



WESTERN AUSTRALIAN
TECHNOLOGY & INDUSTRY ADVISORY COUNCIL

Telecommunications Deregulation -
Is Western Australia Prepared?

Prepared for the
Western Australian Technology and Industry Advisory Council

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December 1996

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Executive Summary

1. BACKGROUND

The Australian telecommunications environment will be further deregulated and opened a to greater level of competition from 1 July 1997.

The planned deregulated telecommunications environment is expected to make an already rapidly changing industry sector even more dynamic. This environment will provide new opportunities and risks for the private sector, the community and State Governments. In particular there are challenges for State Governments in taking an enhanced role in an area that has previously been largely left to the decision making processes of the Commonwealth Government and the Carriers.

A concern that Western Australia may not be positioned to take advantage of the opportunities and to manage the risks associated with the new environment led to the Western Australian Technology and Industry Advisory Council (TIAC) commissioning this study.

2. PURPOSE OF THE STUDY

The formal purpose of the study, as defined by TIAC, was to address the following questions:

- *What do we need to ensure that the latest telecommunication technology is available in Western Australia as soon as it becomes available on the world market?*
- *How do we ensure internationally competitive costs of telecommunications for our private sector, particularly small and medium business in a deregulated environment?*
- *How can we ensure the provision of leading edge telecommunications infrastructure in order to promote the State as a desirable location for corporate headquarters and advanced research and development centres?*

The study is part of the process of the ongoing development by TIAC of advice to the State Government in the areas of Information Infrastructure and Telecommunications.

The study identifies a range of options for further activity that the State Government could undertake in the telecommunications area in the interests of the private sector, community and Government.

The study is intended to provide information and stimulate further action within Government, the private sector and the community in the area of telecommunications.

3. SCOPE

To identify what actions the State Government can take that will assist the private sector to respond to the new opportunities presented by telecommunications deregulation.

The focus of this study is primarily that of telecommunications regulated by the Commonwealth Government Telecommunications Act of 1991. Specifically the Act deals with telephone, computer communications, mobile telephone and other telecommunications services provided by Carriers (Optus, Telstra and Vodafone) and Service Providers.

4. FINDINGS

The key findings of the study are summarised in the following three areas:

1. Expected Regulatory Environment

The regulatory environment from 1 July 1997 is expected to have significant changes from the current environment.

These include:

- Increased Competition

The number of Carriers and Service Providers is expected to increase

- Competition Regulation

The competition regulation will be administered by the Australian Competition and Consumer Commission (ACCC) under general competition law and industry specific law.

- Telecommunications Service Pricing

The current requirement for public filing of tariffs by Carriers is expected to be removed, as will be the need for dominant Carriers to adhere to filed tariffs. The setting of prices will be by open competition but subject to ACCC and Ministerial regulation to prevent anti-competitive behaviour. The price caps on certain service types and the availability of untimed local call charging will be retained. The expectation is that increased competition will reduce prices.

- Technical Regulation

Technical regulation is to be carried out by a merged Austel and Spectrum Management Agency body known as the Australian Communications Authority.

- Customer Service Guarantee

A Customer Service guarantee will be introduced covering connections, repairs, billing systems and operator services to be met by all Carriers and Service Providers.

- Carrier Rights

The rights of Carriers for land use will be subject to a Telecommunications National Code. Carrier exemptions from local planning and environmental laws are to be eliminated or reduced and subject to greater co-ordination requirements.

- Open Access

There will be ongoing and increased rights of interconnection for Carriers and Service Providers including access to Pay TV infrastructure.

2. Risks and Opportunities

The expected telecommunications environment will create new risks and opportunities for the Western Australian private sector, community and State Government.

A brief summary of the identified risks and opportunities follows:

- Opportunities

- Benefits of Increased Competition

The expected increased level of competition will provide new services and improved prices. This will provide the opportunity to improve private sector competitiveness.

- New Business Opportunities

The expected increased level of competition will directly provide or facilitate new business opportunities. These may be both local and export oriented.

- Infrastructure Planning and Co-ordination

The potential for improved telecommunications infrastructure planning and co-ordination for the State.

- Risks

- Increased Competition

The expected increased telecommunications competition may lead to increased competition for local business operations from organisations located outside Western Australia that take up new opportunities.

- Benefits of Competition not Realised

The benefits of increased competition in telecommunications may not be fully realised in Western Australia. This would be due to a limited increase in competition reflecting the limited market size, demography and dominance of Telstra. This may particularly apply to Regional and remote areas.

- Universal Service Obligations

The outcomes of the Universal Service Obligation arrangements may not be sufficient to supply business in Regional and remote areas with their essential telecommunications services.

- Telecommunications Workforce

The staffing arrangements for existing and new Carriers and Service Providers may result in both direct and consequential reduction of employment, particularly in Regional areas.

- Mobile Telephone Network

The planned closure of the analog mobile telephone network in 2000 may occur in a way that disadvantages Regional areas.

- Planning Co-ordination

The planning and co-ordination forums for State Government, Local Government, Carriers and the private sector may not be established in time to operate in the new environment.

- Business Opportunities

The private sector may not have developed the expertise to capitalise on the opportunities and minimise the risks of the new telecommunications environment.

- State Government Role

The State Government may not fully take up the tasks of leadership for support of telecommunications infrastructure and services development, planning co-ordination, encouragement of research and development and influencing of the Commonwealth Government that will be required in the new telecommunications environment.

3. Increased Role for State Government

The study has found that an increased role for State Government in telecommunications will be required in the proposed deregulated environment.

The increased role identified is in the context of a whole of State view and is additional to the changes which will also occur in the context of the public sector being a consumer of telecommunications services.

The areas of increased role are expected to be:

- Leadership

Leadership in promotion of the role of telecommunications in the economic and social development of the State.

- Telecommunications Infrastructure and Services Development

Encouragement and support of the development of a telecommunications infrastructure and services environment in the State which is nationally and internationally competitive.

- Planning Co-ordination

Participation in planning and implementation co-ordination of telecommunications infrastructure.

- Research and Development

Encouragement and support of research and development in telecommunications areas.

- Influence of Commonwealth Government

Influence of Commonwealth Government legislation, regulation and operations in the area of telecommunications.

The strategy options for State Government activity in these areas are summarised in the following section and provided in detail in Section 6 of the report.

Suggested Options for Government

This study has identified and documented a number of strategies that the State Government could embrace in the area of telecommunications. These strategy options are detailed in Section 6 of this report and are aimed at addressing the risks and opportunities of the deregulated environment as identified in Section 4 of the report. A number of strategy options build on initiatives already occurring within Government. These initiatives are detailed in Section 5 of the report.

A number of the strategy options identified are in common with, or related to, the strategy options identified in the TIAC study "Toward an Information Infrastructure Policy for Western Australia - the Business Aspect". This is consistent with the interrelationship of telecommunications and information infrastructure.

STRATEGY OPTIONS

1. Leadership

State Government leadership in the promotion of the role of telecommunications in supporting the economic and social development of the State.

This may include specific strategies such as:

- Early and innovative use of telecommunications in the delivery of Government services.
- Allocation of a ministerial portfolio for Information Industries including telecommunications to increase the profile of this area.
- Fostering and promotion of private sector initiatives in telecommunications.
- Provision of educational and training services to the private sector and the community to increase awareness of the opportunities in telecommunications.

2. Telecommunications Infrastructure and Services Development

State Government action to work for access and prices for telecommunications infrastructure and services throughout the State which are nationally and internationally competitive.

This may include specific strategies such as:

- Monitoring the operation of the new regulatory regime to assess the extent to which competition is increased and the benefits of competition are provided to all areas and sectors of the State.
- Increased liaison with Carriers and Service Providers to influence their infrastructure and service provision programs.
- Increased activity to influence the Commonwealth Government decisions on the structure and operation of telecommunications regulation.

- Leverage of Government telecommunications purchasing to improve outcomes for the whole State.
- Contribution by the Government and/or the private sector to specific telecommunications infrastructure or services projects.
- Partnerships with Local, State, Territory or Commonwealth Government on specific issues.

3. Planning Co-ordination

State Government action to increase co-ordination of telecommunications infrastructure planning. The objectives of the planning co-ordination is to both ensure that Carrier infrastructure meets whole of State requirements and that telecommunications infrastructure is co-ordinated with other infrastructure planning.

4. Research and Development

State Government action to encourage and support research and development in telecommunications areas with application in Western Australia and/or export potential. This may include specific strategies such as:

- Inclusion of research and development arrangements in State Government purchasing.
- Support of specific research and development programs.
- Support of pilot projects and trials.
- Publicity and promotion of private sector initiatives.

5. Influencing the Commonwealth Government

State Government action to influence the Commonwealth Government policy development and implementation in the area of telecommunications. This would encompass activity in a range of areas some of which are included in the preceding Strategy Options. This may include specific strategies such as:

- Increased lobbying of the Commonwealth Government on legislation and regulation.
- Taking of specific cases to the Commonwealth Government regulatory bodies including the Australian Competition and Consumer Commission, the Australian Communications Authority and the Telecommunications Industry Ombudsman.
- Co-ordination with other State or Territory Governments on specific issues.

Terms of Reference

Terms of Reference for the study were given as;

1. *Examine the role of the State Government in a deregulated telecommunications environment with respect to its overall responsibility for infrastructure planning particularly with regard to Western Australia being able to participate in the global information society.*
2. *What strategies and policy options should the State Government pursue in order to ensure that Western Australia small and medium business can maximise the benefits of a deregulated telecommunications sector?*
3. *Investigate the extent to which Western Australia needs to develop its information and telecommunication infrastructure if it is to position itself as a desirable location for R&D centres and Regional corporate headquarters.*
4. *Examine the impact on the cross subsidy from high density telephone areas to the provision of services in remote or isolated communities in a deregulated telecommunications sector.*
5. *In considering the above terms of reference, review and work closely with current and related studies, including the "State Communications Audit" and the "Towards an Information Infrastructure Policy - the Business Aspect" to ensure that the State is provided with a compatible, composite picture of needs, recommendations and strategies.*

1. INTRODUCTION

1.1 Background

Telecommunications technology both as a direct provider of telecommunications services and as a supporting technology for information processing systems is continuing to grow in importance as a business tool and a provider of community services.

The Australian telecommunications regulatory environment will be opened up to a greater level of competition from 1 July 1997. The Commonwealth Government is vigorously continuing the process of telecommunications deregulation that was commenced by the previous Government.

The planned deregulated telecommunications environment is expected to make an already rapidly changing industry sector even more dynamic. This new environment will provide new opportunities and risks for the private sector, the community and State Governments. In particular there are challenges for State Governments in taking an enhanced role in an area that has previously been largely left to the decision making processes of the Commonwealth Government and the Carriers.

This recognition of the new opportunities and risks for the whole State led to the commissioning of this study by the Western Australian Technology and Industry Advisory Council (TIAC).

The recognition of the need for this study is also consistent with the findings in relation to telecommunications of the TIAC report of April 1996 "Towards an Information Infrastructure Policy for Western Australia - The Business Aspect".

1.2 Purpose of the Study

The formal purpose of the study, as defined by TIAC was:

- *What do we need to ensure that the latest telecommunication technology is available in Western Australia as soon as it becomes available on the world market?*
- *How do we ensure internationally competitive costs of telecommunications to our private sector, particularly small and medium business in a deregulated environment?*
- *How can we ensure the provision of leading edge telecommunications infrastructure in order to promote the State as a desirable location for corporate headquarters and advanced research and development centres?*

The study is an input to the ongoing process of development of State Government Policy in the area of Telecommunications.

The study is intended to provide information and stimulate further action within Government, the private sector and the community in the area of telecommunications.

In addition, the study identifies a range of options for further activity that the State Government could undertake in the telecommunications area in the interests of the private sector, community and Government.

The focus of this study is on the private sector, since Government is already undertaking a number of initiatives to improve its own utilisation of telecommunications for delivery of its services.

As the success of the State's private sector both nationally and internationally is core to the success of the State the emphasis is on the access to and use of telecommunications as a business tool.

In particular, this study considers opportunities and risks as they relate to small and medium business, since it is TIAC's view that this sector has the least capability to individually directly influence the telecommunications environment. The special issues in regard to non metropolitan business are highlighted where applicable.

2. SUMMARY OF FINDINGS

2.1 Term of Reference 1

Examine the role of the State Government in a deregulated telecommunications environment with respect to its overall responsibility for infrastructure planning particularly with regard to Western Australia being able to participate in the global information society.

The Commonwealth Government has legislative jurisdiction for telecommunications including competition policy and technical regulation.

The State Government does not have legislative jurisdiction in the area of telecommunications.

However, the opportunity and the need to enhance the State Government's role in telecommunications is expected in the deregulated environment.

Consideration of the risks and opportunities expected in the new regulatory environment resulted in a number of potential options for State Government. The most significant of which are considered to be:

- Monitoring the operation of the new environment to assess the extent to which the benefits of increased competition are being provided to all areas and sectors of the State.
- Enhanced interaction with the Commonwealth Government, the Australian Competition and Consumer Commission and the Australian Communications Authority in the interests of the whole State. This interaction would be across a range of issues such as application of Universal Service Obligations, definition of the standard telecommunications services and the operation of exemptions of Carriers from State and Local Government regulations.
- Enhanced interaction with Carriers to ensure that Carrier infrastructure programs meet State requirements. This interaction would have aspects of both co-ordination of telecommunications with other infrastructure and influencing the scope and extent of Carrier infrastructure programs.
- Enhanced interaction with Carriers and Service Providers to encourage the provisions of the full range of telecommunications services to all areas and sectors of the State. This interaction may involve leveraging of Government purchasing, encouragement and support of research, contribution to specific Carrier or Service Provider projects and delivery of Government services via telecommunications.

2.2 Term of Reference 2

What strategies and policy options should the State Government pursue in order to ensure that Western Australian small and medium business can maximise the benefits of a deregulated telecommunications sector?

The policy options and associated strategies outlined in the preceding item Term of Reference 1 are relevant to small and medium business.

In addition potential policy options and strategies more specific to business have been identified as follows:

- Inclusion of telecommunications industry development and research requirements in State Government purchasing arrangements.
- Support for the research, development and application of telecommunications systems which are relevant to business in WA and which have export potential.
- Delivery of State Government services to business via on-line means and facilitation of the business take-up of these services .
- Fostering and promotion of business initiatives.

2.3 Term of Reference 3

Investigate the extent to which Western Australia needs to develop its information and telecommunication infrastructure if it is to position itself as a desirable location for R&D centres and Regional corporate headquarters.

The State will need to offer information and telecommunications infrastructure equivalent or superior to that available in other areas of Australia and overseas locations to be seen as a desirable location for R&D centres and corporate headquarters.

In addition the State Government needs to contribute to developing and promoting the profile of information and telecommunications infrastructure as being essential business tools and direct contributors to income earning business outputs.

The Perth metropolitan area currently is generally well served with telecommunications infrastructure, relative to other Australian Capital Cities, although the implementation timetable of new broadband infrastructure is lagging behind some other locations.

The outer metropolitan area, Regional centres and remote areas of WA currently have restrictions in availability of some telecommunications infrastructure relative to capital cities. The restrictions include access to digital switching services such as ISDN, specialised high speed data services and broadband cabling.

The current pricing of telecommunications services in Western Australia is equivalent to that of other areas of Australia due to national pricing systems that are used by Carriers and Service Providers under the current regulatory environment.

It is noted that access to some services and their associated pricing, such as telephone services via the Optus Vision Pay TV infrastructure, are not currently available in Western Australia.

The pricing of telecommunications services in Australia relative to overseas locations has improved significantly since the partial deregulation of 1991.

The new regulatory environment will create a risk that Western Australia may fall behind other areas of Australia and overseas locations in terms of telecommunications service access and pricing.

The policy options and associated strategies outlined in the preceding Term of Reference 1 are all relevant to ensuring that the required telecommunications infrastructure and service pricing environment is developed in Western Australia.

2.4 Term of Reference 4

Examine the impact on the cross subsidy from high density telephone areas to the provisions of services in remote or isolated communities in a deregulated telecommunications sector.

The proposed deregulated environment is intended to provide improved services and lower prices in all areas through increased competition. The Universal Service Obligation of all Carriers to contribute financially to the funding for the universal provision of the standard telecommunications service will be maintained.

The increased level of competition, which is expected to be concentrated in high density areas, will have the effect of reducing the capacity of Carriers to carry any cross subsidy that exists. Hence a risk arises that even if remote area prices do not increase, or reduce, the disparity between these areas and high density areas will increase.

This risk is particularly significant in view of the high contribution that Regional WA provides to the Australian economy that is, earning 18% of Australia's export earnings.

The policy options and associated strategies outlined in the preceding Term of Reference 1 are all relevant to ensuring the minimisation of the risk of increased price disparity between high density areas and remote areas.

2.5 Term of Reference 5

In considering the above terms of reference, review and work closely with current and related studies, including the "State Communications Audit" and the "Towards an Information Infrastructure Policy - the Business Aspect" to ensure that the State is provided with a compatible, composite picture of needs, recommendations and strategies.

The State Communications Audit project is currently in progress and is scheduled for completion at the end of November 1996. The results of this audit will provide information to Government on the access to and utilisation of communications services by business and the community in Regional areas. This information will provide a benchmark for future comparisons which can be carried out in the new deregulated environment. This comparison information will be a valuable tool in State Government interaction with the Commonwealth Government, Carriers and Service Providers.

This study has been specifically focussed on the telecommunications area of physical infrastructure which was identified in the previous TIAC study "Towards and Information Infrastructure Policy - the Business Aspect" as one of three factors requiring development.

The findings and options for Government in the area of telecommunications of the previous TIAC study are developed in this study with particular reference to the risks and opportunities of the deregulated environment.

3. STUDY APPROACH

The study adopted a number of approaches to identifying risks and opportunities for the whole State and options available to the State Government. These included literature search of Government documents and broader industry papers, invitations for input from business associations, individual businesses, telecommunications Carriers, Service Providers and State Government Agencies. In addition a review of the changes between the current and the expected post July 1997 regulatory environment was prepared by a specialist telecommunications legal adviser.

The information on current State Government initiatives is based on information provided by State Government Agencies including Ministry of Premier and Cabinet, Department of Commerce and Trade and Ministry of Planning.

The risks and opportunities of the post July 1997 environment are based on analysis of the expected environment and discussions with individual businesses, business associations, telecommunications Carriers, telecommunications Service Providers and State Government Agencies.

The review of the changes between the current environment and the expected post July 1997 regulatory environment was developed using the specifically prepared regulatory environment review paper, the views of industry groups including ATUG, information on Carriers and Service Providers and information from literature searches.

The policy options available to Government are based on an assessment of the expected post July 1997 environment and have been developed with input from individual businesses, business associations, telecommunications Carriers, telecommunications Service Providers and State Government Agencies.

4. RISKS & OPPORTUNITIES OF THE POST JULY 1997 ENVIRONMENT

4.1 Whole State Economy

4.1.1 Risks

- a) The dominance of Telstra in telecommunications infrastructure may minimise or prevent increased competition in telecommunications infrastructure. This risk could result in
- Delay or reduction in aspects of infrastructure development by Telstra due to a lack of competitive pressure on Telstra.
 - Focussing of infrastructure development in the metropolitan areas by Telstra and other Carriers to the detriment of Regional and rural areas.
 - Discouragement of increased competition in telecommunications services by other Carriers and Service Providers. This would result in the benefits of increased competition not being fully realised. This risk is particularly significant if the pricing arrangements for interconnection to and resale of Telstra infrastructure derived services are not acceptable to other Carriers and Service Providers.
- b) The size of the Western Australian telecommunications market, particularly outside of the metropolitan area, may not be large enough to generate significant competition in the provision of infrastructure and services. This risk would result in the benefits of competition not being fully realised as follows:
- Delay in the provision of access to new services to rural and Regional areas relative to the metropolitan area. This delay may also occur for the Perth metropolitan area relative to Eastern Australia and overseas locations.
 - Prices for telecommunications services in rural and Regional areas increasing relative to prices in the metropolitan area. This price disparity increase may also occur for the Perth metropolitan area relative to Eastern Australia and overseas locations as has recently occurred with the offering by Optus of local telephone calls for 20¢ on cable TV infrastructure.
- This risk should be viewed in the context that Regional Western Australia, comprising approximately 2.6% of the nation's population, is generating approximately 18% of the nation's export earnings.
- c) The dominance of Telstra in telecommunications services may minimise or prevent increased competition in these services. This risk would be particularly significant if the proposed new regulatory environment fails to deliver arrangements whereby Service Providers can access the Carrier networks on acceptable commercial terms.

This risk could result in the same outcomes as for the previous risk (Item 4.1.1.b)

- d) The planned closure of the analog mobile telephone network on January 1, 2000 may occur in a way which disadvantages rural and Regional areas. This risk could result in reduction of total mobile telephone coverage area in rural and Regional areas due to closure of analog systems prior to provision of replacement coverage by digital mobile telephone systems.
- e) The planned reductions in staff by Telstra and the method of operation of other Carriers and Service Providers may result in both a direct and consequential reduction in employment in Regional and rural areas. This risk of employment reductions or limited growth may also impact on the Perth metropolitan area if the Carriers and Service Providers centralise particular functions in the Eastern states or overseas.
- f) The arrangements planned by the Commonwealth Government for meeting the Universal Service Obligations will not be effective in providing the level of universal service required by business and the community in Regional and rural areas. This risk could result in increased disparity of telecommunication service access between rural areas and metropolitan areas.
- g) The new Carriers and Service Providers could target only metropolitan areas and high return service areas. This risk could result in
- prices for telecommunication services in rural and Regional areas increasing relative to prices in the metropolitan area.
 - further increase in the disparity in access to new services in Regional and rural areas relative to metropolitan areas.

