

submission then advocates the desirability of abandoning cross media ownership restrictions by claiming "The advantages of cross-ownership do not lie in homogenising various media products, but in providing administrative and operational efficiencies...".

The message from the above excerpts is clear: because the world is changing we, the media proprietors, should be left to do as we please.

WHY THE RESTRICTIONS SHOULD REMAIN

What are the restrictions that they are trying to get rid of? The three kinds of limits placed on media ownership are: limits on ownership within a local area (i.e. the number of licences a person can hold in a defined licence area and restrictions on controlling more than one

type of media), national limits (i.e. a person must not be able to control enough TV licences to reach over 75 percent of the Australian population) and foreign ownership limits. The basic idea behind these limits is that they encourage some sort of diversity in the media offered to the Australian public.

It is highly debatable whether the current media restrictions are doing a good job of providing diverse media in Australia. However, Jock Given is not of the opinion that our media ownership rules are ready for the scrap heap: "It is not a bad idea if major media is controlled by different people. While it is becoming more difficult to have legislation that deals with the different methods of delivering media, the current law is not obsolete yet," he said.

Convergence is a technical possibility. However, it remains to be seen whether the technical possibility becomes commercial reality. The media players are arguing that it will and that the only suitable type of regulation is general competition regulation under the *Trade Practices Act*. However, there is always the possibility that digital media might merely be an additional form of media, adding to consumer choice, the way analogue television did. As Jock Given puts it: "We need to be careful not to think that the world will end up with one media industry."

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THE UNIVERSAL SERVICE OBLIGATION RECENT EVENTS AND COMING ATTRACTIONS

Caroline Lovell examines recent developments in relation to the provision of the USO and outlines some future developments already on the horizon.

Part 7 of the *Telecommunications Act 1997* (Cth) ("Act") provides for the Minister for Communications, Information, Technology and the Arts to declare specified telecommunications carriers to be the universal or regional service providers in Australia. A universal service provider is required to fulfil the Universal Service Obligation ("USO"). This involves ensuring that all Australians, wherever they reside or carry on business, have reasonable access, on an equitable basis, to standard telephone services, pay telephones and prescribed carriage services¹.

Telstra is currently the sole universal service provider. Part 7 of the Act also contains a scheme for the assessment of the cost of providing the USO and for the collection, recovery and distribution of a universal service levy which shares amongst carriers the losses which result from the supply of services in the course of fulfilling the USO. The levy from each

carrier is essentially a function of that carrier's proportion of the total revenue generated by carriers.

The assessment process takes place each financial year. The Australian Communications Authority ("ACA") is responsible for administering the process.

TELSTRA'S NET UNIVERSAL SERVICE COST CLAIM FOR 1997/8

In 1993/4, Telstra's cost claim was set at \$230 million indexed to the CPI for the purposes of the 1994/5, 1995/6 and 1996/7 years as a result of a compromise between Telstra, Optus and Vodafone. For 1995/6 and 1996/7 Telstra's claims averaged about \$250 million. For 1997/8 a new costing method was developed by Bellcore International Inc by agreement between Telstra, Optus and the ACA. On 25 September 1998, the ACA

made the Net Universal Service Cost Avoidable Costs Determination 1998 which reflected the costing method developed by Bellcore.

Just a couple of days later, on 28 September 1998, Telstra filed its claim for the 1997/8 year with the ACA. The total of the claim was \$1.8 billion. Not surprisingly, the magnitude of this claim caused an immediate reaction from the other carriers and the government because of its potentially negative impact on competition, investment and industry stability². Without prior warning, the claim imposed a large liability on each carrier other than Telstra.

THE REACTION OF OTHER CARRIERS

Other carriers, for example Optus, immediately disputed Telstra's claim. Optus also made public statements that

if it were the universal service provider, it would be able to fulfil the USO for a tenth of the cost Telstra had claimed by using new and more efficient technologies than Telstra uses, for example wireless and satellite technologies. Optus claimed that Telstra's claim factored in costs for inefficient and aging networks and placed too much emphasis on the use of expensive copper network systems³. The other carriers also began lobbying the government for the opportunity to provide the USO.

This reaction is interesting, given that the services provided to fulfil the USO are loss-making, rather than profit generating. The interest of carriers other than Telstra in providing the USO seems to be the result of a number of factors, including:

- the belief that other carriers could fulfil the USO more cheaply than Telstra;
- the desire for control over the cost, as the current arrangements lead to commercial uncertainty. As the annual contribution cannot be known with certainty it has the potential to affect investment and other decisions to be made by carriers;
- the belief that providing the USO could facilitate a carrier's entry into new areas of Australia where it could then provide other services besides those required by the USO.

