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Corporate & Regulatory Affairs

31 March 2005

Senator Alan Eggleston
Chairman
Senate Environment, Communications Information Technology and the Arts Legislation
Committee
Parliament House
Canberra ACT 2601

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Dear Senator,

**Inquiry into the provisions of the Telecommunications Legislation Amendment
(Regular Reviews and Other Measures) Bill 2005**

Optus writes to provide comments to the Committee's inquiry into the provisions of the above Bill about the proposed telecommunications reviews.

The Bill provides for reviews of the adequacy of telecommunications services in rural regional and remote parts of Australia within five years after the Bill comes into effect. It also details what the reviews must include and how the review panel will be constituted. These legislated reviews have been designed to address the requirement for the 'future-proofing' of telecommunications services so that the services people in rural and regional Australia receive are not continually lagging behind those in urban areas.

Optus sees merit in the Government's proposed program of reviews.

In our view, however, the real path to resolving service delivery lags between urban and non-urban telecommunications users is through effective infrastructure competition. Therefore all telecommunications policy measures must be measured by how much they drive real competition.

Following is a group of important policy initiatives developed by Optus that if adopted would assist in meeting the objective of driving infrastructure competition in telecommunications services outside metropolitan Australia:

1. **“Bridge to Broadband”.** Broadband is the key area where policy and regulatory focus is needed. Development of this market has reached a crucial point and Telstra has recently shown its intent to stymie competition in this market. With the right regulatory settings, competitive players like Optus are on the verge of building competitive access networks. But a key impediment is resale interconnect pricing, which acts as a dampener to competitors building their customer base which in turn hampers the speed and scale of possible network builds.

Optus proposes reforms to the regulatory framework which would allow the Government and/or the ACCC to offer better interconnect pricing arrangements in return for carriers making infrastructure roll-out commitments.

Promoting competitive broadband infrastructure provides a platform for IP voice and other advanced services, which will provide much needed competition for the local loop.

2. **Rural and regional policy and funding.** Since 1996, the Coalition Government has spent around \$1 billion in grant funds to improve rural and regional communications. But almost none of this has supported competitive infrastructure. On the contrary, it has largely gone to Telstra, directly or indirectly, serving to reinforce Telstra's dominance in rural and regional Australia. The Government has missed an opportunity to stimulate rural and regional competition and in turn deliver consumer benefits. In addition to the one time funding Telstra has received, every year Telstra gets a cross subsidy of around \$60 million from its smaller, less profitable competitors, to subsidise its claimed losses in rural and regional Australia. This is supposedly required to fund Telstra's universal service obligation (USO).

Optus proposed that:

- Policy settings and funding must shift further to promote competitive infrastructure. Optus has a range of innovative suggestions for programs that would achieve this. Particularly important is fostering a second broadband infrastructure provider in rural and regional Australia. Doing this is a key means of “future proofing” because broadband provides the platform for developing services and applications, which Telstra lacks the incentives to deploy without competition.
- The USO as the means of supporting basic services should continue (although it is not appropriate as a vehicle for delivering advanced services). However, Telstra should fund the USO itself; it should no longer receive a cross subsidy from its smaller less profitable competitors. Telstra obtains significant advantage from being the USO provider which means it is highly unlikely that USO services are loss making at all. Further, it is anti-competitive for smaller, less well resourced providers to have to pay a subsidy for Telstra's rural and regional services. This is a significant impediment to rural and regional telecommunications infrastructure investment. Therefore, after 2007/08, (when the subsidy amounts currently being determined by the ACA and the Minister expire), the cross subsidy should end.

3. **The competition regulatory regime.** There needs to be a further round of regulatory reforms, including giving the ACCC additional tools so it can move more quickly to block Telstra's anti-competitive behaviour.

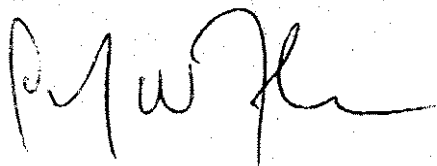
The specific measures that need to be introduced include

- A prohibition on Telstra unreasonably discriminating in favour of its own retail operations through the introduction of a non-discrimination rule. This would require Telstra to demonstrate it is not discriminating in the way it treats its competitors and itself where it resells services. This would overcome the significant hurdle of competitors currently having to prove Telstra is discriminating when it behaves anti-competitively.
- Measures that prevent Telstra targeting customers it has lost to competitors for 180 days (such measures are in place today in Canada). This would remove Telstra's ability to use its competitive advantage to undermine competitor's efforts to acquire customers.
- A better resourced ACCC so that the competition rules are more effectively and timely administered by the regulator.

Optus believes that these initiatives need to be introduced prior to the full sale of Telstra. It is clear that Telstra is on its 'best behaviour' in the lead up to full privatization in an effort to maximize support for the sale. Optus has no doubt that Telstra will become a more aggressive incumbent after the sale. The above measures will help to ensure its behaviour does not damage competition.

We would welcome further discussion on these issues. If the Committee needs further information about Optus' proposals to encourage greater competition outside metropolitan Australia, please do not hesitate to contact either myself on (02) 9342 9109 or Judy Anderson, Manager Regulatory Policy on (02) 6222 3885.

Yours sincerely



Paul Fletcher