4.1.2 Opportunities

- a) The intended outcome of deregulation is increased competition in telecommunications infrastructure and services leading to improved access to services and decreased prices.

This improved access to new and improved telecommunications services and reduced prices could facilitate business opportunities which require telecommunications services as a key input or business opportunities directly in the telecommunications (and related IT) sector.

Some of these business opportunities will have export potential in areas such as:

- Services provision associated with existing key industry sectors including agriculture, minerals, education and tourism.
- Telecommunications services and products designed for operation in an environment of a low population dispersed over a large area.

4.2 State Government

4.2.1 Risks

The risks as detailed for the Whole of State Economy generally apply to the State Government. In addition the following risks are identified as applying to the State Government.

- a) The Commonwealth Government may enact and operate a new telecommunications regulatory regime which is in effect unfavourable to Western Australia due to insufficient lobbying by the State Government.
- b) The State Government may not exert sufficient influence on Carriers and Service Providers to ensure that they make decisions which are favourable to Western Australia.
- c) Other State and Territory Governments may successfully lobby for arrangements with the Carriers, Service Providers and the Commonwealth Government which create relative disadvantage for Western Australia.
- d) The State Government and Local Government may not have made preparations to effectively participate in operation of the proposed Telecommunications National Code and Land Access Code.

An increased level of State and Local Government interaction with Carriers is likely to occur in the post July 1997 environment due to removal or reduction of current Carriers exemptions from State and Local Government planning and environmental laws.

- e) The introduction of on-line information and transaction services by Government may relatively disadvantage private sector and community areas with poor access to telecommunications compared to areas with good access to telecommunications.
- f) The planned separation of technical and competition policy regulatory powers between Austel (to be the Australian Communications Authority) and the ACCC may make it more difficult for the State Government to influence the operation of the new regulatory regime.
- g) State Government Agencies may be deemed to be Carriers in the new regulatory arrangements. This risk could result in State Government Agencies being required to fulfil Carrier obligations such as contribution to universal service obligations.

This risk is considered to be current even though the exposure draft telecommunications legislation released in September 1996 has provided for a range of exemptions.

- h) State Government initiatives in telecommunications to meet Government telecommunications requirements may inadvertently discourage increased competition from new private sector entrants into the telecommunications Service Provider market.

4.2.2 Opportunities

The opportunities detailed for the Whole of State Economy generally apply to the State Government. In addition the following opportunities are identified as applying to the State Government.

- a) Improved co-ordination of telecommunications infrastructure planning and implementation in the overall development process. This could be treated in a similar way as the planning and co-ordination for other services infrastructure such as electricity, water, gas and roads, particularly in relation to major development projects.
- b) Improved telecommunications services access and/or prices for Government, private sector and the community resulting from new commercial arrangements between the State Government and particular Carriers and Service Providers. These commercial arrangements may include research and development opportunities.
- c) Improved telecommunications service access and/or prices for Government, private sector and the Community due to new regulatory requirements on the Carriers and Service Providers. The new requirements would result from successful State Government lobbying of the Commonwealth Government.
- d) Improved delivery of Government services throughout the State through on-line information and transaction services using improved telecommunications access and pricing.

4.3 Private Sector

4.3.1 Risks

The risks as detailed for the Whole of State Economy generally apply to the private sector. In particular the risks of telecommunications service access and pricing falling behind what is available in other locations impacting on the competitiveness of Western Australian based business. In addition the following risks are identified as applying to the Western Australian private sector.

- a) Improved access and lower costs of telecommunications services throughout Australia could lead to increased competition for local business operations from private sector organisations located outside Western Australia.

This risk will occur particularly in business areas heavily dependent on information services and transaction services such as banking, finance, insurance, retail, wholesale, education and entertainment.

- b) The private sector may not have developed the expertise to capitalise on the opportunities and minimise the risks of the new telecommunications environment.

This is particularly applicable to many existing business sectors which are not part of the information sector.

Businesses in these sectors do not generally see information services as key business input or a potential business output but rather as a necessary cost.

- c) The introduction of electronic commerce by Government may disadvantage businesses that do not have access to the necessary telecommunications infrastructure and services.

4.3.2 Opportunities

The opportunities detailed for the Whole of State Economy generally apply to the private sector. In addition the following opportunities are identified as applying to the Western Australian private sector.

- a) Some Carriers and Service Providers may increase the amount of services and equipment sourced from Western Australian businesses.
- b) Improved telecommunications service access and/or lower prices will facilitate business opportunities which are heavily reliant on telecommunications.

These opportunities may occur both in adding value to existing key industry sectors and in developing new niche markets in the information and telecommunications sectors. These opportunities may be export oriented in addition to servicing of local markets.

- c) Improved planning and implementation co-ordination with State Government and Carriers to ensure timely provision of telecommunications infrastructure for private sector projects.
- d) Business operation as a new niche market Carrier or Service Provider. This may be within Western Australia or on a Regional basis.
- e) New research and development opportunities either directly in telecommunications or the application of telecommunications.

5. STATE GOVERNMENT CURRENT INITIATIVES

5.1 Ministry of the Premier and Cabinet

a) Whole of Government Telecommunications

- In 1995, the State Government awarded a contract to Pacific Star (ComsWest) for provision of Telecommunications Services and Management Services.
- In 1995 the State Government established the Information Policy Council (IPC) to provide policy advice to Government in the area of Information and related technologies (including telecommunications). The terms of reference of the IPC are to:

“provide the Western Australian Government with the appropriate policy, standards and advisory framework in the areas of Information, Information Technology and Telecommunications so as to support the goals and initiatives of the Government and its Agencies and to maintain the most cost effective utilisations of resources.”

In 1995 the State Government established the State Telecommunications Management Unit (STMU) now merged with information policy areas to become the Information and Communications Access Branch (ICAB) of the Public Sector Management Office. The objectives of the ICAB are:

- To improve Public Sector service delivery and operational efficiency through a co-ordinated whole of Government approach to the management of information and associated technologies in the Western Australian public sector and the community.

This is an Information and Associated Technology Management program (including Information, Information Technology, Broadcasting and Telecommunications) intended to lead Government into a modern ‘Electronic Business’ environment. This will provide easier access to Government information and improved Government service delivery to the public (private individuals and businesses).

The focus of the program is effective management, use and application of information and associated technologies. It includes improving access by the public to information and communications services, including broadcasting and telecommunications services.

- To manage the ComsWest contract for the Government.
- Common Digital Network (CDN).

The IPC in 1995 have agreed for ComsWest to develop a service offering to Government known as the Common Digital Network. In addition to the potential for improving services and lowering costs within Government the CDN has the potential to improve access and lower costs of transactions with Government for the private sector and the community.

ICAB and the IPC are pursuing the opportunity for use of CDN capacity to facilitate improved access to the Internet for the private sector and the community in locations with no local call access to Internet Service Providers.

b) Rural Communications Strategy

A Rural Communications Strategy for Western Australia has been endorsed by the Communications Advisory Committee, the Regional Development Council and the IPC. It will shortly be issued by the IPC.

The Strategy outlines a range of objectives and proposed actions grouped into the areas of

- Access to Communications Services.

and

- Access to Government through Communications Services.

The following items of the Strategy are highlighted.

- State Wide Telecommunications Audit

The audit, scheduled for completion in November 1996, will provide an independent, statistically valid assessment of the availability and need for communications services by both individuals and businesses throughout all nine regions of the State. This updated knowledge of user needs will enable more focussed implementation of both local initiatives and Federal lobbying.

The audit is a joint project of the Ministry of the Premier and Cabinet, the Department of Commerce and Trade, the Regional Development Council and the nine Regional Development Commissions."

- Reform of Universal Service Obligations

A minimum set of universal services are proposed which the Government will actively seek to promote. The Ministry of Premier and Cabinet submission of July 1996 to the Commonwealth Department of Environment, Recreation, Communications and the Arts put the view that the standard telecommunications service should be a least a 64 kbps service.

- Remote Area Telephone Services

Continued lobbying of the Commonwealth Government and Austel to improve remote area telephone services that are currently supplied primarily by Telstra Digital Radio Concentrator System.

- Emergency Roadside Telephones

A initiative involving the Ministry of Premier and Cabinet, Main Roads WA and remote area Shires to trial roadside telephones is in progress.

- On-line and Dial-up Internet Services

The Ministry of Premier and Cabinet is considering a number of measures to improve cost effective access to Internet services in Rural WA.

- Telephone and On-Line Access to Government

The Ministry of Premier and Cabinet is actively supporting measures to improve community and business access to Government services by improved communications systems.

Measures being considered include:

- A survey of customer needs and development of a voice service delivery strategy.
- Support of individual Agency initiatives by establishment of standards.
- Co-ordination of the proposed CDN which will facilitate the delivery of on-line services.

c) Influencing of Commonwealth Government

ICAB are actively involved in influencing the Commonwealth Government on a range of telecommunications issues. Formal submissions have been submitted on a number of matters including recently the Telstra Dilution Bill and the proposed Telecommunications National Code.

d) Liaison with Carriers and Service Providers

Liaison with Carriers and Service Providers is carried out in a number of forums including the Communications Advisory Council.

A specific current initiative is collection of information on non metropolitan mobile telephone demand via the Statewide Telecommunications Audit. This information will be provided to Carriers to encourage provision of additional mobile telephone coverage.

5.2 Department of Commerce and Trade

a) WA 2029: Stage II Study

In mid 1995, Department of Commerce and Trade awarded a contract to undertake Stage II of WA 2029 study to the Australia Centre for Economic Performance, in association with the Centre of Policy Studies Monash University, the Institute of Science and Technology Policy Murdoch University, the Western Australian Labour Market Research Centre and an expert advisory panel.

Stage II of WA 2029 takes two of the scenarios identified in the 1993 Stage I Discussion Paper, Business as Usual and Quantum Expansion, and assesses in outline and indicative terms their broad implications in such areas as economic growth, environment, social and community issues, technology and telecommunications, metropolitan and Regional growth issues and strategic infrastructure needs.

The Stage II study includes specific consideration of Technology and Telecommunications and Strategic Infrastructure. It concludes that "the expansion of telecommunications infrastructure will continue to be an important aspect of WA's economy" in the business as usual scenario, offering "opportunities to overcome barriers of distance(and) for remote residents of WA to obtain services such as education and health more easily.

In the Quantum Expansion scenario, "high quality telecommunications infrastructure is particularly important in the Global City option. For Perth to be the site of international business activity the most advanced telecommunications technologies will have to be available."

b) State Wide Telecommunications Audit

The Department of Commerce and Trade, Ministry of the Premier and Cabinet, the Regional Development Council and the nine Regional Development Commissions have arranged for a Telecommunications Services Audit to be carried out during 1996.

The audit will provide an independent, statistically valid assessment of the utilisation and need for communications services by the community and the private sector.

The audit is scheduled for completion by the end of November 1996.

The status of the audit as at the end of September 1996 is as follows.

- Meeting with community and business representatives have been held in all nine State Regions.
- The householder survey has been conducted and the information collected is being collated for analysis.
- The business survey is scheduled to be carried out in October 1996.
- The mobile telephone questionnaire is scheduled to be issued in October 1996.

c) Research and Development in Telecommunications and Multimedia

The department supports a range of projects and provides resources, including conditional funding, which promote and support innovation, research and development in Western Australia. A number of research and development projects with significant activity in the Telecommunications and Information Technology sector which have received support include the:

Co-operative Research Centre for Broadband Telecommunications and Networking, which is a consortium of research institutions and private companies, based at Curtin University for Technology. This Centre has achieved international recognition for its research in broadband communications and has attracted interest from international firms and institutions wanting to participate in joint R&D projects.

Imago Multimedia Centres, a consortium of universities and tertiary institutions, the arts industries and private technology companies, including

Telstra, and is based at the Advanced Manufacturing Technology Centre. Imago Multimedia Centre was established to be a catalyst in the development of the multimedia industry in Western Australia, including the research, development and promotion of new innovation.

In addition, through the WA Innovation Support Scheme, nine Western Australian companies have received funding for telecommunications related R&D projects totalling \$0.36M. This represents 24% of all WAISS R&D grants. An additional ten companies with projects involving a significant IT component received \$0.47M in R&D funding, representing 26% of all WAISS grants.

d) Strategic Industries - Telecommunications and Information Technology

Programs which provide positive development assistance for strategic industries in Western Australia, which include the telecommunications sector, are managed by the department. Such programs provide support for the encouragement of trade and investment between Western Australian businesses and overseas business, particularly Asia.

A range of assistance is provided which includes access to inwards and outwards trade missions, referral and matching of clients, export market support, investment promotion and incentives, assistance in establishing a Regional headquarters base in Western Australia, participation in trade exhibitions, use of overseas offices for intelligence on specific countries, and opportunities for participating in international aid projects.

Through departmental representation on State Government Purchasing forums, enhanced opportunities for local industries (including the telecommunications and information technology industries) to participate in State Government contracts are achieved.

There are opportunities for IT&T companies under the State Government's countertrade program administered by the department, whereby Western Australian companies can be introduced to international firms (power generation, distribution and transportation) which have countertrade obligations to Western Australia.

e) Science and Technology Discussion Paper

In the process of developing a Science and Technology Policy for the State, a Science and Technology Discussion Policy Paper was released for public consultation in October 1995. The Paper covers a wide range of science and technology issues including the need for appropriate information technology and telecommunications infrastructure to enable the development of an innovative environment in Western Australia.

It is considered that the convergence of information technology and telecommunications has created a powerful tool for fostering the culture of innovation and the development of an information industry based on the provision of information via networks. Information technology is a key 'enabling factor' in the process of economic and social change which is associated with new development in science and technology.

It is anticipated that the Science and Technology Policy for Western Australia will be released in the near future.

f) Support for Communities to Interface with New Communications Technologies

The Department of Commerce and Trade is encouraging the Government to expand and develop the Telecentre network (presently 43 established across the State) and the Westlink network (presently 112 receival points across the State) as a means of ensuring that rural and remote communities are given the opportunity to access and experience "hands on" the developments in new communications technology.

The department has contributed funds toward the completion of a report "WA Telecentres - Regional Access Project, Feasibility Study" which explores the potential for Telecentres in Regional areas to establish Internet Service Provision facilities.

In conjunction with this the department is monitoring developments in the delivery of Telehealth throughout the State and is actively participating in the development of several pilot projects.

5.3 Department of Training

a) Telecentres

Telecentres are a comparatively recent phenomenon which have resulted jointly from moves in WA to establish rural education centres, as well as a Federal program to assist the development of telecottages. There are currently some 60 telecentres in WA (40 full centres and 25 associate centres), mostly receiving funding from Western Australian Department of Training with 3 still receiving Commonwealth funding from the Department of Primary Industry and Energy.

Telecentres are community access centres in small to medium sized country towns. They are equipped with satellite terminals and TV receivers, loudspeaker phones, fax machines, a range of personal computers, modems and other office equipment. They are generally owned and managed by a community-based local management committee.

Telecentres are designed to service two main purposes:

- To provide access to education, training, professional development and information services utilising communications technology, and
- To encourage local employment by providing shared facilities and opportunities for "telework", ie. tasks that can be undertaken locally on behalf of external agencies, using communications and information technology.

Each WA telecentre (except for the 3 Commonwealth funded centres) is funded on the basis of a resource and performance agreement through the Department of Training. It needs to demonstrate that it can perform and achieve self-sufficiency, or face closure or downsizing. The WA Telecentre network is now seen as a world leader in providing services for rural communities. It has won a national award for its innovative use of open learning and a Best Practice Award for training delivery in Communications and Telecentre networks for 1996.. A Commonwealth Government report has recommended that telecentres be supported and developed along the lines of those in WA

Their future is dependent on:

- The commitment and resourcefulness of the local community, and
- The support and willingness of central public sector agencies to direct services to these centres.
- Collaboration and partnership with other initiatives such as telemedicine, telebanking and library information services.

The State Government intend to continue supporting the development of telecentres in WA, by providing:

- A centralised advisory and management support facility;
- Electronically-delivered education, training and professional development courses and information services where appropriate;
- Financial support for selected telecentres through the Department of Training;
- An ongoing evaluation of teleworking opportunities for generating business for telecentres.

5.4 Western Australian Technology & Industry Advisory Council

a) Information Infrastructure Policy

TIAC commissioned a study in 1996 "To identify Information Infrastructure Policy Options that will capture maximum economic benefit for all industries across the State".

The report was issued in April 1996 and public comment closed in June 1996.

The key findings of the study was that three broad areas of Information Infrastructure being **Physical** Infrastructure, Information **Services** and **Cultural** aspects required development to improve the capacity of business to benefit from utilisation of Information Infrastructure.

A summary of the findings in each of these areas is:

- Physical Infrastructure finding is the need for:
 - Access to emerging digital services throughout the State at competitive prices;
 - and
 - Comprehensive mobile telephone coverage.
- Information Services finding is the need for:
 - Increased training, advice and support services;
 - Improved technical services for hardware and software support;

and

- Information Service Providers relevant to business.
 - Cultural Attitudes finding is the need to:
 - Develop readiness to use new technologies in business;
 - Develop skills to access relevant meaningful information;
- and
- Develop the belief that appropriate use of Information Infrastructure can be beneficial to business.

5.5 Ministry of Planning

Liaison with Carriers to co-ordinate Carrier infrastructure programs with land development planning.

This liaison is primarily an arrangement for Carriers to notify Local Government or the Western Australian Planning Commission in some circumstances of proposed telecommunications infrastructure construction.

5.6 Contract and Management Services

CAMS provides the Westlink talk-back television service which delivers over 1,000 hours per year of training, education, staff development and other services throughout the State. It has placed satellite receiving terminals in 120 towns, well on the way towards the objective of at least one in every town. In towns with a telecentre the terminal is located in the telecentre. In other towns they are in a variety of locations such as Business Enterprise Centres, schools, colleges, shire offices, as chosen by the town. Several are in Remote Aboriginal Community Schools.

Westlink is the provider of carriage services. Programs are provided by TAFE Colleges, Education Department of WA, and a wide range of other Agencies. Amongst other things, Westlink has proved effective as a means of training non-metropolitan people in computer skills including use of the Internet. It may also be suitable for delivering training on new telecommunications-based services.

6. POLICY OPTIONS FOR STATE GOVERNMENT

6.1 Legislative Options

6.1.1 Direct Legislative Options

The State Government has no legislative jurisdiction in the areas of Telecommunications, Broadcasting or Radio communications.

a) Telecommunications National Code

Carrier exemptions from State and Local Government planning and environmental laws may be eliminated or reduced from July 1, 1997.

This would provide the opportunity for State and Local Government to more actively co-ordinate the planning and implementation of proposed Carrier infrastructure with other State Government and private sector infrastructure development.

6.1.2 Indirect Legislative Options

a) Lobbying of the Commonwealth Government

The State Government can continue to lobby the Commonwealth Government to influence legislation and regulations on a wide range of issues including:

- Definition of the standard telecommunications service.
- Application of Universal Service Obligations.
- Provision of emergency services.
- Exemption of Carriers from State and Local Government regulations.
- Arrangements for closure of the analog mobile telephone service.

The lobbying may be carried out in conjunction with other States and Territories on particular issues.

b) Seeking of Rulings

The State Government may take particular issues to the Australian Communications Authority, the Australian Competition and Consumer Commission (ACCC) or the Telecommunications Industry Ombudsman for rulings.

Examples of issues that may be taken for rulings are:

- Discriminatory Pricing - The ACCC could be requested to rule if a Carriers pricing of services in Western Australia is discriminatory.

6.2 Leverage of Government Business Options

The State Government is major consumer of telecommunications services with an annual expenditure of at least \$70M.

The Government expenditure in communications is currently being managed via a single Whole of Government Management Contract.

The following options could be used to apply the leverage of Government purchasing power to improve the communications services available to the private sector and the community.

In particular the areas of Education, Training and Health are expected to be major early users of multi-media applications and associated telecommunications. These areas will also have significant potential for private sector and community application.

6.2.1 Encouragement of Carriers & Service Providers

The Government could encourage Carriers and Service Providers to make available new services, expand existing services or change pricing by taking up those new services.

This situation could arise in a range of situations such as

- a) Government requirement to provide on-line video services to educational and training facilities throughout the state.
- b) Government requirement to provide high resolution imaging facilities to hospitals throughout the state.
- c) Government requirement to provide high resolution land information services throughout the state.

6.2.2 Contractual Arrangements

The Government could formally contract with Carriers and Service Providers to make available services and pricing regimes to the community and the private sector on the basis of committed use by Government of those services or other services from a particular Carrier or Service Provider.

This situation could arise in a range of structures such as

- a) Government desire to ensure cable TV infrastructure provision in particular geographic areas.
- b) Government desire to ensure development and application of technologies for delivery of improved data services via existing telephone cable infrastructure.

6.2.3 Service Availability via the Common Digital Network

The Government could continue to allow and encourage the Whole of Government Telecommunications Manager to provide services resulting from capacity on the proposed Common Digital Network to the community and the private sector with improved functionality or at prices lower than that available from Carriers and other Service Providers.

This situation could arise in a range of situations such as

- a) Government requirement to provide local call cost access to Government on-line information and transaction services.
- b) Failure of the new environment to provide increased competition in certain geographic areas or market segments.

6.2.4 Industry Development and Research

The Government could include in the purchasing arrangements for Telecommunications services or other services with a major telecommunications component, the requirement for Industry Development and/or research in telecommunications areas. This may take the form of direct programs by the provider of services to Government or contribution to other programs already being undertaken in this state.

6.3 Infrastructure Development

6.3.1 Direct Infrastructure Investment

- a) Capital Contribution

The State Government could make capital contributions to specific Carrier infrastructure programs which will provide improved services to the Government, community and the private sector. These capital contributions would be made on a contractual basis in which the Carrier committed to a specific infrastructure project and timetable. The State Government would not have any ownership or operating responsibility for the infrastructure.

