, rather than imposing financial obligations on industry. While the existing Universal Service Obligation has been highly successful in driving availability of the basic telephone service, payphones and the ISDN digital data service or equivalent, the Estens Report noted that the existing USO regime is not the appropriate mechanism for delivering increasingly heterogeneous data services such as broadband. In this regard, Telstra notes the success of the government's Higher Bandwidth Incentive Scheme in making higher-speed data services available to many more customers across Australia, and endorses this model for making future services available to customers in regional, rural and remote areas.

Section 4 - Ongoing Regulatory Controls

Telstra notes that the protections offered by the local presence obligation on Telstra and the scrutiny, transparency and accountability driven by the RTIRC review process are but the latest additions to a comprehensive network of regulatory protections already available to customers in regional, rural and remote Australia.

The extent of this existing regime has been described on many occasions, perhaps most relevantly in Part 4 and Appendix A of Telstra's Submission to the Environment, Communications IT & the Arts Legislation Committee Inquiry into the provisions of the *Telstra (Transition to Full Private Ownership) Bill 2003*.

The regime – much of which is Telstra specific – is one of the most extensive in the world. Obligations imposed on Telstra include the Universal Service Obligation (USO), the Digital Data Service Obligation, the Price Cap regime, the Customer Service Guarantee (CSG), the Network Reliability Framework (NRF) and a range of other social obligations (including Directory Assistance, Priority Assistance and Emergence Call services).

These regulatory protections cover such matters as availability of basic telephone services, connection and repair times, priority services, price controls and network reliability.