THE GOVERNMENT'S INITIAL REACTION

The government's initial reaction was to announce that unless agreement could be reached in relation to Telstra's claim for 1997/8 it would legislate to cap the claim. The size of Telstra's claim, particularly given the increase from the claims of previous years, meant that a negotiated agreement on the claim was always most unlikely. The *Telecommunications Laws Amendment (Universal Service Cap) Bill 1999* ("Cap Bill") was introduced into Parliament on 23 March 1999 and passed on 26 May 1999. It is now only awaiting Royal Assent. Essentially, it caps Telstra's claim for 1997/8 at \$253.32 million. This cap is also extended to the 1998/9 and 1999/2000 financial years⁴.

Next, the Minister requested the ACA to provide a report on what the ACA considers:

- to be the real cost of providing the USO; and
- what might be appropriate arrangements for the future funding of the USO.

Prior to introducing the Cap Bill, the Minister also requested the ACA to review Telstra's claim for 1997/8. In order to do so, the ACA commissioned reports from industry consultants. In April 1999, Gibson Quai & Associates Pty Ltd and Ovum Pty Ltd provided the ACA with their report, entitled "*ACA USO Forward Looking Technologies Study*". The Allen Consulting Group provided two reports, "*Telstra's Weighted Average Cost of Capital - Application to the USO*" and "*The Year 1 Cost Problem Application to the USO and Proposed Solution*".

The report by Gibson Quai & Associates Pty Ltd and Ovum Pty Ltd advised on the technologies which would be appropriate to consider for the efficient provision of services in Potential Net Loss Areas identified by consultation with Telstra. The report also assessed the costs of providing the services using the technologies identified. A number of technologies, including LEO satellite services, were rejected because they were either not commercially available or failed to meet the study's performance requirements. The study identified a number of generic technologies as being worthy of further consideration and costing. These were CAN, Switching and Junctions. The lowest cost technology for providing the services varied between different Potential Net Loss Areas.

The first report by the Allen Consulting Group analysed the cost of capital which should be used to assess the magnitude of losses incurred in providing the USO for 1997/8 and 1998/99. The second Allen Consulting Group report considered the problem which arises in relation to depreciation used in calculating the cost of fulfilling the USO. Because the assets (infrastructure) used to fulfil the USO last, in general, more than one year, the report concluded that to return the first year depreciation in every year would over compensate the universal service provider.

On 29 April 1999 the ACA announced that it believed that the approach to the calculation of the cost of providing the USO set out in the report by Gibson Quai & Associates Pty Ltd and the first of the Allen Consulting Group's reports would lead to an annual cost/claim of around \$600 million. If the recommendations contained in the second of the Allen Consulting Group's reports were also adopted, the cost could be reduced to about \$425 million. As the Cap Bill has been passed, it was not ultimately necessary for the ACA to conclude its assessment of Telstra's claim for 1997/8 for the purpose of determining the contribution or levy to be provided by each of the other carriers. Nevertheless, the reports provided by the ACA's consultants have continuing relevance, because the result achieved by the Cap Bill cannot be, and was not intended to be, a long term solution. The ACA will also continue to assess Telstra's claim for 1997/8 in the context of its assessment of the cost of fulfilling the USO and future funding arrangements for the USO for its report to the Minister.

THE ACA'S ASSESSMENT OF THE COST OF FULFILLING THE USO AND FUTURE FUNDING ARRANGEMENTS

The ACA issued a Discussion Paper for the purposes of its report on 6 May 1999 entitled "*USO Costing and Assessment Arrangements*" and called for public comments by 28 May 1999. At the time of writing the ACA was expected to have provided its report to the Minister by 30 June 1999. It had received 4 submissions, from Telstra, Optus, Vodafone and SETEL (Small Enterprise Telecommunications Centre Limited), which had yet to be made publicly available. As the ACA's report is to be provided to the Minister, it will be up to the Minister to decide whether to release it publicly.

In light of the circumstances from which it has arisen, the ACA's report to the Minister is likely to recommend a change in the methodology used to calculate the net universal service cost. It also seems likely, as a result of the reports provided by Gibson Quai & Associates, Ovum Pty Ltd and the Allen Consulting Group, that the ACA will find that the cost of fulfilling the USO is substantially less than Telstra's claim for 1997/8, but

somewhat more than the amount at which it has now been capped for 3 years by legislation.

THE GOVERNMENT'S RECENT RESPONSE

On 6 April 1999, the Minister called for expressions of interest in tendering for the USO from carriers. The Department of Communications, Information, Technology and the Arts also issued a consultation paper calling for comments and expressions of interest by 28 May 1999.