This form of investment may be an alternative to direct investment for ownership and operation of communication systems which have been historically made by Government utilities and Government Agencies with specific telecommunications services requirements.

- b) Infrastructure Ownership

Some State Government Agencies currently own and operate significant communications infrastructure systems including microwave links, optic fibre links, pair cable links and mobile radio systems.

The State Government could build on this infrastructure base to become a telecommunications Carrier providing services to the private sector and community in locations where other Carriers are not providing the services required.

Alternatively the State Government could build on and use this infrastructure base to service Government requirements and to provide capacity to a Carrier who would then make available improved services to the private sector and the community. This approach would avoid the Government Agency being bound by the obligations of being a Carrier.

The application of these approaches could have a role in the provision of improved services if the intended benefits of increased competition are not delivering these improved services in particular geographic areas.

6.3.2 Indirect

a) Planning Co-ordination

The State Government could influence Carrier infrastructure programs by operating a planning co-ordination body which assesses private sector, community and Government telecommunications requirements and provides the results of these assessments to the Carriers.

This planning co-ordination body could build on the co-ordination activities already carried out by the Ministry of Premier and Cabinet (ICAB), Department of Commerce and Trade and Ministry of Planning.

b) Lobbying of Carriers

The State Government could directly lobby Carriers to maintain an appropriate proportion of their infrastructure spending in this State.

c) Planning Approvals

The State Government could require that development projects include specific levels of Carrier public telecommunications infrastructure to be included in the project proposal to receive planning approval. This requirement could include facilities such as conduits for broadband cabling by multiple Carriers and infrastructure to deliver new broadband services.

6.4 Service Provision

The Local, State and Commonwealth Government are planning to provide on-line electronic information and transaction services to the community and the private sector.

The use of these services may be limited by access to and/or pricing of communications services.

To improve telecommunications access, the Government could become a telecommunications Service Provider or establish a commercial arrangement with a Service Provider or Carrier to provide improved telecommunications services.

A specific option in this area is to enhance the role of Telecentres and Westlink/Business Enterprise Centres to provide an on-line access point to Government Services at local call (or community call) rates. Where available the Telecentres could provide access to Government via the proposed CDN.

6.5 Other

a) Support of Research and Development

The State Government could fund new or existing centres of excellence in areas that would assist the private sector and the community in Western Australia. Potential areas of research particularly relevant to Western Australia and with export potential are:

- Development and application of improved transmission speed data systems to operate in pair telephone cable.
- Development and application of mobile communications systems.
- Development and application of systems which access the emerging Low Earth Orbit (LEO) communications satellite systems.
- Development of information technology and communications based business applications which can add value to existing industry sectors including agriculture, minerals, oil and gas, education and tourism
- Development of information technology and communications based business applications to assist new information based businesses.

b) Partnerships with State and Commonwealth Governments

The State Government could continue, and enhance, efforts to partner with State (and Territory) Governments and the Commonwealth in activities directed at improving communications services to the private sector and the community. The areas of partner activities could include:

- Lobbying of Carriers and Service Providers.
- Lobbying of the Commonwealth Government.
- Sharing of service delivery arrangements to allow increased access to on-line Government services.
- Sharing of capital contribution to specific Carrier infrastructure programs.

c) Monitoring of Telecommunications Competition

The State Government could formally monitor the operation of the new regulatory regime to assess the extent to which the benefits of competition are being provided to all areas and sectors of the state.

The monitoring may involve direct information collection in addition to assessment of information which will be provided by the ACCC and the ACA.

The information collected would provide an input into Government telecommunications policy development, lobbying of the Commonwealth Government and lobbying of Carriers and Service Providers.

d) Foster and Promote Private Initiatives

The State Government could foster and promote private sector and community initiatives in the use of telecommunications. A range of mechanisms could be used to this end including:

- Publicising innovative and commercially successful uses of telecommunications via a variety of Government channels.
- Direct support of pilot projects and trials. This would particularly apply to initiatives which act as a reference site for export industries, enhance local business and encourage new business initiatives.

e) Government Minister

The State Government could allocate a ministerial portfolio for the area of Information Industries including telecommunications. This would provide an increased profile and focus for State Government policy development and policy implementation in the area of telecommunications.

7. REVIEW OF CURRENT ENVIRONMENT

7.1 Regulatory Environment

7.1.1 Overview

Liberalisation of the Australian telecommunications industry commenced in May 1988 when the then Labor Government announced its first round of telecommunications industry reforms, which were later implemented in the *Telecommunications Act 1989*. These included the introduction of competition in the supply of value-added services and customer equipment and the establishment of the independent telecommunications industry regulator, Austel.

In November 1990 a second round of reforms were announced, which were later implemented in the current legislation, the *Telecommunications Act 1991*. The *Telecommunications Act*, which commenced on 1 July 1991, provides for an interim position on the path to developing a fully competitive telecommunications industry by establishing:

- a) A fixed network duopoly and mobile triopoly;
- b) Allowing full third party resale of services; and
- c) Granting enhanced powers and increased functions, including the promotion of competition within the telecommunications industry, to Austel.

A key objective of the *Telecommunications Act* is “to provide a framework for fostering genuine and sustainable network competition”. Further objectives include supporting the Australian equipment manufacturing industry and ensuring that certain social objectives are promoted (including, that the “standard telephone service” and payphones are available to both residential and business customers throughout Australia on an equitable basis through the delivery of the universal service obligation; continued access to untimed local calls by residential users; and privacy of communications).

Until 30 June 1997, two general Carriers (duopoly) and three mobile Carriers (triopoly) will be the primary suppliers of telecommunications network infrastructure and services in Australia.

The number of Carriers is restricted by agreement not by legislation. The aim is to create a level of commercially sustainable competition by enabling the emergence of a strong general Carrier competitor to Telstra before the market is open to full network competition.

Carriers are regulated by the provisions of the *Telecommunications Act*, the terms and conditions of their individual licences and Ministerial Directions.

7.1.2 Factors of Current Regulatory Environment

- a) Exclusive Rights of Carriers

The general Carriers are the primary providers of Australia’s public telecommunications infrastructure and networks and have exclusive rights under Part 6 of the *Telecommunications Act*

- To install and maintain terrestrial links between *distinct places* within Australia or between a place within Australia and a place outside Australia, subject to certain exceptions such as links installed or maintained by broadcasters;
- To use satellite based facilities and be the primary suppliers of satellite services both domestically and internationally, subject to certain exceptions such as the operation of private satellite earth stations; and
- To supply, install and maintain public payphones within Australia.

b) Powers, Immunities and Access Rights of Carriers

In addition to their exclusive rights, all Carriers enjoy the right:

- To enter and use land with immunity from certain State environment and planning laws, subject to compliance with Commonwealth access codes (Part 7 of the *Telecommunications Act*)
- To interconnect their facilities to the networks of other Carriers and obtain access to services supplied by other Carriers for the purpose of its supply of services (Part 8 of the *Telecommunications Act*)

c) Competitive Safeguards

While limiting the number of Carriers, the current regulatory regime aims at promoting competition and Service Provider operations through specific competition safeguards. These are contained primarily in Parts 8, 9, 10 and 11 of the *Telecommunications Act*

d) Carrier Interconnection and Access Rights (Part 8)

Carriers enjoy the right to interconnect their facilities to the networks of other Carriers. In the case of interconnection there is an obvious conflict of interest between the incumbent and the new Carrier over the price of interconnection.

The *Telecommunications Act* provides for Telstra and Optus to negotiate the charges of interconnection, which must comply with charging principles determined by the Minister from time to time, and for Austel to intervene if the Carriers are unable to agree.

Since 1990, the charges of interconnection must be on a "directly attributable incremental cost" basis. This is designed to assist Optus to become established, by allowing Telstra to cover its costs by providing interconnections but make no economic rent from such interconnection.

e) Prohibition of Discriminatory Conditions of Supply (Part 9, Division 4)

These provisions supplement the general competition law provisions by prohibiting discrimination by Carriers between, and against, persons to whom they supply telecommunications services.

f) Approval of, and Charging in Accordance with, Tariffs for Basic Carriage Services (Part 9, Division 5).

All Carriers are prohibited from supplying basic services to persons (other than a Carrier) unless such services are tariffed and approved by Austel. All tariffs for basic services must be publicly available.

Dominant Carriers must charge in accordance with their basic carriage service tariffs. Otherwise, non dominant Carriers Optus, Vodafone and Telstra (in the markets for Pay TV and mobile telephony only) must not charge in excess of their basic carriage services tariffs.

g) Service Provider Access and Interconnection Rights (Part 10, Division 4)

Service Providers have a much more limited right of interconnection to Carrier networks, than Carriers. As a result, Service Providers have not been able to complete effectively in the Australian market.

The term Service Provider includes providers commonly known as re-sellers.

Carriers must connect Service Provider services to their networks if requested, except if another carrier's basic services provides interconnection, the services is not included in the Carrier's filed tariffs, or, in the opinion of the Carrier, it is not technically feasible to connect the service or the Service Provider would fail to comply with the terms and conditions on which the Carrier would supply the service to that person.

These exceptions provide a wide scope for Carriers to deny access to networks and services. Further, the connection rights do not give Service Providers rights to certain levels of connection such as access to CCITT 7 signalling.

h) Accounting Separation and Charging Procedures (Part 5, Division 5)

The high proportion of fixed variable costs and of joint to specific costs involved in telecommunications companies, presents a problem for the regulation of cross subsidisation by the network owner of services faced by competition, by proceeds from those areas relatively sheltered from competition.

i) Management of Number of Services (Part 11, Division 2)

In order to ensure that new Carriers gain access to customers, Austel is responsible for the numbering system, including the development and implementation of a national numbering plan and allocation and portability of numbers.

Implementation of 13, 1300 and 1800 portability and local number portability is scheduled to be available by late 1996, with GSM portability to follow post 1997.

j) Customer Access - Pre-selection of Carrier

In order to encourage competition the *Telecommunications Act* provides for equal access for consumers between different Carrier services.

k) Access to Untimed Local Calls (Part 5, Division 3)

The general Carriers have an obligation to offer residential customers and charitable and welfare bodies or organisations, untimed local calls made using the standard telephone service.

Amendments to these provisions have been proposed in the *Telstra (Dilution of Public Ownership) Bill 1996* extend the obligation to business customers.

l) Universal Service Obligations (USO) (Part 13)

The *Telecommunications Act* seeks to protect the provision of telephone services throughout Australia on a non-discriminatory and uniform basis through the provisions relating to the USO. Telstra is the universal service Carrier for Australia under Section 209(1) of the *Telecommunications Act*. Any losses that result from supplying services in the course of fulfilling the USO (such as to rural and remote customers) are shared by all Carriers in direct proportion to their share of timed connections (in minutes).

The USO is defined as an obligation to ensure that a standard telephone service and payphones are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business, to supply a standard telephone service to people in Australia and to supply, install and maintain payphones in Australia.

m) Telstra Price Controls

Telstra is subject to price control arrangements under its incorporating act, the *Telstra Corporation Act 1991*. Part 6 of the *Telstra Corporation Act 1991* provides that the Minister may determine that specified charges for telecommunications services or facilities supplied by Telstra are subject to price control arrangements. These price control arrangements may take the form of price caps and/or principles in accordance with which Telstra is to make alterations to its charges. If Telstra wishes to alter a charge that is subject to a price control arrangement, then the consent of Austel is required (unless otherwise stated in the Minister's determination).

n) Application of General Competition Law-Regulatory Philosophy

As already noted, a key objective of the *Telecommunications Act* is to provide a framework fostering genuine and sustainable network competition. The Government was of a view that the best way to achieve such competition was through licensing a single fixed network competitor to the merged Telecom/OTC, prior to full competition in 1997.

This regulated duopoly approach, with competitive and consumer safeguards that enhance the provisions of general competition law under the *Trade Practices Act 1974 (TPA)*, has allowed the new Carrier (Optus), to establish its market base and develop expertise and infrastructure before open competition is introduced in 1997. It also places stringent controls over the incumbent's (Telstra) conduct, to restrain its dominance in the telecommunications market. Unfair barriers to entry have been addressed by giving Austel a number of pro-competitive functions and through appropriate interconnection and equal access arrangements.

As a result, the *Telecommunications Act* contains an intricate and highly complex set of provisions that are specific to the telecommunications industry. This need to regulate in addition to, but separate from, general competition law under the *TPA* is crucial to the Government's policy objective of achieving sustainable network competition before 1 July 1997.

o) Application of General Competition Law-Telecommunications Act Provisions

The *TPA* applies to the telecommunications industry, including the activities of the licensed Carriers, except to the extent that it is expressly excluded.

Due to the regulatory philosophy expressed in Section 1.2.1 above, the *Telecommunications Act*, while basically working along side and supplementary to general competition law under the *TPA* (particularly the restrictive trade practices provisions set out in Part IV of the *TPA*), does provide for a number of limitations to, and exclusions of the operation of the *TPA*

In particular, Part 11, Division 1 of the *Telecommunications Act* provides that:

- Part IIIA of the *TPA* does not apply in relation to the supply of a telecommunications service by a Carrier or under a class licence;
- Part IV of the *TPA* does not apply in relation to acts or omissions that are necessary to comply with or give effect to;
 - a condition of a Carrier licence;
 - a direction or determination given under the *Telecommunications Act* by the Minister or Austel; and
 - an access agreement, or any variation to an access agreement; and
- Carriers may refuse to supply basic carriage services or facilities that are not included in that Carrier's basic services tariff without breaching the *TPA*

7.2 Technical Environment

7.2.1 Carrier Fixed Networks

a) Telstra Network

The fixed network of Telstra is still by far the dominant telecommunications infrastructure in Australia. The Telstra network provides over 9 million telephone lines. The Telstra network has been developed over time and comprises metallic cables, optic fibre cables, analog transmission systems, digital transmission systems, analog telephone exchanges, digital telephone exchanges and specialised computer data networks. In 1994 the Telstra network had a relatively low 51% of telephone lines connected to fully digital exchanges.

The Future Mode of Operation (FMO) project established in 1993 was scheduled to connect all telephone lines to digital exchanges by the year 2000.

The current FMO scheduling is for completion of all metropolitan areas and the majority of Regional areas by the end of 1997. The remaining areas are planned to be completed by the end of 1998.

The vast majority of telecommunications services are connected by traditional metallic pair cable although a number of specialist services are provided by optic fibre cable.

Telstra commenced building a hybrid fibre and coaxial cable (HFC) broadband network in 1995. The network passed over 1 million homes by early 1996 and is planned to pass 4 million homes by 1999. The network will be used for delivery of Pay TV and entertainment services by Foxtel and for interactive telecommunications services by Telstra. As at early 1996 the HFC network had passed approximately 100,000 homes in Perth.

b) Optus

The Optus fixed network commenced development in 1992.

The network has been developed using digital switching and transmission systems. Digital switching systems have been installed in major cities and these have been linked with fibre optic transmission systems. The connection of Perth to the Eastern States by Optus fibre optic cable is scheduled for 1996.

Optus are partners with Telstra in the Jasaurus Port Hedland to Jakarta submarine optic fibre cable.

Optus have inner city optic fibre cabling direct to customer premises in major cities including Perth. Optus have not installed metallic pair cables to customer premises. Optus is building a hybrid fibre and coaxial cable broadband network which will provide connection to customer premises. The network will provide Pay TV and interactive telecommunications services including telephony. The construction commenced in 1995 and passed over 450,000 homes by early 1996. The planned target is to pass over 2 million homes by the end of 1996. The installation of this network has not commenced in Western Australia.

The Optus network includes satellites, major satellite earth stations and customer satellite dishes. Optus have announced in 1996 plans to migrate analog services to digital services on the new B series satellites and to offer a range of new services.

7.2.2 Carrier Mobile Networks

a) Telstra

The Analog Mobile Telephone Service (AMPS) commenced in 1986. As at early 1996 the network had 2.6M services in operation, covered 4.5% of the continent and reached 91% of the population. The network is operated by Telstra and has service provision by Telstra and Optus. The AMPS network is scheduled for closure in the year 2000.

Telstra operate a GSM standard digital mobile telephone network. As at early 1996 the network reached approximately 90% of the population and had over 0.3M services in operation.

Telstra operates radio paging in capital cities and major centres with approximately 140,000 customer services. Telstra launched a mobile data network in 1995 which covers mainland capitals and major Regional centres. As at early 1996 there is approximately 5200 customer services on this network.

b) Optus

Optus operate a GSM standard digital mobile telephone network. The network commenced operation in 1993. As at early 1996 the network reached over 85% of the population and had over 0.3M services in operation.

Optus also provide a satellite based mobile telephone service. This has been available since 1995 and as at early 1996 had approximately 2000 users. The system provides coverage of the continent and up to 200 km offshore. The system is limited to approximately 50,000 users.

c) Vodafone Australia

Vodafone operate a GSM standard digital mobile telephone network. The network commenced operation in 1993. The network was extended to cover all capital cities in 1994. As at early 1996 the network reached over 80% of the population and had over 0.175M services in operation.

7.2.3 Computer Data Communications Systems

Computer data communications systems are still mostly provided by separate data service networks by the Carriers. These networks share transmission systems and customer access networks with voice systems. Data communications services still only account for approximately 8% of Telstra revenues as compared to voice services at approximately 57%. Demand for on-line data services using dial-up modems on voice telephone connections and using dial-up ISDN has started to grow rapidly as the small business sector and the home user sector has commenced using the Internet.

7.3 Telecommunications Services Environment

7.3.1 Services Environment

The current telecommunications services environment is characterised by the following features.

- a) The great majority of telecommunications services are provided by the two fixed Carriers and the three mobile Carriers. For example the market share by revenue for voice services include mobile telephony in 1995/96 is estimated in the Paul Budde 1996/97 Carriers and Service Providers report as:

Telstra	78.7%
Optus	13.7%
Vodafone and Service Providers	7.6%

- b) A large number of Service Providers are operating but still only capturing a small amount of market share. The current approximate number of Service Providers is as follows.

35 fixed service Service Providers including 4 switched Service Providers

24 mobile telephony resellers

7 International callback operators

over 200 Internet Service and Access Providers

- c) The majority of telecommunications services in use are still traditional analog telephone services, dial-up modem services (including facsimile) and business leased line data services.

The telecommunications service areas of most rapid growth are mobile telephony, dial-up modems (for Internet access) and business data services.

- d) A range of new broadband based services are beginning to be offered. These include services carried on Pay TV cable infrastructure and broadband data communications using Asynchronous Transfer Mode (ATM).
- e) An increase in the packaging of telecommunications services with facilities management services and industry sector based services such as banking and travel.

7.3.2 Telecommunications Service Pricing

The following aspects of telecommunications service pricing under the current regulatory regime are highlighted.

- a) Decreasing prices in service sectors where competition is strongest. For example price reductions as reported by Austel for 1995/95 include

Mobile Telephony	9.7%
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STD	8.99%
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IDD	7.61%
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- b) Prices are publicly known and change at a controlled rate due to requirement for Carriers to file tariffs with Austel and for Austel to approve tariffs.
- c) Prices publicised are generally those actually paid due to the requirement for the dominant Carrier not to discount from filed tariffs and the reluctance of non dominant Carriers to discount from filed tariffs.
- d) Tariffs have been standardised across the nation.
- e) Increasing rate of new tariff filings and complexity of tariff filings. These include complex discount plans and special offers.

- f) Government enforced price reductions by setting of a price reduction requirement of CPI - x% on a basket of Telstra's basic services.
- g) Limited price competition to Carriers from Service Providers due to restrictions on the ability of Service Providers to interconnect to Carriers networks under suitable technical and price arrangements.
- h) The relative prices for many services reflect historical factors rather than the cost of provision. An example being that the price of data services is generally higher than for telephone services.
- i) The standardisation of prices across the nation results in different costs of provision not being reflected in prices.

7.3.3 Environment for Private Sector Users

The following aspects of the telecommunications environment under the current regulatory regime are highlighted.

- a) It is relatively straightforward to assess pricing of different Carrier telecommunications services with readily available public information on market prices due to regulatory requirements.
- b) Increased level of telecommunications tariff complexity and increased rate of change of tariffs compared to the previous single Carrier regime.
- c) Higher prices for some telecommunications services in Australia than applicable in some overseas locations.
- d) Comparison of telecommunications costs based on operation from different locations within Australia is relatively straightforward due to standardised national tariffs which are publicly available.

7.4 Role of Government

7.4.1 Role of Commonwealth Government

- a) Legislative Role

Section 51(v) of the Constitution confers on the Commonwealth Parliament the power to pass laws with respect to:

"Postal, telegraphic, telephone and other like services".

The words "other like services" have been given an expansive interpretation by the High Court. Although the meaning of this phrase has never been challenged in the telecommunications context, it has been generally accepted that most developments in telecommunications would be included within this power.

As a result, the Commonwealth has assumed ultimate policy, planning and regulatory authority for telecommunications. It has enacted a comprehensive set of laws that "cover the field". Therefore, any State laws on the same topic would be invalid to the extent that they were inconsistent with the Commonwealth's laws. This

has meant that there has been no significant State regulation of telecommunications since 1901.

b) Owner of Telstra

The Commonwealth Government is currently the only shareholder of Telstra Corporation Limited. This current form of ownership has evolved from the ownership applying under Post Master Generals Department through the Australian Telecommunications Commission (Telecom) arrangements to the current shareholding ownership of the Government Business Enterprise.

Historically Government ownership facilitated direct control of the National Carriers technical programs and pricing arrangements to achieve objectives set by the Government of the day. This direct control resulted in Government involvement in significant projects and programs such as Subscriber Trunk Dialling (STD) and the Digital Radio Concentrator System (PRCS) rural and remote program. The direct control also allowed for Government involvement in a range of operational decisions including pricing of services, maintenance of rural staffing levels and setting of requirements for levels of local manufacturing by Suppliers.

The role of the Government as the owner of the National Carrier was historically for a high level of direct influence over the PMG. This occurred in conjunction with relatively low levels of use of legislative measures to achieve Government objectives.

This balance has changed significantly with the change from Government Department through Commission to Government Business Enterprise.

In the current environment the Government has much higher reliance on legislative measures, which operate independently of the Government ownership of Telstra, to achieve Government objectives. In conjunction with this the extent of influence exercised by virtue of ownership has significantly reduced. However the Government of the day may occasionally use ownership to influence specific decisions of Telstra.

The Government as owner also has considerable potential influence over Telstra in terms of requirements for payment of dividends and re-payment of loans to the Government.

The Government is currently implementing its plan to sell one third of Telstra prior to June 1997. The Legislation (Dilution of Public Ownership Bill 1996) has been passed by the House of Representatives but has not been passed by the Senate at this stage. Further information on this legislation is provided in Section 5.1.3 b) and AppendixD of this report.

The anticipated impact of this legislation will be to continue to shift the role of shareholder ownership to be business based and to shift national policy objectives into legislative areas. This is reflected in the provisions of the Bill in the areas of Universal Service Obligations, untimed local calls, maintenance of price caps and industry development plans.

c) Competition Policy

The Commonwealth Government is responsible for the establishment and operation of competition policy for Telecommunications.

Prior to the introduction of the Telecommunication Act of 1989 there was very little competition in the Australian Telecommunication market. Telecom was the monopoly infrastructure and Service Provider and the regulator. There was limited competition in the customer equipment market and also from Aussat (after 1984).

The Telecommunications Act of 1989 introduced:

- Competition in value-added services.
- Increased competition for provision and maintenance of terminal equipment.
- The independent Regulator Austel.

The Act of 1989 retained the monopoly Carrier and an industry specific regulatory regime.

The Telecommunications Act of 1991 introduced:

- Additional Carriers being one general Carrier (Optus) and two mobile Carriers (Optus and Vodaphone).
- Open competition for all services.
- Enhanced role for Austel including promotion of competition.
- Full third policy re-sale.
- Ongoing industry specific competition requirements plus general competition law requirements under the Trade Practices Act.

The Telecommunications Act of 1991 provided an interim stage on the path to a fully competitive telecommunications industry.

d) Industry Policy

One of the intended outcomes of the restructuring of the telecommunications industry was that Australia would become a significant international communications centre. A local industry that was dynamic and forward looking would be necessary to take full advantage of the opportunities that telecommunications presented. Furthermore, the regulatory environment aimed to promote Australia's telecommunications capabilities, industries and skills for use in Australia and overseas (refer to Section 3 of the *Telecommunications Act*)

- Carrier Licence Conditions

All Carriers are required, as a condition of their licence, to maintain and implement a plan for the development of the Australian telecommunications supply and information industries.

Upon grant of a licence, Carriers are required to submit the plan to the Minister of State for Industry, Technology and Commerce and must report

annually to that Minister until year ending 1998, on progress in achieving their plans. These plans are publicly available.

In addition to the provisions relating to industry development, certain of the Carriers also have network rollout requirements.

- TIDA

In July 1992 the Minister established the Telecommunications Industry Development Authority (known as TIDA) to monitor and advise on the extent to which Carriers met their commitments under their industry plan. TIDA is a non-statutory authority reporting to the Minister. It is an advisory rather than policy setting body.

TIDA reviews the annual reports from Carriers on progress implementing their plans and it monitors the performance of each Carrier against their planned reports on achievements by equipment and service suppliers. It advises the Minister as to whether an individual Carrier's performance under a plan is satisfactory.

7.4.2 Role of State Government

a) Legislative Role

While the States are effectively prevented from legislating in the telecommunications area, the States do have a limited legislative role.

- Planning and Environmental Laws

Currently, Section 116 of the *Telecommunications Act* grants Carriers exemptions from certain State laws, including planning and environment laws, in order to facilitate rapid and efficient rollout of the telecommunications networks. The exercise of these exemptions is subject to compliance with the Telecommunications National Code, which Code requires the Carriers to undertake a limited amount of notification and consultation with State and local government, when installing facilities. At the end of the day however, the Carriers may do as they please.

The Code is has been reviewed by Austel and a draft code has been submitted to the Minister. The Coalition Government's stated policy is to develop a new Code that incorporates tighter notification and consultation procedures and makes Carriers more accountable to State and local government authorities. The Government is considering ultimately removing all Carrier exemptions. Refer to Appendix D for a discussion of the draft Telecommunications National Code and Land Access Code.

- Levying of Rates and Taxes on Carriers

Since 1991, Telstra has been fully subject to State tax laws.

- NSW Government Telecommunications Act 1991

The only State to enact actual telecommunications legislation is New South Wales.

The *NSW Government Telecommunications Act 1994* the objects of:

- integrating the various telecommunications networks of New South Wales Government agencies to provide for the common carriage of communications of these agencies;
- establishing a Government Telecommunications Authority in which to vest the integrated telecommunications network and its control and management; and
- obtaining the best commercial use of the integrated telecommunications network.

b) Major User of Services

The State Government as an entity is a major user of services provided by Carriers and Service Providers. This has allowed the State Government to access a variety of high volume purchase plans and to effectively negotiate with Carriers and Service Providers.

In 1995 the State Government awarded a contract to Pacific Star (ComsWest) to provide telecommunications services (by purchase from Carriers and Service Providers and resale or direct provision) and associated management services on a Whole of Government basis. This contract is understood to be providing substantial cost savings and improvements in management of communications services for Government.

c) Private Sector and Community Role

The State Government has represented the broader interests of the private sector and the community in lobbying and formal submissions to the Commonwealth Government. This activity is the responsibility of the Public Sector Management Office (PSMO) Information and Communications Access Branch. Prior to 1995 this role was carried out by the Department of State Services.

d) Influencing Commonwealth Telecommunications Policy and Legislation

The State has played an active role in influencing Commonwealth policy and legislation in the interests of Western Australia through submissions to all relevant Commonwealth Reviews and Inquiries, appropriate Ministerial correspondence and discussions between State and Commonwealth officials. Such initiatives have been co-ordinated with both public and private sector stakeholders.

8. ASSESSMENT OF THE POST JULY 1997 ENVIRONMENT

8.1 Regulatory Environment

8.1.1 Overview

The purpose of this summary is to provide the context of the expected change in the telecommunications regulatory environment from the current regime to the proposed regime commencing in July 1997.

As at the end of September 1996 the post 1997 telecommunications regulatory environment is not settled. Therefore it is not possible to state with absolute certainty, what the provisions of the new regime post 1 July 1997 will be.

Hence specific details of this summary may have been superseded by the time of release of this report for public comment.

In late 1995 the previous Government released for public discussion exposure drafts of a Telecommunications Bill 1996 and a Trade Practices Amendment (Telecommunications) Bill 1996. These bills dealt with four key areas of telecommunications reform: licensing of Carriers, industry codes of practice, anti-competitive conduct, and the proposed access regime. These Bills have since been abandoned due to heavy industry criticism, although the Coalition has endorsed elements of these Bills in its policies and draft telecommunications legislation.

On 16 August the Federal Government released for public comment the first package of the draft post 1 July 1997 telecommunications legislation containing the *Radiocommunications Amendment Bill 1996*, the *Australian Communications Authority Bill 1996* and part of the *Telecommunications Bill 1996* relating to technical regulation and numbering.

A second package of draft telecommunications legislation was released for public comment on 13 September 1996 containing the *Trade Practices Amendment (Telecommunications) Bill 1996*, the *Telecommunications (Transitional Provisions and Consequential Amendments) Bill 1996* and further parts of the *Telecommunications Bill 1996* relating to the licensing of Carriers, regulation of Service Providers, powers of the Australian Communications Authority and the Australian Competition and Consumer Commission to undertake public inquiries and investigations, and information gathering and enforcement powers for the Australian Communications Authority.

A further package of draft telecommunications legislation, yet to be finalised for exposure, is expected to be available in early October.

These Bills are expected to be put before Parliament before the end of 1996.

A detailed assessment of the current and proposed regulatory environment as at the end of September 1996 is provided in Appendix D.

8.1.2 Pre-election Coalition Policies - Better Communications & Better Phones

In January 1996 the Coalition published its policy entitled *Better Communications*, detailing broad policies on post 1 July 1997 telecommunications regulation, media regulation and Telstra's privatisation.

In late February 1996 the Coalition announced more detailed policies on its plans for the partial privatisation of Telstra and the promotion of better phone services in a policy entitled *Telstra - Serving Locally, Thinking Globally*. This policy provided justification for the planned privatisation of Telstra, details of the ownership plan and safeguards and specific proposals regarding the future provision of telecommunication services.

Key features of these policies include the following:

- a) New and tighter Telecommunications National Code to be introduced by 1 July 1996, with Carrier exemptions from local planning and environment laws to be eliminated or reduced from 1 July 1997.
- b) Untimed local calls to be available for residential and business customers.
- c) Customer Service Guarantee to be met by all telephone companies, covering connections, repairs, billing systems and operator calls.
- d) Pay TV operators to be required to provide access to infrastructure under a compulsory interconnect regime from 1 July 1997.
- e) The Carrier Associate Direction to be reviewed to determine whether the pro-competitive provisions of the new *Telecommunications Act* should extend to interactive services in a technologically neutral way.
- f) The Government to consult with industry regarding reducing infrastructure duplication and encourage co-location of cable facilities.
- g) In the post 1 July 1997 environment:
 - No limit on the number of Carriers or Service Providers;
 - Competition regulation to be administered by a special branch of the ACCC;
 - Content regulation to be administered by the ABA;
 - Technical regulation to be administered by a merged SMA/Austel body;
 - The Telecommunications Industry Ombudsman to be retained and to administer the Customer Service Guarantee;
 - A statutory right of interconnection for all carriers;
 - No blanket proscription of price discrimination with wholesale prices subject to Ministerial Guidelines and arbitration provisions and retail prices subject to ACCC monitoring; and
 - Telstra price cap regime and the universal service (with a review of the standard telephone service definition) to remain.
 - AMPS analogue phase-out to continue as planned and the introduction of new Personal Communications Services (PCS) technologies to be expedited.

8.1.3 Post-election Developments

a) Discussion Paper

In May 1996, the Minister for Communications and the Arts, Senator Richard Alston, announced that the Coalition would review the previous Labor Government draft *Telecommunications Bill* and *TPA Bill*. Those *Bills* were based on the policy principles published by the Labor Government in August 1995.

On 14 May 1996, Senator Alston, released a discussion paper putting forward for consideration and discussion a framework for post 1 July 1997 telecommunications regulation to give effect to the Coalition's *Better Communications* policy and address industry comments. The discussion paper also formed the basis of discussions at the Telecommunications Working Forum held in Sydney on 16 May 1996.

The Discussion Paper comments on provisions of the *Bills* and gives some indication as to the Government's focus or likely action on post 1997 telecommunications regulation in the following areas.

- Carrier Regulation

Definition of Carrier

The Government reiterated its policy that those persons who are in control of significant facilities used to supply carriage services to the public should be required to hold a Carrier licence and be subject to the various rights and obligations which flow from that licence.

- Rights and Obligation of Carriers

All carriers would:

- have access to such land access rights and immunities from state and territories laws as are determined by the Government;
- be obliged to contribute to the net cost of universal service and to the operating costs of Austel;
- be required to give access undertakings to the Australian Competition and Consumer Commission (ACCC).

- Licensing Arrangements

Austel would licence all Carriers, with licences including the following provisions:

- industry development obligations;
- emergency service obligations (including to ensure networks enable all end users to place calls to the emergency services);
- participating in a Telecommunications Industry Ombudsman Scheme.

- Carrier Land Access Rights and Immunities

Contrary to what was stated in its pre-election policies, the Government has now decided that a scheme of proper planning process will be developed in consultation with the States, Territories and local Government and that the actual legislative provisions dealing with Carrier powers and immunities in the post 1997 legislation will depend on the outcome of that process.

Therefore it is likely that certain powers and immunities will still be granted to Carriers post 1 July 1997.

- Proposed Access Regime - Outside Part IIIA

The Government regards access and interconnection issues as central to achieving effective competition. Access and interconnection at competitive commercial terms is central to competition in the supply of content and carriage services. The Government appears to favour commercial solutions to these issues through industry forums or bilateral commercial negotiations with provision for administrative review.

The proposed scheme relies heavily on the Carrier rights and obligations that already exist in Part 8 of the *Telecommunications Act* and the provisions of Part IIIA of the *TPA*

- Anti-competitive Conduct

The Coalition Government favours an open market approach but with industry specifies measures to ensure control of Telstra's potential for anti-competitive behaviour.

From 1 July 1997 the telecommunications industry should be subject to the general competition laws contained in Part IV of the *TPA*. However, the complexities of the industry, the continued early development of competition in some markets and the pace at which change takes place in the industry suggests that it would be appropriate that Part IV be supplemented by industry-specific competition regulation, at least until competition is firmly established.

The ACCC will be responsible for regulating competition policy from 1 July 1997. The main provisions granting the ACCC power to regulate competition in the telecommunications market are the proposed Competition Direction and the Tariff Direction.

- Technical Regulation

Regulation of Technical issues under the *Telecommunications Act* and *Radiocommunications Act* will be harmonised and the two regulatory bodies, Austel and SMA, will be merged.

- Consumer Related Measures

The main measures envisaged by the Government are as follows:

- Untimed Local Calls

The right to untimed local calls to residential customers and welfare and charity organisations will remain. It will also extend to businesses. Provisions to this effect have been included in the *Telecommunications Bill*

- Standard Telephone Service

The "standard telephone service" is to be defined as a carriage service where:

one of the main purposes of a service of that kind is for use by an end user for voice telephony;

and

an end user supplied with a service of that kind is ordinarily able to communicate by means of that service, with each other end user who is supplied with the same service whether or not the end users are connected to the same telecommunications network.

- Price Controls

The Government is committed to the maintenance of the current Telstra price cap regime. Further, universal Service Providers (ie Carriers) other than Telstra would be subjected to price controls in relation to services that they are required to supply under the Universal Service Obligation.

- Universal Service Arrangements

The Government is committed to the concept of universal service whereby a standard telephone service is available to all people in Australia, wherever they reside or carry on business.

The Government has revised the concept of standard telephone service to a concept of standard telecommunications service. This would be defined as the standard telephone service and any other prescribed services. These may be reviewed regularly.

Only Carriers would be eligible to be declared Universal Service Providers.

USO costs will be calculated using the current "avoidable cost less revenue foregone" methodology.

All Carriers would be required to contribute the net cost of the USO.

- Service Provider Licence Conditions and Rules

Service Provider rules, which would replace the current service class licensing regime, would include the following.

- ◇ Obligations to provide operator services, directory assistance services and itemised billing.

- ◇ An obligation to comply with the TIO scheme and, the Service Providers who are not Carriers, to enter into the scheme where directed to do so by AUSTEL.
- ◇ An obligation to assist in the maintenance of an integrated public number database.
- ◇ An obligation to establish protection arrangements for residential customers receiving standard telecommunications services.

b) Privatisation of Telstra

- Coalition Policy

With an election mandate to sell one third of Telstra before 30 June 1997 in an effort to raise \$8bn and to improve the efficiency of Australia's largest telecommunications company, the Government has placed before Parliament privatisation legislation - the *Telstra (Dilution of Public Ownership) Bill 1996 (Dilution Bill)*.

In late February 1996, just prior to the last Federal election, the Coalition announced details of its plan for the partial privatisation of Telstra in a policy entitled *Telstra - Serving Locally, Thinking Globally*. The announced conditions of Telstra's partial privatisation included the following:

- No further sale of Telstra without an explicit mandate given by the Australian people at a future election.
- Telstra will not be broken-up.
- Ownership and control of Telstra to remain Australian, with 65% of shares reserved for Australian owners and a 35% limit for foreign owners (with no single foreign investor allowed more than a 5% holding of the partial privatisation).
- Individual Australian investors to be offered discounts, with loyalty bonus for shares held for more than 12 months.
- 2% of the one third float reserved for Telstra's full-time employees.
- National interest safeguards to include maintenance of universal service obligations, maintenance of the right to untimed local calls, maintenance of price caps, 2/3 of Telstra Board (including the Chairman) to be Australian citizens, Government right to veto staff remuneration packages, and industry development plans to remain as licence condition.

8.1.4 Current Status (September 1996)

a) Telstra Privatisation Bill

The Government has passed the *Telstra (Dilution of Public Ownership Bill) 1996* in the House of Representatives.

On the 21 May 1996 the Senate resolved that the *Telstra (Dilution of Public Ownership) Bill 1996* be referred to the Environmental, Recreation, Communications and the Arts References Committee for inquiry and report by 22 August 1996.

The Western Australian Government made a submission to this Senate Inquiry.

On 9 September, after a three week delay caused by the receipt of insufficient information to complete its final report, the Senate Committee enquiring into the Government's Dilution Bill handed down its report, after reading 650 submissions and hearing 136 witnesses.

In summary, the Senate Committee found no substantial evidence to back the Coalition Government's claim that the Australian economy or consumers will benefit from the partial sale of Telstra.

The major recommendations of the report were:

- That Telstra remain in public ownership;
- That the Dilution Bill be divided into two bills - one dealing with the proposed sale and the other concerning the Customer Service Guarantee;
- That environmental programs be funded from recurrent expenditure or from portion of Telstra's profits; and
- That if Parliament passes legislation to sell one third of Telstra that the sale should be delayed until December 1998 or at least 18 months after the post 1997 regulatory regime commences.

b) Telecommunications Expert Group

In early May the Minister appointed Allan Horsley (Managing Director of the Australian Telecommunications Users Group), Mara Bun (Manager of Policy and Public Affairs at the Australian Consumers' Association), Phil Singleton (member of the Telecommunications Industry Development Authority) and Professor Henry Ergas (BellSouth New Zealand visiting Professor of Network Economics & Communications) to form a telecommunications expert group to discuss and advise the Government on the policy principles for a further exposure draft of the post 1 July 1997 telecommunications legislation. Notably Carriers and Service Providers were not represented in the group, which is in contrast to the Labor government's previous telecommunications advisory body, the Telecommunications Advisory Panel.

c) Review of the "Standard Telephone Service"

On 10 July 1996, the Minister announced the establishment of a 10 member standard telephone service review group to carry out a review into the definition of the standard telephone service.

The review group's terms of reference is to examine whether the definition of the Standard Telephone Service (STS) mandated under the universal service arrangements should be upgraded to accommodate new technologies and minimum,

service levels. the current definition of the STS is given in Section 5 of the *Telecommunications Act*. Austel's interpretation of the level and quality of service that the standard telephone service constitutes is given in "Austel's view of Telstra's Universal Service Obligation".

The Western Australian Government is preparing a submission to this review.

The Review should report to the Minister for Communications and the Arts by November 29, 1996.

d) Telecommunications National Code & Land Access Code - Discussion Paper

Following the Coalition's policy to implement a new Telecommunications National Code and a Land Access Code, the Minister directed Austel to conduct a public enquiry into the draft telecommunications national code and the draft land access code and report the outcomes of the enquiry to the Minister by 9 August 1996.

In July 1996, Austel released a discussion paper and draft revised Telecommunications National Code and a Land Access Code, for public comment.

The draft Codes reflect the Coalition Government's policies of tighter notification and consultation requirements, and enhanced rights for state and local government.

- Telecommunications National Code

The new draft national code contains the following procedures:

- Carriers must comply with recommendations;

Of Heritage Chairperson or Environment Secretary;

Of a council in relation to minimising impact on aerial cabling at major intersections;

Of a relevant State or Territory authority (including local councils) unless a Carrier has reasonably determined that it is not economically feasible, not technically practicable, incompatible with network, so vital to network that it proceed, or have greater effect on environment.

- Land Access Code

Currently there is no Land Access Code in force. Carrier access to land is governed by the relevant provisions of the *Telecommunications Act*

The draft Land Access Code provides that:

- Carriers must, as far as possible, cooperate with other Carriers and utilities in planning to exercise land access powers.

As at the end of September 1996 the Government has not indicated whether it will adopt the draft Codes.

e) Closure of the AMPS Network

On 15 July 1996, the Government confirmed its commitment to phasing out the AMPS mobile phone network by 1 January 2000, subject to appropriate safeguards.

The Commonwealth has contractual obligations to Vodafone and Optus to close substantially all of Telstra's AMPS analogue network by 1 January 2000. Failure to do so will mean that the Commonwealth will be in contravention of its agreement with Vodafone (unless Vodafone consents to a new closure date) and that the Commonwealth may be in contravention of its agreement with Optus Mobile, unless the Commonwealth follows certain prescribed processes.

The Minister has asked the management agency to establish a timetable for the withdrawal of AMPS spectrum. The Minister noted that the phase out will take into account the need to preserve the existing coverage and quality of mobile service to the greatest extent possible, as the analogue system is gradually replaced with digital technology.

Also, the Government recognised that mobile phone users in rural and remote areas will have particular concerns about coverage and that the SMA have been asked to consider options for dealing with these as part of its consultation process.

f) 1.8 GHz Spectrum - Proposals Paper

In July 1996, the Spectrum Management Agency released a paper setting out proposals for the allocation of radio frequency spectrum in the 1.8 GHz bands. The paper provides an opportunity for the public to make representations about the major changes proposed to access arrangements to this spectrum band. Public representations were sought prior to 30 August 1996.

The band will provide for the introduction of new Personal Communication Services (PCS), which will introduce further competition into the mobile cellular and wireless local access markets.

g) Legislative Timetable

On 16 August the Federal Government released for public comment the first package of the draft post 1 July 1997 telecommunications legislation containing the *Radiocommunications Amendment Bill 1996*, the *Australian Communications Authority Bill 1996* and part of the *Telecommunications Bill 1996* relating to technical regulation and numbering.