At the time of writing, the Department had received 26 submissions or expressions of interest and was still taking submissions. The submissions already received are from a wide range of entities including carriers, the state governments and community groups. No arrangements have yet been made to make these available to the public and parts of them have been submitted on a "commercial in confidence" basis. The Department is not able to indicate a date by which it will respond to the submissions or expressions of interest as a result of the complexity of the issues it has to consider.

The consultation paper is careful to note that the call for expressions of interest "does not represent a commitment on the part of Government to establish a competitive selection process of any particular sort" and that an expression of interest will not be taken as a specific or binding offer by a carrier to be a universal service provider¹. Nevertheless, the press release issued by the Minister on 6 April 1999 states that the government has formed the view that carriers other than Telstra may be able to deliver "a more competitive and efficient USO", for example by using satellite or wireless local loop technologies. Opening the USO up to competition may result in "more innovative services to regional, rural and remote Australia, improvements in service standards, and the introduction of new carriers and possibly new infrastructure with a resultant increase in price and service competition"⁶.

The Minister's call for expressions of interest is a rare example of policy moving in advance of deployed technology. Although there is

undoubtedly the potential for other technologies such as satellite technology or wireless local loop technologies to be utilised in relation to the USO, such technologies are not yet being used commercially by any carriers in Australia for the provision of services such as the standard telephone service or pay telephones (even if they are technically feasible).

Inevitably, then, there will be lag between any commitment by the government to tender the USO and the actual development and utilisation of alternative infrastructure to Telstra's existing networks. Query also, whether the current level of industry enthusiasm for the concept of providing the USO will subside when it is necessary for carriers interested in becoming a universal service provider to calculate how much it will actually cost them to fulfil the obligations of a universal service provider, for example, for the purpose of assessing how much to bid in the event that the USO is put out to tender by an auction process. As Telstra has never had to disclose the calculations it uses to determine its net universal service cost claims, carriers other than Telstra will find it very difficult to calculate the costs of fulfilling the USO, despite the studies undertaken by Gibson Quai & Associates Pty Ltd and Ovum Pty Ltd. The fact that the data provided by Telstra for these studies was provided in confidence means that these studies are not entirely transparent⁷.

Whether the government moves forward with tendering the USO will no doubt depend on the quantity and quality of the expressions of interest received and on the degree of confidence they engender that the USO could be entrusted to a new universal service provider or providers.

The consultation paper issued by the Minister specifies the issues the government considers arise in relation to the competitive selection of universal service providers, including the following matters:

- what services should be included in the USO, given that tendering the USO will provide an opportunity to reconsider and perhaps increase the services to be provided?⁸;
- how should service areas be determined? For example, should geographical areas be used or Telstra's existing exchange areas?;
- what service standards are

appropriate and how can they be imposed?;

- what selection process should be used?;
- how should transitional arrangements be managed, for example, while functions such as maintenance are transferred from the existing universal service provider to a new universal service provider?;
- if a new universal service provider wishes to fulfil its obligations by using part or parts of Telstra's existing infrastructure, how will access be managed?;
- how long should a carrier remain a universal service provider?;
- what, if any price control arrangements should be imposed?; and
- what arrangements should be made to ensure that the USO is fulfilled and what "safety nets" can or should be developed in case a universal service provider is unable to fulfil its obligations.

1 The standard telephone service is a carriage service for the purpose of voice telephony or, in the case of a person with a disability, another form of communication of equivalent functionality which passes the connectivity test. The connectivity test is passed if an end-user supplied with the service is ordinarily able to communicate, by means of the service, with each other end-user who is supplied with the same service, whether or not the end-users are connected to the same network – *Telecommunications Act 1997 (Cth)* s17. A prescribed carriage service is one specified by regulation. No such services have been specified to date.

2 Australian Communications Authority Discussion Paper released 6 May 1999 – "USO Costing and Assessment Agreements".

3 *Communications Day* 13 October 1998.

4 Clause 2 of the Bill is unusual and provides that the provisions capping the claim will be taken to have commenced on 30 June 1999 in the event that the Bill does not receive royal assent before that date.

5 Consultation Paper, page 4.

6 Press Release issued by the Minister on 6 April 1999.

7 On 24 November 1998 ATUG (the Australian Telecommunications Users Group) called for Telstra to disclose the costs it used to calculate its claim for 1997/8.

8 The government has also announced its intention to upgrade the USO to include a requirement that a universal service provider provide access on demand to high speed digital data services.

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