A second package of draft telecommunications legislation was released for public comment on 13 September 1996 containing the *Trade Practices Amendment (Telecommunications) Bill 1996*, the *Telecommunications (Transitional Provisions and Consequential Amendments) Bill 1996* and further parts of the *Telecommunications Bill 1996* relating to the licensing of Carriers, regulation of Service Providers, powers of the Australian Communications Authority and the Australian Competition and Consumer Commission to undertake public inquiries and investigations, and information gathering and enforcement powers for the Australian Communications Authority.

A further package of draft telecommunications legislation, yet to be finalised for exposure, is expected in early October 1996 and will include provisions relating to: service regime; emergency call services; defence requirements and disaster plans;

untimed local calls; monitoring the performance of Service Providers and Carriers' reviewing competitive safeguards within the industry; the telecommunications industry ombudsman; calling line identification; pre selection; and providers rules including directory assistance services, operator (fault and difficulty) services, itemised billing and integrated public number database.

The Government proposes to put the full package of legislation before Parliament in late 1996.

- Radiocommunications Amendment Bill 1996

The *Radiocommunications Amendment Bill 1996* amends the *Radiocommunications Act 1992*.

- enable the sale of spectrum while it is occupied;
- apply section 50 of the *Trade Practices Act 1974* to the issue of spectrum and apparatus licences and to the authorisation of third parties to operate under such licences;
- remove all provisions in the current Act that relate to technical licence specifications.

- Australian Communications Authority Bill

The *Australian Communications Authority Bill 1996* establishes the Australian Communications Authority (ACA) from 1 July 1997.

The ACA will be constituted by a merger of the Spectrum Management Agency (SMA) and the Australian Telecommunications Authority (AUSTEL). AUSTEL's competition policy functions will be transferred to the Australian Competition and Consumer Commission (ACCC).

The ACA's main functions will be regulating telecommunications in accordance with the *Telecommunications Bill 1996* and managing radiofrequency spectrum in accordance with the *Radiocommunications Act 1992*.

- Telecommunications Bill 1996

The parts of the draft *Telecommunications Bill 1996* released so far provide for the following.

- Part 1A and 2 - Licensing of Carriers and the use of Network Units

The object of these Parts is to ensure that open market access is established for both telecommunications infrastructure and Service Providers. Current restrictions on the installation of telecommunications infrastructure will be removed and Carrier licences will be required only from persons wishing to use infrastructure to provide services to the public.

There is a prohibition on the use of *network units* to supply carriage or content services to the public without the owner of the *network unit* being licensed as a Carrier or there being a Carrier willing and able to take on all Carrier-related responsibilities in regard to that *network unit*. Limited exceptions apply to this prohibition for certain persons and uses, such as for defence or transport purposes, and use by broadcasters or electricity supply authorities.

The ACA will be responsible for licensing Carriers, with no restriction on the number of Carriers. Carrier licence conditions will include, in particular, obligations:

- ◇ to provide other Carriers with access facilities for the purposes of enabling the other Carriers to provide competitive facilities and competitive carriage services or establish their own facilities;
- ◇ to provide other Carriers with access to certain information relating to the operation of telecommunications networks;
- ◇ to comply with the provisions of the *Telecommunications Bill* and the *Trade Practices Amendment (Telecommunications) Bill* relating to access obligations, the competition rule, tariff filing directions and record keeping rules.

- Part 2A - Service Provider Rules

The object of this Part is to avoid unnecessary regulation of private network operations and to take a light handed approach to the regulation of Service Providers by not require individual licences.

Service Providers will be (with limited exceptions):

- ◇ *carriage Service Providers*
- and;
- ◇ *content Service Providers* which include persons using, or proposing to use, carriage services to supply content services to the public.

Service Providers must comply with the *Service Provider rules* which include obligations to:

- ◇ provide directory assistance services and itemised billing;
- ◇ assist in the maintenance of a complete integrated public number database;
- ◇ join the Telecommunications Industry Ombudsman scheme;
- ◇ establish protection for residential customers against failure of Service Providers to provide pre-paid services.

- Part 4 - Technical Regulation

This Part establishes a scheme for the technical regulation of telecommunications primarily by industry self regulation, addressing the matters of standards, compliance, cable installation and labelling.

- Part 15 and 16 - ACA and ACCC Powers to hold Inquiries and Investigations

The ACA or the ACCC may hold public inquiries about matters concerning carriage services, content services, the telecommunications industry, or a matter relating to the ACA's and ACCC's telecommunications functions or powers.

- Trade Practices Amendment (Telecommunications) Bill 1996

The *Trade Practices Amendment (Telecommunications) Bill 1996* will amend the *Trade Practices Act 1974* to provide the ACCC with the powers to regulate competition in the telecommunications industry.

- Telecommunications (Transitional Provisions and Consequential Amendments) Bill 1996

This Bill covers:

- services covered by existing agreements.
- registration of existing access agreements.
- existing Carrier licences.

- Regulatory Environment - Application of General Competition

Although the philosophy behind the proposed telecommunications regulatory regime post 1 July 1997 is to move closer to regulation under general competition law, the Government still perceives the need to continue to regulate telecommunications in addition to general competition law.

The current policy of the Government is to make Carriers and other participants in the market subject to general competition law (including Part IV of the *Trade Practices Act*), supplemented by broader industry specific provisions to be administered by the general competition regulator, the ACCC.

8.2 Telecommunications Technology Trends

There have been a wide range of recent studies examining the impact of the development of information and telecommunications technologies. It is beyond the scope of this study to re-iterate in detail all those developments.

However, the following sections summarise some of the major trends in communications technology that will have a significant impact for the private sector. A more comprehensive review of the technology can be obtained from numerous articles in the industry and journal literature.

8.2.1 Digitisation of Carrier Networks

a) Telstra

In 1993, as the result of

- increasing technological change;
- competition from a second national Carrier (Optus); and
- the need to deliver an increasing number of new digital services

Telstra undertook a major cross-organisational study, which developed a Future Mode of Operation (FMO) strategy. This included the rapid digitisation and rationalisation of Telstra's inter-exchange network to facilitate Telstra's capability to compete with the new digital network being constructed by Optus.

Telstra is now implementing a \$3.3 billion program of digitisation of its inter-exchange network which will see the creation of a fully digital (transmission and switching) inter-exchange component of the PSTN by the year 2000 (June 1997 for metropolitan networks). The resultant digital PSTN will become the platform via which Telstra's existing and future digital network services are delivered.

One impact of the FMO strategy is the centralisation and concentration of the number of exchanges in the network and a consequent reduction in staff required to operate and maintain the network.

b) Optus

As the new Carrier commencing operations in 1992, Optus is building a fully digital network, bypassing the expense of having to operate an analogue network

c) New Carriers

New fixed network and mobile Carriers entering the market post July 1997 will also be building fully digital infrastructure.

8.2.2 Digitisation of Customer Access Networks (CAN)

The CAN component of the network is expensive to construct because of the large number of customers requiring connection and their wide geographic distribution in metropolitan and Regional areas. To facilitate the delivery of digital services it is desirable for the CAN transmission to also be digital with sufficient bandwidth to carry the current and future digital services.

The cost of CAN construction and the size of the Australian market makes it uneconomical for all Carriers to install their own CAN networks in many locations. Therefore, to maintain competition in the provision of services, it is critical that the communications regulatory framework ensures Carriers have open access to existing CAN.

Telstra and Optus are reticent to reveal their future digital CAN strategies because of commercial sensitivity. However, the cost of CAN construction encourages the use of

the same infrastructure employed in Pay TV distribution for the delivery of telecommunication network services.

To justify the investment in the Pay TV CAN infrastructure the Commonwealth Government has been under pressure to allow continued exclusive access to the CAN infrastructure by the developing Carrier. The current Commonwealth Government has announced that Pay TV CAN infrastructure will be available on an open access basis to other Carriers and Service Providers from July 1997.

8.2.3 Media Convergence, Broadband Applications and Networks

The rapid growth of the Internet and private and public intranets for private sector business, government activity and community use is a clear indication of the expected growth in demand for digital communications.

To date many business, government and community organisations are connected to these networks by operating on the analog public switched telephone network. Whilst modem technology has continued to develop with speeds of up to 36 kbps being available this technology is fundamentally limited by the bandwidth of the analog telephone system circuits. The clear trend in the use of computing applications is for the requirement for higher speed telecommunications lines of at least 64 kbps and in many cases multiples of this or orders of magnitude higher speed requirements.

The expansion of public network ISDN coverage is capable of providing multiples of 64 kbps. However, it is anticipated that broadband networks utilising new infrastructure such as optic fibre cable and hybrid optic fibre and coaxial cable (current Pay TV networks) will be used to provide increased capacity.

The continued development of improved transmission capacity systems which utilise the existing pair cable CAN will be crucial to provision of improved services to Regional and Outer metropolitan areas.

It is expected that deployment of broadband networks in Regional areas of the state will lag well behind that in the metropolitan areas and in the lower population density areas broadband networks may never be economically viable. This does not necessarily mean that Regional areas will be seriously disadvantaged since, as discussed in the following section, it should be possible to obtain effective narrowband access to broadband networks using digital compression and remote access techniques.

8.2.4 Asynchronous Transfer Mode (ATM)

ATM is a developing technology standard which is essentially a fast-packet switched based technology. The ATM technology will be used by the public network Carriers as it will provide a single transport system for voice, data and video communications. ATM technology is also being rapidly deployed in the private networks as a backbone technology for LANs and WANs. The actual configuration of the ATM standard is still to be fully resolved and, while there are products in the market place, further changes to the standard can be expected.

8.2.5 Voice & Data & Video Compression

The high cost of broadband capacity has historically been a driver for the development of efficient digital voice and data and video compression algorithms. These technologies reduce the amount of bandwidth required to run bandwidth "hungry" applications.

Irrespective of the development of high capacity broadband networks there will always be a requirement for compression schemes to facilitate low cost remote access and telecommuting applications.

This is a critical technology for Regional areas as it offers the prospect for remote access to broadband applications on an efficient, cost effective basis.

8.2.6 Cable & Pay TV

The reticulation of Pay TV networks in Australia is proceeding at a rapid pace, initially via microwave radio networks and now via hybrid optic fibre and coaxial cable distribution networks.

Telstra have commenced cabling the Perth metropolitan area and at this stage have cable in place to provide service to some 100,000 homes. Optus Vision have no immediate plans (up to 1997) to cable in Perth for Pay TV.

If there is no competition in Pay TV broadband infrastructure then it is critical that the Regulatory exclusion of the open access requirement for Carriers be terminated as soon as possible to allow competition in telecommunications and other services over the single infrastructure.

8.2.7 Mobile Telephone Networks

The growth of digital mobile networks reflects the importance of voice communications in business and private communications. The existing digital cellular mobile networks are likely to be replaced with high capacity Personal Communication Services with radio cell diameters of 100s of metres, compared to several kilometres in the existing cellular networks. In time the PCS services will be integrated with fixed services and then with fixed broadband ISDN to form a Universal Personal Telecommunications service.

In July 1996 the Spectrum Management Agency released a paper setting out proposals for the allocation of radio frequency spectrum in the 1.8 GHz bands.

The 1.8 GHz bands will provide for the introduction of new Personal Communications Services (PCS) which will introduce further competition into the mobile cellular and wireless local access markets.

8.2.8 Satellite Communications

Satellite Communications has proven effective for mobile telephones and broadcast applications but less effective for data communications where the time delay to transmit to geostationary satellites is a limiting factor. The introduction of Low Earth Orbit (LEO) satellite systems will allow true cellular type mobile services and make data satellite services more attractive.

Satellite communications has significant potential to be an important and cost effective communications medium for the large, sparsely populated remote areas of Western Australia.

8.3 Telecommunications Services Environment

8.3.1 Services Environment

The new regulatory environment is predicted to generate the following outcomes in the telecommunications services environment.

- a) An increase in the number of Carriers is expected. The new Carriers are expected to range from current equipment based Service Providers (ie AAPT) to new Carriers targeting specific Regional areas, specialist market segments or specialist technology segments (ie PCS). Completely new Australia wide infrastructure based entrants in the Carrier market are not likely to emerge in the short term.
- b) A continuing large increase in the number of Service Providers is expected. The new Service Providers are expected to include:
 - New Regional based Carriers providing telephone and data services;
 - New technology based Carriers providing new services such as PCS services;
 - New specialist market segment Service Providers. These may include providers operating in the retail industry, Internet services, banking and finance, insurance, travel and education.
- c) A steady increase in the range of underlying telecommunications services available as new technologies are introduced. These services will be based on new mobile telephone technologies (PCS), new LEO satellite technologies, new broadband technologies (Broadband ISDN, ATM) and new high capacity pair cable transmission systems.
- d) A rapid increase in the range of telecommunications service packages. These packages will include packaging of underlying telecommunications services with services such as Internet service provision, banking service, credit facilities, travel services and billing systems.
- e) An increase in the range of services which bring together telecommunications, information technology and broadcasting services into new convergent services.

8.3.2 Telecommunications Service Pricing

The following aspects of telecommunications service pricing expected under the proposed regulatory regime are highlighted.

- a) Decreasing pricing particularly in service sectors and geographic areas where competition is strongest.
- b) Pricing will become more specific to location, industry sector, customer size and specific customer as compared to the current national standardised tariffs.

-
- c) Pricing will tend to more closely reflect the cost of provision. This is expected to generate prices which are less sensitive to distance and with less distinction between voice and data services.
- d) Decreasing prices for satellite services as a result of increased competition to the Optus Aussat system.
- e) Prices will be less publicly known as a result of the removal of the requirement for Carriers to file tariffs as a matter of course. Tariffs will only need to be declared if required by the ACCC.
- f) Pricing strategies of Carriers and Service Providers will reflect the trend for telecommunications services to become commodity services with a high degree of price competition. Expected strategies include:
- Bundling of telecommunications services together or with other services.
 - Below cost pricing of particular services to attract customers.
 - Incentives and loyalty programs.
 - Sophisticated customer profiling.
 - Special offers to attract customers.
 - Flattened prices by providing proportions of free calls within the fixed access price.
 - Calling circles.
 - Improved levels of customer service to attract customers.
- g) Packaging (bundling) of telecommunications services with an overall service provision such as retail, finance, travel and education. In these cases the telecommunication service cost may not be visible to the customer.
- h) Government requirement for untimed local calls for residential and business customers at price which is subject to price cap.

8.3.3 Environment for Private Sector Users

The following aspects of the telecommunications environment expected under the proposed regulatory regime are highlighted.

- a) More sophisticated approach will be required by consumers to ensure that prices being paid for telecommunications services are market prices.
- b) Increased rate of change in prices and services will require increased rate of review by customers.
- c) Changing of relative prices for fixed telephone services, mobile telephone services, data services and long distance services will change the relative costs of conducting business in different ways.

- d) Difference in cost of telecommunications based on operation from different locations within Australia will become complex to calculate and may result in pronounced variations of outcomes.

8.4 Role of Government

8.4.1 Role of Commonwealth Government

- a) Legislative Role

The legislative power of the Commonwealth is unchanged in the deregulated environment. This is as given in the earlier section on the current environment and repeated in the following

Section 51(v) of the Constitution confers on the Commonwealth Parliament the power to pass laws with respect to:

“Postal, telegraphic, telephone and other like services”.

The words “other like services” have been given an expansive interpretation by the High Court. Although the meaning of this phrase has never been challenged in the telecommunications context, it has been generally accepted that most developments in telecommunications would be included within this power.

As a result, the Commonwealth has assumed ultimate policy, planning and regulatory authority for telecommunications. It has enacted a comprehensive set of laws that “cover the field”. Therefore, any State laws on the same topic would be invalid to the extent that they were inconsistent with the Commonwealth’s laws. This has meant that there has been no significant State regulation of telecommunications since 1901.

- b) Owner of Telstra

The Government is currently implementing its plan to sell one third of Telstra prior to June 1997. The legislation (Dilution of Public Ownership Bill 1996) has been passed by the House of Representatives but has not been passed by the Senate at this stage. The Government has stated that no further sale of Telstra would occur without an explicit mandate given by the Australian people at a future election.

The anticipated impact of the sale of one third of Telstra on the role of the Government as the majority shareholder is for the Government to tend to business based management of the Government shareholding. In conjunction with this there is anticipated to be increased legislation and regulation to achieve Government Policy objectives. This is reflected in the provisions of the Bill in the areas of Universal Service Obligations, untimed local calls, maintenance of price caps and industry development plans.

- c) Competition Policy

The Government has stated a competition policy for telecommunications based on open market competition subject to general competition law of the Trade Practices Act and administered by the ACCC, plus industry specific regulation. Aspects of the policy are highlighted in Section 5.1.2 and Appendix D of this report. The translation

of the stated policy into legislation is awaiting release of draft bills in September 1996 and passage through Parliament.

d) Industry Policy

The Government has included in policy statements an intention to maintain Industry Development requirements in the licensing provisions of Carriers. The extent of these requirements will not be clearly known until the passage of legislation through Parliament.

8.4.2 Role of State Government

a) Legislative Role

The legislative power of the State is unchanged in the deregulated environment. This is as given in the earlier section on the current environment and repeated in the following

While the States are effectively prevented from legislating in the telecommunications area, the States do have a limited legislative role.

- Planning and Environmental Laws

Currently, Section 116 of the *Telecommunications Act* grants Carriers exemptions from certain State laws, including planning and environment laws, in order to facilitate rapid and efficient rollout of the telecommunications networks. The exercise of these exemptions is subject to compliance with the Telecommunications National Code, which Code requires the Carriers to undertake a limited amount of notification and consultation with State and local government, when installing facilities. At the end of the day however, the Carriers may do as they please.

The Code is has been reviewed by Austel and a draft code has been submitted to the Minister. The Coalition Government's stated policy is to develop a new Code that incorporates tighter notification and consultation procedures and makes Carriers more accountable to State and local government authorities. The Government is considering ultimately removing most Carrier exemptions. Refer to AppendixD for a discussion of the draft Telecommunications National Code and Land Access Code.

- Levying of Rates and Taxes on Carriers

Since 1991, Telstra has been fully subject to State tax laws.

- NSW Government Telecommunications Act 1991

To our knowledge, the only State to enact actual telecommunications legislation is New South Wales.

The *NSW Government Telecommunications Act 1991* the objects of:

- integrating the various telecommunications networks of New South Wales Government agencies to provide for the common carriage of communications of these agencies;
- establishing a Government Telecommunications Authority in which to vest the integrated telecommunications network and its control and management; and
- obtaining the best commercial use of the integrated telecommunications network.

b) Major User of Services

The State Government will continue to be a major user of services provided by Carriers and Service Providers. This will continue to offer opportunities to influence the service offerings of Carriers and Service Providers due to the purchasing power of Government.

c) Private Sector and Community Role

The State Government will continue to have a role in endeavouring to facilitate the best possible environment for business activity and improved services to the community.

In the new telecommunications environment there will be a greater need than currently for the State Government to take action in the area of telecommunications in the interests of the private sector and the community.

d) Infrastructure Co-ordination Role

The State Government and Local Government will have an opportunity to have a greater role in the co-ordination of provision of Carrier telecommunications infrastructure with public and private development. This greater role will in part result from the planned withdrawal of general Carrier exemption from State Government planning and environmental regulation.

e) Influencing Commonwealth Telecommunications Policy and Legislations

The State should have an ongoing and enhanced role in seeking to influence Commonwealth policy, legislation and regulation in the area of telecommunications. This will also involve interaction on specific issues with ACCC and ACA.

APPENDIX A - GLOSSARY OF TERMS

AAPT:	AAP Telecommunications
ACA:	Australian Communications Authority
ACCC:	Australian Competition & Consumer Commission
AMPS:	Analog Mobile Telephone Service
ATM:	Asynchronous Transfer Mode
AUSTEL:	Australian Telecommunications Authority
CAMS:	Contract and Management Services
CAN:	Customer Access Networks
CDN:	Common Digital Network
CPI:	Consumer Price Index
DRCS:	Digital RadioConcentrator System
FMO:	Future Mode of Operation
GSM:	Group Special Mobile (digital mobile telephone standard)
HFC:	Hybrid Fibre Coax
ICAB:	Information & Communications Access Branch
ISDN:	Integrated Services Digital Network
IDD:	International Direct Dialling
LEO:	Low Earth Orbit
MEO:	Medium Earth Orbit
PCN:	Personal Communications Networks
PCS:	Personal Communications Services
PMG:	Postmaster Generals Department
PSMO:	Public Sector Management Office
PSTN:	Public Switched Telephone Network
SMA:	Spectrum Management Agency
SPs:	Service Providers
STD:	Subscriber Trunk Dialling

STMU:	State Telecommunications Management Unit
STS:	Standard Telecommunications Service
TIDA:	Telecommunications Industry Development Authority
USO:	Universal Service Obligations
VPN:	Virtual Private Network
VSAT:	Very Small Aperture Terminal
WAN:	Wide Area Networks

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APPENDIX C - CONTACTS

The following organisations were contacted in the course of the study.

ORGANISATION

AAPT

Access 1

Alcoa of Australia

ATUG (WA)

Australian Information Industries Association

Chamber of Mines & Energy

CRA Advanced Technical Development

CRA Business Development (WA)

Datacraft Australia Pty Ltd

Department of Commerce & Trade Infrastructure

ERG Telecommunications

FAL

Gascoyne Development Commission

Goldfields-Esperance Development Commission

Great Southern Development Commission

Information Industry Forum

JTEC Pty Ltd

Kimberley Development Commission

Mid West Development Commission

Ministry of Planning

Ministry of Premier & Cabinet (IPC & ICAB)

Optus Communications

PacStar

Pastoralists & Graziers Association

Peel Development Commission

Pilbara Development Commission

QPSX Communications Pty Ltd

Regional Chambers of Commerce & Industry

SCITEC Pty Ltd

Small Business Association

South West Development Commission

Telstra

Telstra Internet Service Provider

WA Internet Service Provider Assoc.

Wesfarmers Pty Ltd

Westel Group Limited

Western Australian Chamber of Commerce & Industry

Western Australian Farmers Federation

Western Mining Corporation

Wheatbelt Development Commission

**APPENDIX D - SUMMARY OF TELECOMMUNICATIONS
REGULATORY ENVIRONMENT**

FOREWORD

This summary was prepared and finalised in August and late September 1996.

At that stage the Commonwealth Government Telstra Dilution Bill (one third sale of Telstra) had not been passed by the Senate, only the first two parcels of proposed Telecommunications Act exposure drafts had been released for comment. The proposed Telecommunication Act and related Bills had not been tabled or passed by Parliament.

Hence specific details of this summary may have been superseded by the time of release of this report for public comment.

The intent of this summary is to provide the context of the expected change in the telecommunications regulatory environment from the current regime as at September 1996 to proposed regime commencing in July 1997.

TIAC DEREGULATION STUDY LEGAL REPORT

1. CURRENT TELECOMMUNICATIONS ENVIRONMENT

1.1 Executive Summary

Liberalisation of the Australian telecommunications industry commenced in May 1988 when the then Labor Government announced its first round of telecommunications industry reforms¹, which were later implemented in the *Telecommunications Act 1989*. These included the introduction of competition in the supply of value-added services and customer equipment and the establishment of the independent telecommunications industry regulator, AUSTEL.

In November 1990 a second round of reforms were announced² which were later implemented in the current legislation, the *Telecommunications Act 1991 (Telco Act)*. The *Telco Act*, which commenced on 1 July 1991, provides for an interim position on the path to developing a fully competitive telecommunications industry by establishing a fixed network duopoly and mobile triopoly, allowing full third party resale of services and granting enhanced powers and increased functions, including the promotion of competition within the telecommunications industry, to AUSTEL.

A key objective of the *Telco Act* is "to provide a framework for fostering genuine and sustainable network competition"³. Further objectives include supporting the Australian equipment manufacturing industry and ensuring that certain social objectives are promoted (including, that the "standard telephone service" and payphones are available to both residential and business customers throughout Australia on an equitable basis through the delivery of the universal service obligation; continued access to untimed local calls by residential users; and privacy of communications).

1.2 Regulatory Environment Industry Specific Regulation

1.2.1 Regulated duopoly market

(a) *Restrictions on carrier number*

Until 30 June 1997, two general carriers (duopoly) and three mobile carriers (triopoly) will be the primary suppliers of telecommunications network infrastructure and services in Australia.

The number of carriers is restricted by agreement not by legislation⁴. The aim is to create a level of commercially sustainable competition by enabling the emergence of a strong general carrier competitor to Telstra before the market is open to full network competition.

Carriers are regulated by the provisions of the *Telco Act*, the terms and conditions of their individual licences and Ministerial Directions.

(b) *Exclusive rights of carriers*

The general carriers are the primary providers of Australia's public telecommunications infrastructure and networks and have exclusive rights under Part 6 of the *Telco Act*:

- to install and maintain terrestrial links between *distinct places* within Australia or between a place within Australia and place outside Australia, subject to certain exceptions such as links installed or maintained by broadcasters;

- to use satellite based facilities and be the primary suppliers of satellite services both domestically and internationally, subject to certain exceptions such as the operation of private satellite earth stations; and
- to supply, install and maintain public payphones within Australia.

The mobile carriers are the primary suppliers of public mobile telecommunications services and have the exclusive right under Part 6 of the *Telco Act* to supply such services between *distinct places* within Australia or carry communications between Australia and places outside Australia or resell such services to third parties. However the mobile carriers Optus and Vodafone, are prohibited from establishing their own analogue mobile telephone networks, although may resell analogue airtime purchased from Telstra. All mobile carriers are permitted to construct (and in fact have done so) digital mobile telephone networks.

(c) ***Powers, immunities and access rights of carriers***

In addition to their exclusive rights, all carriers enjoy the right:

- to enter and use land with immunity from certain State and Territory environmental and planning laws, subject to compliance with Commonwealth access codes (Part 7 of the *Telco Act*); and
- to interconnect their facilities to the networks of other carriers and obtain access to services supplied by other carriers for the purpose of its supply of services (Part 8 of the *Telco Act*).

1.2.2 Competitive safeguards

While limiting the number of carriers, the current regulatory regime aims at promoting competition and service provider operations through specific competition safeguards. These are contained primarily in Parts 8, 9, 10 and 11 of the *Telco Act*.

(a) ***Carrier Interconnection and access rights (Part 8)***

Carriers enjoy the right to interconnect their facilities to the networks of other carriers. In the case of interconnection there is an obvious conflict of interest between the incumbent and the new carrier over the price of interconnection.

The *Telco Act* provides for carriers (primarily Telstra and Optus) to negotiate the charges of interconnection, which must comply with charging principles determined by the Minister from time to time, and for AUSTEL to intervene if the carriers are unable to agree.

Since 1990, the charges of interconnection must be on a "directly attributable incremental cost" basis. This was designed to assist Optus to become established in the market, by allowing Telstra to cover its costs by providing interconnection but make no economic rent from such interconnection.

All access agreements, which are the agreements that set out the terms and conditions of interconnection of a carrier's network facilities with those of another carrier and/or the terms and conditions of a carrier's access to the telecommunications services of another carrier, must be registered with AUSTEL.

(b) ***AUSTEL direction to unbundle basic services (Part 9, Division 3)***

AUSTEL's unbundling power

Part 9, Division 3 of the *Telco Act* grants AUSTEL the power to hold a public enquiry about whether it should direct a carrier to supply a particular basic carriage service (BCS) to the public generally, and to so direct a carrier if AUSTEL is satisfied that certain conditions have been met.

Types of BCS include local calls and long distance calls. BCS is defined in Section 174 of the *Telco Act*.

Purpose and policy behind unbundling

The purpose of making a direction to a carrier to supply a certain BCS, is to make such BCS available to the general public by itself and not only as part of a package (or bundle) of various services. For example, Telstra may decide only offer a local call service provided that you also acquire long distance calls from it. In such case, AUSTEL could direct Telstra to supply a local call service to its customers, without requiring that such customers also acquire long distance calls from Telstra.

The policy behind these provisions, which is expressed in Section 173(d) of the *Telco Act*, is the promotion of competition in markets for telecommunications services in a way that is orderly and consistent with the Commonwealth Parliament's intention that carriers be the primary providers of telecommunications networks and services in Australia and that carriers be able to exploit fully the economies of scale and scope available to them because of the facilities they control.

Limits on AUSTEL's unbundling power

Given that the clear policy is to promote competition, but only to a level that allows carriers to exploit fully any benefits derived from their control over telecommunications infrastructure, it is not surprising that AUSTEL does not have the power, when making an unbundling direction, to specify the terms and conditions, in particular the charges, at which a BCS must be supplied by a carrier, except to require that such terms and conditions be reasonable (Section 182 of the *Telco Act*).

To date AUSTEL has never exercised its powers under Part 9, Division 3 of the Act to hold an unbundling enquiry and make a direction to a carrier following that enquiry. This is thought to be due to AUSTEL's belief that an inquiry would be a costly and lengthy exercise, and that ultimately any direction would be ineffective in promoting competition due to AUSTEL's extremely limited power to determine the terms and conditions of access to the unbundled BCS.

As noted above, the purpose of an unbundling direction is to make a BCS, by itself, available to the general public. This means that the beneficiaries of a direction to supply would include individual consumers of services, as well as corporates including resellers of services.

Service providers or resellers are fairly sophisticated users of services, and want access to a wider range of services at a lower level of functionality than individual consumers. The types of services that service providers want access to are generally not just BCS: they include related services such as customer billing services. AUSTEL only has the power to direct the supply of a BCS, not any other type of service.

Unfortunately for service providers, they currently enjoy very limited rights of access to the networks and services of carriers (for example, Section 234 of the *Telco Act*).

The current unbundling regime has not been able to be used to increase their rights in this regard.

Considerations when making an unbundling direction

If AUSTEL were to hold an unbundling inquiry, then before it could make a direction to supply a BCS, it would need to be satisfied that:

"181 (2)...

- (a) *having regard to the matters referred to in subsection (3), it is **technically feasible** for the carrier to supply, and charge for, that service as a service distinct from any other telecommunications service; and*
- (b) *the carrier is in a position to **dominate a market** for that service; and*
- (c) *unless the direction is given, there **will be substantial lessening of competition**, within the meaning of the Trade Practices Act 1974, in a market for any other telecommunications service; and*
- (d) *complying with the direction will **not significantly reduce the carrier's ability to use facilities** under its control to supply other telecommunications services in a way that enables the carrier to exploit the economies of scale and scope available to it because it controls those facilities; and*
- (e) *the carrier's compliance with the direction will **not unduly affect the practical ability of the carriers to be the primary suppliers of telecommunications services in Australia.***

The matters referred to in subsection (3) are:

- "(a) *the technology used by, or available to, the carrier; and*
- (b) *whether the costs that would be involved in so supplying, and charging for, the service are reasonable; and*
- (c) *the effects that so supplying, and charging for, that service would have on the operation and performance of the telecommunications networks that the carrier operates."*

(c) ***Prohibition of discriminatory conditions of supply (Part 9, Division 4)***

These provisions supplement the general competition law provisions by prohibiting discrimination by carriers between, and against, persons to whom they supply telecommunications services.

Nature of Prohibitions

There are two main prohibitions.

- (a) Dominant carriers (which AUSTEL considers to be is Telstra in all markets except pay TV and mobile telephony) cannot discriminate (ie. treat differently) between persons who acquire services in relation to the charges and/or terms and conditions for the supply of the services, except in limited circumstances, including, where discounts are offered because of, for example:
 - AUSTEL permitted cost based discrimination; or
 - certain pricing arrangements (called legitimate charging options).
- (b) All carriers must not, in relation to the supply of basic carriage services, discriminate against service providers or their clients in relation to the charges and/or terms and conditions for the supply of such services, except in limited circumstances as noted in (a) above.

In addition, dominant carriers must supply basic services which are part of higher level services (all telecommunications services other than basic services) offered by that carrier, at the same price as if the carrier had acquired those basic services at arms length.

AUSTEL approval permitting discrimination

AUSTEL will make a decision permitting discrimination if that discrimination is justified by:

- the community interest in the promotion of the objects of the *Telco Act* which would include ensuring that standard telephone services are reasonably accessible to all Australians; or
- the desirability of schemes such as trial or pilot programs and demonstrations which allow carriers to develop and test new services (such as caller identification systems); or
- differences in the costs borne by the carrier (other than a difference that is insignificant) that will be, or is likely to be, related to the discrimination.

In making its decision on this last ground, AUSTEL may have regard to:

- the quantities of telecommunication services that would be effected by the decision if supplied;
- the transmission capacity needed to supply the services;
- places from or to which the services are supplied;
- the periods for which the services are supplied;
- the performance characteristics at which the services are supplied;
- network matters relating to supply of the services; and
- the administrative and/or operational costs in relation to the services.

Legitimate charging options

A legitimate charging option basically refers to a charging option that is generally available to all customers or to a large class of customers such as business or residential users.

(d) *Approval of, and charging in accordance with, tariffs for basic carriage services (Part 9, Division 5)*

All carriers are prohibited from supplying basic services to persons (other than a carrier) unless such services are tariffed and approved by AUSTEL. All tariffs for basic services must be publicly available. Due to the volume of tariffs, AUSTEL has adopted the practice of reviewing and approving tariffs in most cases after such tariffs have been in operation in the market.

Dominant carriers must charge in accordance with their basic carriage service tariffs. Otherwise, carriers (Optus, Vodafone and Telstra (in the markets for pay TV and mobile telephony only)) must not charge in excess of their basic carriage service tariffs.

AUSTEL may disallow the tariff of a carrier where it does not comply with the prescribed form.

Anti-competitive tariffs

AUSTEL must disallow the tariff of a dominant carrier if it is anti-competitive in its purpose or effect (Part 11, Division 1).

In relation to this provision, the *Telco Act* sets out an anti-competitive test which may be (and in certain circumstances must be) applied by AUSTEL. The test is defined as whether the operation of a tariff has or is likely to have the effect of materially and adversely affecting the development and/or maintenance of commercially sustainable competition in the market.

AUSTEL must apply the anti-competitive test to determine whether the operation of a dominant carrier's tariff has an anti-competitive effect in the market where, inter alia:

- the tariff makes the supply of the service conditional upon the supply of another service;
- a discount or other incentive is offered for the supply of two or more services simultaneously;
- a discount or other incentive is offered for a public mobile telecommunications service in conjunction with another telecommunications service that is not a mobile telecommunications service;
- a charging option will benefit only a small proportion of customers in a market for services; and
- a charging option applies in conjunction with other charging options with the effect that the price available to a customer for a service is less than a price otherwise generally applicable to customers of the service generally available under a single charging option alone.

When applying the test to a dominant carrier's tariffs to determine whether the tariffs are anti-competitive, AUSTEL must have regard to, inter alia:

- the nature and effect of barriers to entry to effective competitive participation in the market;
- whether the tariff would have the effect or would be likely to have the effect of eliminating or substantially damaging the competitor to the carrier, preventing, delaying or deterring the entry of a person into the market or deterring or preventing a person from engaging in competitive conduct; and
- whether predatory pricing is involved.

In exercising its power to disallow anti-competitive tariffs, AUSTEL must have regard to the Decision Making Framework (DMF), which is a document that provides a framework which AUSTEL must use as a guide in forming an opinion on the likely anti-competitive effects of a tariff. The DMF sets out procedures for determining matters such as dominance, service and market definition, as well as, commercially sustainable competition and discrimination.

(e) *Service provider access and interconnection rights (Part 10, Division 4)*

Service providers have a much more limited right of interconnection to carrier networks, than carriers do to other carrier network. As a result, service providers have not been able to compete effectively in the Australian market.

Carriers must connect service provider services to their networks if requested, except if another carrier's basic services provides interconnection, the service is not included in the carrier's filed tariffs, or, in the opinion of the carrier, it is not technically feasible to connect the service or the service provider would fail to comply with the terms and conditions on which the carrier would supply the service to that person.

These exceptions provide a wide scope for carriers to deny access to service providers to carrier networks and services. Further, the connection rights do not give service providers rights to certain levels of connection, such as access to CCITT 7 signalling.

(f) Accounting separation and charging procedures (Part 5, Division 5)

The high proportion of fixed to variable costs and of joint to specific costs involved in running telecommunications companies, presents a problem in terms of the regulation of cross subsidising by the network owner of services faced by competition, by proceeds from those areas relatively sheltered from competition.

The *Telco Act* addresses this by requiring accounting separation by all carriers. AUSTEL has developed a chart of accounts and a cost allocation manual which specifies principles to be followed by the carriers in allocating costs for their various activities and reporting financial data to AUSTEL. This also provides AUSTEL with information to be used in performing its other functions, including the determination of interconnection prices and retail prices regulation.

(g) Management of numbering of services (Part 11, Division 2)

In order to ensure that new carriers gain access to customers, AUSTEL is responsible for the numbering system including the development and implementation of a national numbering plan and determining rules relating to the allocation and portability of numbers.

The issue of number portability is of particular concern to the industry. AUSTEL's Numbering Advisory Committee established a Number Portability Study Group in January 1994 to identify the key problems and issues requiring resolution, develop the necessary technical models, propose suitable commercial arrangements and advise AUSTEL on regulatory implications.

AUSTEL's approach to number portability is focused on obtaining a total industry (carriers, service providers, suppliers and consumers) solution to the implementation of number portability for a range of services. The Number Portability Study Group is presently investigating number portability implementation options for local numbers, free phone numbers, digital mobile GSM numbers, 13 and 1300 numbers, information and premium rate services and personal numbers.

Implementation of 13, 1300 and 1800 portability and local number portability is scheduled to be available by late 1996, with GSM portability to follow post 1997.

(h) Customer access- Pre-selection of carrier

In order to encourage competition the *Telco Act* provides for equal access for consumers between different carrier services.

When the second carrier, Optus, commenced operation in late 1992, customers were initially required to dial the "1" prefix to gain access to Optus' services. This was followed by a nationwide ballot which allowed Telstra customers to preselect Optus as their long distance carrier. Those ballots were in compliance with a condition of Optus' carrier licence requiring that customers should be able to access Optus' services as easily as they do Telstra's without Optus having to construct its own local network.

Callers are still able to override the preselected carrier and to have the call carried by alternative carrier by dialling a 4 digit code before the relevant long distance code.

1.2.3 Consumer safeguards

In addition to the competitive safeguards in the *Telco Act*, additional consumer protection safeguards regulate the provision of telecommunications services.

(a) Access to untimed local calls (Part 5, Division 3)

The general carriers have an obligation to offer residential customers and charitable and welfare bodies or organisations, untimed local calls made using the standard telephone service.

The "standard telephone service" is defined as a public switched telephone service that is supplied by a carrier and by means of a telephone handset that does not have switching functions. This definition is currently being reviewed by the Government. Refer to Section 2.2.4 below.

Amendments to these provisions of the *Telco Act* have been proposed in the *Telstra (Dilution of Public Ownership) Bill 1996* to extend the obligation to business customers. This is in line with the Coalition Government's policies. Refer to Section 1.4.2(b) below.

(b) *Universal Service Obligations (USO) (Part 13)*

The *Telco Act* seeks to protect the provision of telephone services throughout Australia on a non-discriminatory and uniform basis through the provisions relating to the USO. Telstra is the universal service carrier for Australia under Section 209(1) of the *Telco Act*. Any losses that result from supplying services in the course of fulfilling the USO (such as to rural and remote customers) are shared by all carriers in direct proportion to their share of timed connections (in minutes).

The USO is defined as an obligation to ensure that a standard telephone service and payphones are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business, to supply a standard telephone service to people in Australia and to supply, install and maintain payphones in Australia.

(c) *Telstra Price controls*

Telstra is subject to price control arrangements under its incorporating act, the *Telstra Corporation Act 1991*. Part 6 of the *Telstra Corporation Act 1991* provides that the Minister may determine that specified charges for telecommunications services or facilities supplied by Telstra are subject to price control arrangements. These price control arrangements may take the form of price caps and/or principles in accordance with which Telstra is to make alterations to its charges. If Telstra wishes to alter a charge that is subject to a price control arrangement, then the consent of AUSTEL is required (unless otherwise stated in the Minister's determination).

The price cap arrangements are supplemented by notification and disallowance provisions which give the Minister direct control over certain services considered too sensitive to be regulated by AUSTEL.

Current price control arrangements

In the current period of price control regulation (1 January 1996 to 31 December 1998), Telstra is subject to:

- (a) an annual price cap of CPI minus 7.5% in respect of a basket of services that includes rentals, local calls, STD calls, IDD calls, connections, mobile services and leased lines; and
- (b) a further annual price cap of CPI minus 1% in respect of connections, rentals, STD calls and IDD calls; and
- (c) a price freeze on local calls and payphone charges.

In addition, charges for directory assistance and interconnection for service providers are subject to notification and disallowance.

The effect of these controls is that Telstra must lower its prices in real terms by at least 7.5%. This is because the average of prices for the basket of services subject to the controls is prohibited from increasing in any period by a percentage in excess of CPI minus 7.5%.

In addition, the subcaps (set out in (b) and (c) above) further constrain Telstra's ability to raise prices in effective monopoly areas (such as local calls) and thereby prevent it from supporting predatory pricing in competitive areas (such as IDD and STD calls).

Optus' and Vodafone's prices are not subject to any price cap.

The value of X

The price cap regime involves two variables: an inflation index (the Australian Consumer Price Index or CPI) and an "X" factor. It is in setting the "X" factor, that the government is able to control Telstra's pricing without being involved in day to day price setting.

The higher the value of X, the greater the short term productivity improvement forced upon Telstra and the greater the benefits passed on to consumers in the form of lower prices. This is because Telstra must improve its overall productivity by at least the value of X, if it is to maintain profit margins.

1.3 Regulatory Environment- Application of General Competition Law

1.3.1 Regulatory Philosophy

As already noted, a key objective of the *Telco Act* is to provide a framework fostering genuine and sustainable network competition. The Government was of a view that the best way to achieve such competition was through licensing a single fixed network competitor to the merged Telecom/OTC, prior to full competition in 1997.

This regulated duopoly approach, with competitive and consumer safeguards that enhance the provisions of general competition law under the *Trade Practices Act 1974 (TPA)*, has allowed the second carrier, Optus, to establish its market base and develop expertise and infrastructure before open competition is introduced in 1997. It also places stringent controls over the conduct of the incumbent, Telstra, to restrain its dominance in the telecommunications market. Unfair barriers to entry have been addressed by giving AUSTEL a number of pro-competitive functions and through appropriate interconnection and equal access arrangements.

As a result, the *Telco Act* contains an intricate and highly complex set of provisions that are specific to the telecommunications industry. This need to regulate in addition to, and separate from, general competition law under the *TPA* is crucial to the Government's policy objective of achieving sustainable network competition before 1 July 1997.

1.3.2 Telco Act Provisions

The *TPA* applies to the telecommunications industry, including the activities of the licensed carriers, except to the extent that it is expressly excluded.

Due to the regulatory philosophy expressed in Section 1.3.1 above, the *Telco Act*, while basically working along side and supplementing general competition law under the *TPA* (particularly the restrictive trade practices provisions set out in Part IV of the *TPA*), does provide for a number of limitations to, and exclusions of the operation of the *TPA*.

In particular, Part 11, Division 1 of the *Telco Act* provides that:

- (a) Part IIIA of the *TPA* does not apply in relation to the supply of a telecommunications service by a carrier or under a class licence;
- (b) Part IV of the *TPA* does not apply in relation to acts or omissions that are necessary to comply with or give effect to;

- (i) a condition of a carrier licence;
 - (ii) a direction or determination given under the *Telco Act* by the Minister or AUSTEL; and
 - (iii) an access agreement, or any variation to an access agreement; and
- (c) carriers may refuse to supply basic carriage services or facilities that are not included in that carrier's basic services tariff without breaching the *TPA*.

1.4 Role of Federal Government

1.4.1 Legislative role

Section 51(v) of the Constitution confers on the Commonwealth Parliament the power to pass laws with respect to:

"Postal, telegraphic, telephonic and other like services" .

The words "other like services" have been given an expansive interpretation by the High Court. Although the meaning of this phrase has never been challenged in the telecommunications context, it has been generally accepted that most developments in telecommunications would be included within this power.

As a result, the Commonwealth has assumed ultimate policy, planning and regulatory authority for telecommunications. It has enacted a comprehensive set of laws that "cover the field". Therefore, any State laws on the same topic would be invalid to the extent that they were inconsistent with the Commonwealth's laws. This has meant that there has been no significant State regulation of telecommunications since 1901.

As the States are effectively prevented from legislating in the telecommunications area, they only have a limited role in regulating the activities of industry players. In addition to general fair trading and related consumer protection legislation this legislative role may manifest itself in the following.

(i) *State Planning and Environmental Laws*

Section 116 of the *Telco Act* grants carriers exemptions from certain State and Territory laws, including planning and environment laws, in order to facilitate rapid and efficient rollout of the carrier's telecommunications networks. The exercise of these exemptions is subject to compliance with the Telecommunications National Code, which Code requires the carriers to undertake a limited amount of notification and consultation with affected State, Territory and local government, when installing facilities. At the end of the day however, the carriers may do as they please.

The Telecommunications National Code is currently being reviewed by AUSTEL. The Coalition Government's stated policy is to develop a new Code that incorporates tighter notification and consultation procedures and makes carriers more accountable to State and local government authorities. While carriers' immunities from State and Territory planning and environmental laws may continue post 1 July 1997, the carriers' activities will be subject to more stringent review and direction by State, Territory and local Government under revised Codes. Refer to Section 2.2.5 below for a discussion of the draft Telecommunications National Code and Land Access Code.

Telstra is also exempt from certain State or Territory laws relating to buildings, structures and facilities and environmental protection laws under the *Telstra Corporation Act 1991* .

(ii) *NSW Government Telecommunications Act 1991*

To our knowledge, the only State to enact specific telecommunications legislation is New South Wales.

The *NSW Government Telecommunications Act 1991* has the objects of:

- integrating the various telecommunications networks of New South Wales Government agencies to provide for the common carriage of communications of these agencies;
- establishing a Government Telecommunications Authority in which to vest the integrated telecommunications network and its control and management; and
- obtaining the best commercial use of the integrated telecommunications network.

Although, subsequent amendments to the *Telco Act* invalidated provisions relating to the vesting of network in the Government Telecommunications Authority, the Act is important as it:

- allows for the coordinated use of the New South Wales Government's telecommunications network infrastructure so as to maximise benefits to the Government through volume discounts, which has enabled the Government to better assess its telecommunications needs and to cater for those needs in the most economic way; and
- grants Government agencies (which include utilities such as the electricity transmission authority, TransGrid) the power to lease excess capacity on their telecommunications networks to third parties.

1.4.2 Privatisation of Telstra

(a) Coalition policy

With an election mandate to sell one third of Telstra before 30 June 1997 in an effort to raise \$8bn and improve the efficiency of Australia's largest telecommunications company, in early May 1996 the Government placed before Parliament privatisation legislation - the *Telstra (Dilution of Public Ownership) Bill 1996 (Dilution Bill)*.

In late February 1996, just prior to the last Federal election, the Coalition announced details of its plans for the partial privatisation of Telstra in a policy entitled *Telstra - Serving Locally, Thinking Globally*. The announced conditions of Telstra's partial privatisation included the following.

- No further sale of Telstra (after initial one third) without an explicit mandate given by the Australian people at a future election.
- Telstra will not be broken up.
- Ownership and control of Telstra to remain Australian, with 65% of shares reserved for Australian owners and a 35% limit for foreign owners (with no single foreign investor allowed more than a 5% holding of the partial privatisation).
- Individual Australian investors to be offered discounts, with a loyalty bonus for shares held for more than 12 months.
- 2% of the one third float reserved for Telstra's fulltime employees.
- National interest safeguards to include maintenance of universal service obligations, maintenance of the right to untimed local calls, maintenance of price caps, 2/3 of Telstra Board (including the Chairman) to be Australian

citizens, Government right to veto staff remuneration packages, and industry development plans to remain as licence condition.

The Minister has indicated that while the telecommunications market need not be fully deregulated before the *Dilution Bill* is passed, the duopoly regime should be settled before Telstra is sold. This would enable potential investors to assess the implications of the new regime.

The Government has confirmed that its future telecommunications policy would remain pro-competitive and that there would be no trade-off of long term competitive benefit to maximise Telstra's sale price.

(b) Provisions of the Dilution Bill

The *Dilution Bill* was tabled on 2 May 1996 by the Minister for Communications and the Arts, Senator Richard Alston. The *Dilution Bill* provides for the sale of Telstra through multiple tranches or single tranches with instalment purchase arrangements.

The *Dilution Bill* provides the necessary legislative changes to enable part of the Commonwealth's interest in Telstra to be sold as well as legislating specific consumer protection mechanisms. This is achieved through amendments to the *Telstra Corporation Act 1991* and the *Telco Act*.

(i) Amendments to the Telstra Corporation Act 1991

Specific issues covered in relation to the sale include:

◦ **The maintenance of majority Commonwealth ownership of Telstra**
(Part 2 - Commonwealth Ownership of Telstra)

This Part includes provisions covering:

- the requirement that the Commonwealth retain two-thirds of its equity interest in Telstra (Division 2- cl. 8AB) and Telstra's obligations to ensure that the section is not contravened (cl. 8AC);
- the imposition of reporting obligations on Telstra (Division 3), including providing financial statements to the Minister (cl. 8AD), keeping the Minister informed as to Telstra's operations (cl. 8AF) and preparing corporate plans (cl. 8AG); and
- rules for the process of the sale (Divisions 4 & 5) including: exemption from stamp duty; appropriation from consolidated revenue for costs incurred in the sale; capacity for the Commonwealth to take over certain obligations of Telstra or Telstra's subsidiaries; requiring Telstra to assist in the sale process; enabling the Commonwealth to use information obtained from Telstra; facilitating alteration of Telstra's constitution and restructure of its capital to support the sale process; and enabling the offer document for the sale of equity in Telstra to be registered under the *Corporations Law* .

◦ **Foreign ownership restrictions**
(Part 2A - Restrictions on Ownership of Telstra)

This Part includes provisions covering:

- the restriction of aggregate foreign ownership to 11.6667% ownership stake in Telstra (35% of one third offering) (cl.8BH);
- the restriction of individual foreign ownership in Telstra to 1.6667% ownership stake (5% of the one third offering) (cl.8BH); and
- offence, anti-avoidance and enforcement provisions (Divisions 4-7).
- **Base of Operations and Board membership**
(Divisions 8 & 9)
 - Telstra's head office, base of operations and incorporation must remain in Australia; and
 - Telstra must have a chairperson who is an Australian citizen and a board of directors the majority of whom must be Australian citizens.
- **Remedial action where foreign ownership limits breached**
 - Provisions to enable action to be taken where the foreign ownership limits or other requirements have been breached, including enabling Telstra or the Minister to make applications to the Federal Court for injunctions and special provisions for prosecution of offences (Part 2B).
- **Universal Service**
 - Reaffirms that the Universal Service Obligation is to apply to Telstra and other carriers (Part 2C).

(ii) ***Amendments to the Telecommunications Act 1991***

The *Dilution Bill* also introduces the new Customer Service Guarantee which sets out mandatory performance standards for carriers in relation to connecting customers, rectifying faults and keeping appointments and provides damages for breach of these standards (to be determined by AUSTEL and be applicable to all carriers) and extends the obligation on general carriers to provide the option of untimed local calls to all customers in local call areas (including businesses) (Schedule 1 to the *Dilution Bill*).

(c) ***History of the Dilution Bill to date***

(i) ***House of Representatives***

Since the introduction of the *Dilution Bill* on 2 May 1996 parliamentary and public debate on the partial privatisation of Telstra has been extensive. Debate in the House of Representatives was fairly brief (with minority members in the Senate suggesting later that the Government used its numbers to gag debate).

A number of amendments were moved by the member for Werriwa, Mratham. Those amendments provide a useful summary of some of the arguments made by the opponents of the *Dilution Bill* to date and read:

"The House is of the opinion that the Bill should not proceed for the following reasons:

1. *it represents the start of a process leading to full privatisation of Telstra;*

2. *it will lead to a loss of jobs, investment and exports, and the Bill also fails to establish an Australia-first purchasing policy for Telstra;*
3. *the remittance of profits overseas which will follow enactment will damage Australia's balance of payment;*
4. *it provides inadequate protection of the universal service obligations and preservation of services in regional, rural and remote Australia;*
5. *the Government's failure to bring outer metropolitan telephone zones into capital city local call zones;*
6. *the Government's failure to fulfil its commitment to establish an ISDN service throughout Australia plus establish A and B share categories to monitor foreign ownership;*
7. *the failure to preserve ministerial directions and accountability to the Parliament for the delivery of Telstra's universal service obligations;*
8. *there are much better ways of funding environmental programs than selling Australia's major public assets;*
9. *it represents an ideological obsession with ownership issues instead of focusing on competitive features of the telecommunications market;*
10. *at a time of rapid technological change in telecommunications, the public sector should continue to hold a major strategic asset like Telstra to avoid inequity of access and affordability on the so termed "Information Superhighway";*
11. *with the Government's recent decision to review 1997 Telecommunications Regulation, it is inappropriate for the Parliament to be considering the sale of Telstra ."*

The proposed amendments to the *Dilution Bill* were defeated by significant majority in the House of Representatives and the *Dilution Bill* passed the House without difficulty.

(ii) Senate

The progress of the *Dilution Bill* through the Senate is a more problematic issue for the Government.

The last Federal election included a half Senate election. The newly elected (and ~~re~~lected) Senators took office on 1 July 1996.

Currently the Coalition needs 1 vote to block a bill and 2 to pass a bill.

Debate in the Senate has been more lively with the members of the Senate minority parties referring the *Dilution Bill* to the Environment, Recreation, Communications and the Arts References Committee (Refer to Section 2.2.3 below).

While the ALP and Democrat Senators are opposed to the partial sale of Telstra, the recent defection of Senator Colston from the ALP has increased the Government's chances of getting enough votes in the Senate to pass the *Dilution Bill* before the end of 1996. The Government will also be seeking the vote of independent Senator Brian Harradine.

(d) CSFB Scoping Study

The Federal Government's business adviser on the Telstra privatisation, C S First Boston has undertaken a scoping study on the partial privatisation. CSFB's Report, copies of which have not been made public, is understood to be critical of Telstra's high staffing levels, management of its network and other technologies such as ISDN and the use of assets (particularly the PSTN). In addition, CSFB is believed to have concluded that breaking Telstra and selling individual business units such as mobile telephones and the Yellow Pages directory could raise \$6 billion more than an earlier estimate of \$24 billion.

1.4.3 Competition Policy

As noted in Section 1.3 above, Federal general competition laws have a limited role in the regulation of the telecommunications industry due to the policy of the Government of including industry specific competition provisions in the *Telco Act*.

1.4.4 Industry Policy

One of the intended outcomes of the restructuring of the telecommunications industry was that Australia would become a significant international communications centre. The regulatory environment aimed to promote Australia's telecommunications capabilities, industries and skills for use in Australia and overseas (refer to Section 3 of the *Telco Act*).

To this end, the Federal Government has adopted the following policies.

(i) Carrier licence conditions

All carriers are required, as a condition of their licence, to maintain and implement a plan for the development of the Australian telecommunications supply and information industries.

Upon grant of a licence, carriers are required to submit the plan to the Minister of State for Industry, Technology and Commerce and must report annually to that Minister until the year ending 1998, on progress in achieving their plans.¹³ These plans are publicly available.

In addition to the provisions relating to industry development, certain of the carriers also have network rollout requirements.

- ***Optus Networks Pty Ltd***

Under the terms of its general carrier licence, Optus has various requirements to offer and be in a position to supply, domestic long distance services and international services and terminating access. These requirements incrementally increase each 31 December, until 31 December 1997 when Optus must have offered, and be in a position to supply, domestic long distance services and international long distance services to 100% of the population of Australia.

- ***Optus Mobile Pty Ltd***

Under the terms of its public mobile licence, Optus must, no later than 31 December 1997, have offered and be in a position to supply, services by means of digital facilities to not less than 80% of the population of Australia.

- ***Vodafone Pty Ltd***

Under the terms of its public mobile licence, Vodafone must, no later than 31 December 1996, have offered, and be in a position to supply, services by means of digital facilities to not less than 80% of the population of Australia.

(ii) **TIDA**

In July 1992 the Minister established the Telecommunications Industry Development Authority (known as TIDA) to monitor and advise on the extent to which carriers met their commitments under their industry plans. TIDA is a non-statutory authority reporting to the Minister. It is an advisory rather than policy setting body.

TIDA reviews the annual reports from carriers on progress in implementing their industry plans and it monitors the performance of each carrier against their planned reports on achievements by equipment and service suppliers. It advises the Minister as to whether an individual carrier's performance under an industry plan is satisfactory.

2. PROPOSED TELECOMMUNICATIONS ENVIRONMENT

2.1 Executive Summary

We are currently in a period where the post 1997 telecommunications regulatory environment is not settled.

In late 1995 the previous Government released for public discussion exposure drafts of a Telecommunications Bill 1996 (*Telco Bill*) and a Trade Practices Amendment (Telecommunications) Bill 1996 (*TPA Bill*). These bills dealt with four key areas of telecommunications reform: licensing of carriers, industry codes of practice, anti-competitive conduct, and the proposed access regime. These Bills have since been abandoned due to heavy industry criticism, although the Coalition has endorsed elements of the these Bills in its policies and draft telecommunications legislation.

On 16 August the Federal Government released for public comment the first package of the draft post 1 July 1997 telecommunications legislation containing the *Radiocommunications Amendment Bill 1996*, the *Australian Communications Authority Bill 1996* and part of the *Telecommunications Bill 1996* relating to technical regulation and numbering.

A second package of draft telecommunications legislation was released for public comment on 13 September 1996 containing the *Trade Practices Amendment (Telecommunications) Bill 1996*, the *Telecommunications (Transitional Provisions and Consequential Amendments) Bill 1996* and further parts of the *Telecommunications Bill 1996* relating to the licensing of carriers, regulation of service providers, powers of the Australian Communications Authority and the Australian Competition & Consumer Commission to undertake public inquiries and investigations, and information gathering and enforcement powers for the Australian Communications Authority.

A further package of draft telecommunications legislation, yet to be finalised for exposure, is expected to be available in early October.

These Bills are expected to be put before Parliament before the end of 1996. **As a result, it is currently not possible to state, with absolute certainty, what the provisions of the new regime post 1 July 1997 will be.**

2.2 Regulatory Environment Industry Specific Regulation

2.2.1 Coalition Policies

(a) *Pre-election Coalition policies Better Communications and Better Phones*

In January 1996 the Coalition published its policy entitled *Better Communications*, detailing broad policies on post 1 July 1997 telecommunications regulation, media regulation and Telstra's privatisation.

In late February 1996 the Coalition announced more detailed policies on its plans for the partial privatisation of Telstra and the promotion of better phone services in a policy entitled *Telstra - Serving Locally, Thinking Globally*. This policy provided justification for the planned privatisation of Telstra, details of the ownership plan and safeguards and specific proposals regarding the future provision of telecommunication services.

Key features of these policies include the following.

- New and tighter Telecommunications National Code to be introduced by 1 July 1996, with carrier exemptions from local planning and environmental laws to be eliminated from 1 July 1997.
- Untimed local calls to be available for residential and business customers.

- Customer Service Guarantee to be met by all telephone companies, covering connections, repairs, billing systems and operator calls.
- Pay TV operators to be required to provide access to infrastructure under a compulsory interconnect regime from 1 July 1997.
- The Carrier Associate Direction to be reviewed to determine whether the pro-competitive provisions of the new *Telecommunications Act* should extend to interactive services in a technologically neutral way.
- The Government to consult with industry regarding reducing infrastructure duplication and encourage co-location of cable facilities.
- In the post 1 July 1997 environment:
 - (i) no limit on the number of carriers or service providers;
 - (ii) competition regulation to be administered by a special branch of the ACCC;
 - (iii) content regulation to be administered by the ABA;
 - (iv) technical regulation to be administered by a merged Spectrum Management Authority / AUSTEL body;
 - (v) the Telecommunications Industry Ombudsman to be retained and to administer the Customer Service Guarantee;
 - (vi) a statutory right of interconnection for all carriers;
 - (vii) no blanket proscription of price discrimination with wholesale prices subject to Ministerial Guidelines and arbitration provisions and retail prices subject to ACCC monitoring; and
 - (viii) Telstra price cap regime and the universal service levy (with a review of the standard telephone service definition) to remain.
- AMPS analogue phaseout to continue as planned and the introduction of new personal communications services (PCS) technologies to be expedited.

(b) Discussion Paper

In May 1996, the Minister for Communications and the Arts, Senator Richard Alston, announced that the Coalition would review the previous Labor Government's draft *Telco Bill* and *TPA Bill*. Those *Bills* were based on the policy principles published by the Labor Government in August 1995.

On 14 May 1996, Senator Alston, released a discussion paper putting forward for consideration and discussion a framework for post 1 July 1997 telecommunications regulation to give effect to the Coalition's *Better Communications* policy and address industry comments. The discussion paper also formed the basis of discussions at the Telecommunications Working Forum held in Sydney on 16 May 1996.

The Discussion Paper comments on provisions of the *Bills* and gives some indication as to the Government's focus or likely action on post 1997 telecommunications regulation in the following areas. A common theme in the Discussion Paper is the need for certainty in the exercise of powers conferred on the regulatory bodies, particularly the ACCC.

(i) Carrier regulation*Definition of carrier*

The Government reiterated its policy that those persons who **are in control of significant facilities** used to supply carriage services to the public should be required to hold a carrier licence and be subject to the various rights and obligations which flow from that licence.

The Government proposes that:

"A carrier would be a person:

- who owns line links or specified radio communications links used to provide carriage services;
- where the distance of a line or link exceeds 500m or the distance of all lines or links total more than 5km;
- where use of the lines or links is not confined to a private network (except to provide point-to-point services between the private network and the other end users, for example, so that persons on a private network can communicate with end users on a public network without becoming a carrier).

Specified radio communications links would initially be included in the carrier definition, including identified fixed radio communications links, links used to provide public mobile telecommunications services and satellite-based facilities.

Existing exemptions for transport authorities, certain line links (eg. those used by utilities), and defence organisations would continue. The exemption for broadcasters would apply to line links used only for the purposes of carrying the signals from studios to radiocommunications transmitters unless the link is specified in the carrier definition or retransmitting programs in accordance with Section 212 of the *Broadcasting Services Act 1992*.

Rights and Obligation of carriers

All carriers would:

- have access to such land access rights and immunities from State and Territory laws as are determined by the Government;
- be obliged to contribute to the net cost of universal service and to the operating costs of AUSTEL;
- be required to give access undertakings in relation to their networks and services to the Australian Competition and Consumer Commission (ACCC); and
- be bound by carrier licence conditions.

Licensing arrangements

AUSTEL would be responsible for licensing carriers, with licences including the following provisions:

- fixed networks must be preselectable and carriers must comply with any AUSTEL direction regarding the implementation of preselection for service providers;
- a general obligation to comply with the telecommunications legislation;
- industry development obligations;
- emergency service obligations (including to ensure networks enable all end users to place calls to the emergency services);
- co-operation with law enforcement agencies (including network interception requirements);
- co-operation with defence agencies, including disaster management; and
- participation in a Telecommunications Industry Ombudsman Scheme.

(ii) *Carrier land access rights and immunities*

Contrary to what was stated in its preselection policies, the Government has now decided that a scheme of proper planning process will be developed in consultation with the States, Territories and local government. The actual legislative provisions dealing with carrier powers to enter land and immunities from local planning and environmental law in the post 1997 legislation will depend on the outcome of that process.

It is likely that certain powers and immunities will still be granted to carriers post 1 July 1997. The operation of these powers and immunities will probably be subject to Codes, similar to those currently in operation and proposed for the period up to 1 July 1997. Refer to Section 2.2.5 below for a discussion of these Codes.

(iii) *Proposed Access Regime Outside Part IIIA*

The Government regards access and interconnection issues as central to achieving effective competition. Access and interconnection at competitive commercial terms is central to competition in the supply of content and carriage services. The Government appears to favour commercial solutions to these issues through industry forums or bilateral commercial negotiations with provision for administrative review.

The purpose of the proposed regime is to balance the public interest considerations of any connectivity, consumer access to a competitive variety of services, the rights of service providers to provide services over infrastructure, the legitimate business interests of infrastructure owners and the broader interest in the efficient operation of telecommunications networks.

The proposed scheme relies heavily on the carrier rights and obligations that already exist in Part 8 of the *Telecommunications Act* and the general access provisions of Part IIIA of the *TPA*.

Declared carriage services

Carriers and service providers will have the right to have declared carriage services supplied to them and to interconnect facilities to carrier networks. Carrier licences will require compliance with the telecommunications access obligations set out in the new *Telecommunications Act* which give effect to the carrier and service provider rights.

Carriage services would be declared by the ACCC.

The ACCC would only declare a new service following:

- general consensus of telecommunications industry body to be known as the Telecommunication Access Forum (*TAF*), provided that there has been a reasonable opportunity for service providers and consumers to participate during the ACCC's deliberation; or
- a public inquiry, after which the ACCC is satisfied that the declaration would promote the long term interests of end users of the service by promoting any-to-any connectivity and/or competition in a market by allowing carriers to compete with each other on an equal basis in the supply of networks and allowing carriers and service providers to compete with each other on an equal basis in the supply of services.

Development of Access Codes

The TAF would be responsible for developing a telecommunications Access Code, or more than one if the ACCC agrees.

Access Codes would deal with matters giving effect to the carrier and service provider rights and carrier access obligations, including matters relating to the terms and conditions:

- upon which declared services are supplied to carriers and service providers;
- for interconnection of carrier and service provider network facilities;
- for the technical and operational quality; and timeliness of interconnection, traffic carriage and fault detection; and
- giving effect to the other carrier access obligations.

Access Codes would be subject to ACCC approval, with approval to be given where the ACCC is satisfied that:

- there is a general consensus of carriers and a reasonable opportunity for service providers and consumers to participate during TAF deliberations;
- undertakings consistent with the Code would give effect to one or more aspects of the carrier and service provider rights and carrier access obligations;
- the terms and conditions and any other matters addressed in the Code are fair and reasonable having regard to the terms of the carrier and service provider rights and carrier access obligations; and
- in so far as a Code deals with price or a method of ascertaining price, the Code must be consistent with any principles about price determined by the Minister.

The Government is still considering whether the ACCC would need to apply EPA Part VI type authorisation (where the public benefits of conduct consistent with the Code outweighs any lessening of competition which might result from that conduct), or whether a Code approved by the ACCC should be deemed to receive such authorisation.

The ACCC may determine a Code (complying with the above Code approval criteria) if:

of:

- the TAF does not give the ACCC a Code;
- the TAF has given the ACCC a Code which it has refused to approve; or
- the ACCC has requested the TAF prepare a Code dealing with a particular aspect
 - the carrier and service provider rights; or
 - the carrier access obligations;
 in relation to a declared carriage service and the TAF does not comply.

The ACCC will have the power to request the TAF to submit a variation to the Code or a new Code.

Making of Access undertakings

Carriers would be required to submit access undertaking for approval by the ACCC (carriers would be able to submit different access undertakings for different declared services only with the consent of the ACCC)

Public consultation on the access undertakings would be required in any case where the ACCC is of the opinion that the undertakings provide for aspects of access which:

- are not included in a Access Code; or
- are included in an Access Code, but the undertaking provides for a level of access less than that required by the Code or the carrier access obligations.

The access undertaking must provide **access to all declared carriage services** supplied by the carrier's network (whether supplied to itself or another person), except to the extent that another person controls access to those services.

A carrier would be able to omit a declared service from its access undertaking if it is not technically feasible for the carrier to supply the declared service.

ACCC will approve an access undertaking where it is satisfied that:

- the undertaking would enable access which complies with the carrier and service provider rights and carrier access obligations;
- the terms and conditions and any other matters addressed in the undertaking or undertakings are fair and reasonable having regard to the terms of the carrier and service provider rights and carrier access obligations; and
- insofar as the undertaking deals with price or a method of ascertaining price, the undertaking would be consistent with any principles about price determined by the Minister.

The ACCC would be able to approve an undertaking, despite the carrier's undertakings not including a declared carriage service which the carrier supplies, or providing for a delay in the provision of the declared carriage service, where access, or increased access, to the carrier's service would be contrary to the public interest.

An undertaking would be for a term determined by the carrier, not exceeding 3 years (extendable to 6 years where the ACCC is satisfied, following public comment, that the facility is of national significance and would not be installed in the absence of an extended time period for the undertaking). A carrier's undertaking would only need to be varied when a new service is declared and the carrier supplies that carriage service (either to itself or to another person).

ACCC would be able to arbitrate the terms of undertakings on criteria based on the principles in Part IIIA of the *TPA*. Also, the ACCC must have regard to the carrier's undertaking, the carrier and service provider rights and carrier access obligations and where the undertaking has no pricing principles and there is a Ministerial determination about price in place, that determination.

A carrier would not be required, either by a Code or in an undertaking, to give access to the use of intellectual property, except to the extent that intellectual property is an integral but subsidiary part of the carriage service or network facilities concerned.

(iv) ***Prohibition of Anti-Competitive Conduct***

The Coalition Government favours an open market approach but with industry specifies measures to ensure control of Telstra's potential for anticompetitive behaviour.

From 1 July 1997 the telecommunications industry will be subject to the general competition laws contained in Part IV of the *TPA*. However, the Government is of the view that the complexities of the industry, the continued early development of competition in some markets and the pace at which change takes place in the industry suggests that it would be appropriate that Part IV be supplemented by industry-specific competition regulation, at least until competition is firmly established.

The ACCC will be responsible for regulating competition policy from 1 July 1997. The main provisions granting the ACCC power to regulate competition in the telecommunications market are the proposed Competition Direction and the Tariff Direction.

Competition Direction

The Labor Government's draft *TPA Bill* defines anti-competitive conduct by reference to an "Effects Test" and a "Hindering Test".

Under the Effects Test, a carrier or carriage service provider would be taken to be engaging in anti-competitive conduct if it has a substantial degree of power in a telecommunications market and takes advantage of that power for the purpose, or with the effect or likely effect, of substantially lessening competition, or potential competition, in that or any other telecommunications market.

Under the Hindering Test, a carrier that has a substantial degree of market power in a telecommunications market must not take advantage of that power for the purpose of hindering entry to a telecommunications market.

These provisions capture a much wider range of conduct, than Section 46 of the TPA. Accordingly, no per se legislative prohibitions on types of conduct are proposed. Instead, the ACCC may issue a Competition Direction where it is satisfied that a carrier or carriage service provider **is engaged, is engaging or is proposing to engage in anti-competitive conduct**, directing a carrier or carriage service provider not to engage in specified anti-competitive conduct.

There has been some concern among industry players regarding the proposed power for the ACCC to direct a carrier or carriage service provider "to do something" to rectify the effect of conduct, without the need to obtain an order from the Court. This is a greater power than the ACCC enjoys under the TPA.

The Government is still considering the nature of this power and whether its exercise must only be in accordance with stated guidelines. It is likely that such a power will surface in draft legislation.

Tariff filing Direction

The TPA Bill gives the ACCC the power to require a carrier or carriage service provider with a substantial degree of power in a telecommunications market to file its tariffs for specified goods and services (a Tariff Filing Direction).

The primary purpose of such a power would be to allow the ACCC to require tariff filing when it was in the interests of end users for this information to be made publicly available. At the same time, this mechanism would allow the ACCC to examine carrier and carriage service provider conduct in markets for telecommunications services and related goods and services, including where the ACCC has concerns about potential anti-competitive conduct.

Concern has been expressed regarding the possibility that the public disclosure of information would damage the commercial interests of a carrier or service provider. The Government intends addressing these concerns by allowing the ACCC, following the receipt of the tariffs, to hold the information in confidence where it was satisfied that the negative impact on carriers and their customers would not justify public release. In reaching such a decision, the ACCC might also be required to have regard to whether disclosure of the information to other parts of the industry would assist it in monitoring behaviour.

Appeal rights

The Government is still considering whether the following decisions of the ACCC should be being reviewable on the merits by the Australian Competition Tribunal (ACT):

- a decision to give a competition direction (other than an interim competition direction)
- a decision not to revoke a competition direction
- a decision to vary or not to vary a competition direction
- a decision not to make an exemption order
- a decision to revoke an exemption order or to make a further exemption order.

The carrier and the carriage service provider directly affected by the ACCC's decision would be able to apply to the ACT for review of the decision. They, together with any other person whose interests are, or would be adversely affected by the ACT's review decision, would be permitted to appeal to the Federal Court, on a question of law, from that decision. Further review would be available under the *Administrative Decisions (Judicial Review) Act 1977*.

On the basis that the proposed tariff filing provisions are an information disclosure mechanism, no review or appeal rights would be conferred in relation to ACCC decisions concerning tariff filing.

The Government is convinced of the need to supplement the Part IV of the EPA provisions, but at the same time has no desire to continue per se prohibitions on types of conduct beyond 30 June 1997.

(v) **Technical Regulation**

Regulation of technical issues under the *Telco Act* and *Radiocommunications Act* will be harmonised and the two regulatory bodies, AUSTEL and the Spectrum Management Authority, will be merged.

Standards

The underlying premise is that industries should, except where this is clearly inappropriate, be self regulating.

AUSTEL would have the power to make mandatory standards for:

- customer equipment and cabling;
- interconnection of networks and components; and
- charging accuracy, billing and quality of service.

AUSTEL would also be given a discrete standards making power applying to standard issue customer equipment which would cover features needed to cater for some of the needs of disabled persons.

AUSTEL may also be given a standards making power to permit standards for customer equipment that require a basic level of interoperability for customer equipment used for the standard telecommunications service.

The industry self regulation will be based on industry standards processes which would be developed under a recognised Australian standards process either by Standards Australia or an authorised industry standards body.

Labelling

A labelling regime would be used to enforce compliance with mandatory standards. All customer equipment and cabling must have a label applied by the supplier of the device, which label would state whether or not the device met the mandatory standards.

In order to meet the mandatory standard, the supplier of the equipment would need to meet any compliance requirements set out by AUSTEL.

Cabling

Persons must hold a cabling licence or operate under an appropriate class licence or perform cabling work under the supervision of the holder of the cabling licence.

Numbering

AUSTEL would be required to make a plan for the numbering of carriage services in Australia and the use of numbers in connection with the supply of services. The plan would include arrangements for number portability.

The plan would provide for the allocation and reallocation of numbers either by a price based allocation system or otherwise. The Government has made an election commitment to raise \$16 million from numbering fees.

AUSTEL would have the power to declare an industry body as a manager of electronic addressing and address the manager with respect to electronic addressing if the addressing is, in AUSTEL's opinion of public importance. The ACCC would also have a directions power.

(vi) Consumer Related Measures

The main measures envisaged by the Government are as follows.

Untimed local calls

The right to untimed local calls to residential customers and welfare and charity organisations will remain. It will also extend to businesses. Provisions to this effect have been included in the *Dilution Bill*.

After 1997, all service providers providing a fixed local call service could also be required to offer the option of untimed local calls to both residential and business customers.

Telstra would be required to continue to use at a minimum the local zones used immediately before the commencement of the *Telco Act*.

The untimed local call obligation would attach to the "standard telephone service".

Standard Telephone Service

The "standard telephone service" is to be defined as a carriage service where:

- one of the main purposes of a service of that kind is for use by an end user for voice telephony; and
- an end user supplied with a service of that kind is ordinarily able to communicate, by means of that service, with each other end user who is supplied with the same service whether or not the end users are connected to the same telecommunications network.

The definition of the standard telephone service would need to be technologically neutral, focus attention on the functionality of the service and accommodate non-voice users of voice services. Refer to section 2.2.6 below.

Price Controls

The Government is committed to the maintenance of the current Telstra price cap regime. Further, universal service providers (ie carriers) other than Telstra would be subjected to price controls in relation to services that they are required to supply under the Universal Service Obligation.

In addition, other carriers and service providers will be subject to general price surveillance by the ACCC.

Universal Service Arrangements

The Government is committed to the concept of universal service whereby a standard telephone service is available to all people in Australia, wherever they reside or carry on business.

The Government has revised the concept of standard telephone service to a concept of standard telecommunications service. This would be defined as the standard telephone service and any other prescribed services. These may be reviewed regularly.

Only carriers would be eligible to be declared universal service providers.

USO costs will be calculated using the current "avoidable cost less revenue forgone" methodology.

All carriers would be required to contribute the net cost of the USO.

(vii) *Codes of Practice and Standards*

Customer Service Guarantee

Amendments to the *Telco Act* are proposed in the *Dilution Bill*. These provide for a customer service guarantee to be made by all carriers which sets out requirements for the connection of services, rectification of faults and keeping appointments. If a carrier fails to meet this customer service guarantee, then it will be liable to pay damages to the customer.

(viii) *Service Provider Licence Conditions and Rules*

Service provider rules, which would replace the current service class licensing regime, would include the following.

- Obligations to provide operator services, directory assistance services and itemised billing.
- An obligation to comply with the TIO scheme and, the service providers who are not carriers, to enter into the scheme where directed to do so by AUSTEL.
- An obligation to assist in the maintenance of an integrated public number database.

- An obligation to establish protection arrangements for residential customers receiving standard telecommunications services.

2.2.2 Telecommunications Expert Group

In early May 1996, the Minister appointed Allan Horsley (Managing Director of the Australian Telecommunications Users Group), Mara Bun (Manager of Policy and Public Affairs at the Australian Consumers' Association), Phil Singleton (member of the Telecommunications Industry Development Authority) and Professor Henry Ergas (BellSouth New Zealand visiting Professor of Network Economics & Communications) to form a telecommunications expert group to discuss and advise the Government on the policy principles for a further exposure draft of the post 1 July 1997 telecommunications legislation. Notably, carriers and service providers were not represented in the group; which is in contrast to the Labor government's previous telecommunications advisory body, the Telecommunications Advisory Panel.

The group met on four occasions, discussing a variety of topics including carrier licensing, access arrangements, anti-competitive conduct, consumer safeguards and the continuing development of the Australian telecommunications manufacturing industry.

No official public comment has been made by the group to date, and none is expected. The Group has reported to the Minister, which report is understood to have formed the basis of the exposure draft telecommunications legislation.

2.2.3 Senate Committee Inquiry

On the 21 May 1996, the Senate resolved that the *Telstra (Dilution of Public Ownership) Bill 1996* be referred to the Environmental, Recreation, Communications and the Arts References Committee for inquiry and report by 22 August 1996.

The Committee, chaired by the South Australian Democrat Senator Meg Lees, was to consider:

- (a) whether the proposed post-1997 telecommunications regulatory arrangements ~~dated~~ in the Government's May 1996 discussion paper provide effective and adequate consumer protection safeguards;
- (b) whether the *Telstra (Dilution of Public Ownership) Bill 1996* might need to be amended to full accommodate the post-1997 regulation;
- (c) whether the timing and the likely proceeds of a partial Telstra float should be ~~fact~~ affected by the proposed post-1997 rules;
- (d) whether the *Telstra (Dilution of Public Ownership) Bill 1996* should be split into two or more pieces of legislation;
- (e) the impact on public sector savings of the partial sale of Telstra;
- (f) whether the proposed accountability regime in the *Telstra (Dilution of Public Ownership) Bill 1996* is adequate to protect the public interest;
- (g) whether joint ventures by Telstra as "de facto" privatisation and whether they confer unfair competitive advantages on Telstra's partners;
- (h) whether the Universal Service Obligations (USO) are adequately protected, including:
 - (i) Directory Assistance;
 - (ii) untimed local calls; and
 - (iii) provision of public telephones;

- and, in particular, the provision of USO in regional Australia;
- (i) whether elements of enquiry of access, public interest and USO in terms of telecommunications services beyond simple telephony can be determined, especially in regard to facsimile data and interactive transmissions;
 - (j) the extent to which Telstra and telecommunications carriers should be excluded from State and local government regulations;
 - (k) the impact of the duplication of infrastructure, and the extent to which this can be reduced by sharing;
 - (l) the impact of privatisation on employment and economic activity, particularly in regional Australia;
 - (m) whether proposed foreign investment restrictions on Telstra and other telecommunications carriers are appropriate or adequate, and take account of regulation and monitoring of financial transactions and currency flows; and
 - (n) the extent to which the bill and the post-1997 arrangements will foster the development of the Australian telecommunications services and equipment industry, research and development, and the development of new services.

On 9 September, after a three week delay caused by the receipt of insufficient information to complete its final report, the Senate Committee enquiring into the Government's Dilution Bill handed down its report, after reading 650 submissions and hearing 136 witnesses.

In summary, the Senate Committee found no substantial evidence to back the Coalition Government's claim that the Australian economy or consumers will benefit from the partial sale of Telstra.

The major recommendations of the report were:

- that Telstra remain in public ownership;
- that the Dilution Bill be divided into two bills one dealing with the proposed sale and the other concerning the Customer Service Guarantee;
- that environmental programs be funded from recurrent expenditure or from portion of Telstra's profits; and
- that if Parliament passes legislation to sell one third of Telstra that the sale should be delayed until December 1998 or at least 18 months after the post 1997 regulatory regime commences.

The Senate Committee recommendations did not come as a surprise to the Government. However, the report does give some indication as to the general resentment in the Senate to the current form of the Dilution Bill and highlights the issues which will need to be heavily debated in the Senate before the Dilution Bill can be passed.

2.2.4 Review of the "standard telephone service"

On 10 July 1996, the Minister announced the establishment of a 10 member "standard telephone service" review group to carry out a review into the definition of the standard telephone service.

The review group's term of reference is to examine whether the definition of the Standard Telephone Service (STS) mandated under the universal service arrangements should be upgraded to accommodate new technologies and minimum service levels. The current definition of the STS is given in Section 5 of the *Telco Act*. AUSTEL's interpretation of the level and quality of service that the standard telephone service constitutes is given in "AUSTEL's view of Telstra's Universal Service Obligation".

The Minister requires that the definition of the STS be assessed in the context of the post 1997 legislative framework which has been broadly agreed to date. This framework includes:

- carriers only being eligible to be declared universal service providers;
- pro-rata funding of universal service carriers;
- a scheme by which universal service providers for a particular geographic area can be selected;
- all universal service providers being required to submit a plan for fulfilling their universal service obligations to the Minister for approval; and
- universal service obligation costs being calculated using the current "available cost less revenue forgone" methodology.

The objective of the review will be to determine whether recent and emerging developments in telecommunications technology, or increased demand for more advanced telecommunications services in the Australian community, warrant a change in the level of service mandated under the universal service obligation.

Key factors to be addressed by the review include:

- an assessment of the particular needs and expectations of people living in non-metropolitan areas, including Aboriginal and Torres Strait Island Communities, and people with disabilities, in relation to basic telecommunications services including voice, data and facsimile services;
- an assessment of whether the existing definition of the standard telephone service is appropriate to ensure that existing needs are met;
- an assessment of recent and emerging changes in telecommunications technology, in terms of their implications for delivering basic services to all parts of Australia;
- an assessment of the cost implication of any proposed upgrade in the level or quality of the STS under the universal service obligation; and
- an assessment of whether the requirement in respect of payphones under the current universal service obligations is appropriate, particularly in view of the importance of payphones in meeting basic telecommunications needs in remote communities.

Any definition of STS promulgated by the review group should:

- focus attention on the functionality of the service, namely basic communications;
- be technology neutral;
- eliminate uncertainty about the meaning of "public switched telephone service";

- accommodate non-voice users of voice services;
- support a consistent definition of the "standard telephone service" throughout the post 1997 telecommunications legislation.

Further, the review should assess the need for periodic reviews of the standard telephone service under the post 1997 telecommunications legislation.

The review must report to the Minister for Communications and the Arts by November 29, 1996.

2.2.5 Telecommunications National Code and Land Access Code Discussion Paper

(a) Background

Following the Coalition's policy to implement a new Telecommunications National Code and a Land Access Code, the Minister directed AUSTEL to conduct a public enquiry into the draft telecommunications national code and the draft land access code and report the outcomes of the enquiry to the Minister by 9 August 1996.

In July 1996, AUSTEL released a discussion paper and draft revised Telecommunications National Code and a Land Access Code for public comment. This followed a year long review of the National Code by Austel during which time Austel published an Issues Paper (in November 1995) and a Report setting out 57 recommendations (in January 1996).

In summary, Austel's recommended changes to the National Code:

- place more stringent obligations on the carriers when installing telecommunications infrastructure; and
- give government (particularly local) authorities greater influence over the process.

In its Report, Austel noted that while State and Territory government departments and agencies may be more inclined actively to engage in processes available under the existing National Code, there is less opportunity for them to influence the outcome of these processes than is the case with local government bodies. This is because State or Territory government departments or agencies have no means of compelling a carrier to take a proposal for a prescribed activity to an independent arbiter such as the Secretary of DEST.

The draft Codes reflect the Coalition Government's policies of tighter notification and consultation requirements, and enhanced rights for state and local governments.

To date, the Government has not indicated whether it will adopt the draft Codes.

(b) Summary of effects of proposed Codes

In summary, the new Codes should have the following effect.

- The experience with the carriers under the old National Code was that they preferred to negotiate rights of way and attachment points (particularly with the electricity authorities for their respective metropolitan broadband roll-outs). This should continue under the proposed new Codes, although such agreements must be lodged with Austel and made available to the public.
- The new Codes apply from 1 July, 1997. The Federal Government has not decided how it wishes to proceed post 1 July, 1997 in relation to carrier powers and immunities. It appears that immunities from State and Territory planning and environmental laws will **continue**

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- The new Codes will increase planning periods and increase the sensitivity of proposed developments for carriers.
 - Telstra and Optus are well practised in community and government consultation. The new procedures (potentially including public notification and consultation) will probably not have a major differential impact on them (in addition, both are pursuing accelerated broadband roll-out strategies prior to 1 July 1997).
 - The new procedures, if they continue to apply after 1 July 1997, will have a major impact on new entrants (new basic service and cellular carriers).
 - State and Territory Governments can co-ordinate their agencies to make facilities (such as ducts and conduits) available for co-location of carrier facilities. Also, such Governments can deliver to the carriers certain relief from the processes and procedures of the new Codes as a trade off for carrier compliance with certain planning and environmental laws.

(c) ***Proposed Codes and the effect on State Governments***

- ***Land Access Code***

Currently there is no Land Access Code, with land access procedures governed by relevant provisions of the *Telco Act*.

The new Land Access Code aims to:

- ensure consistency with the Telecommunications National Code as far as possible;
- co-ordinate activities between carriers to minimise disruption; and
- require carriers to provide reasonable written notice and consultation in matters requiring access.

- ***New National Code***

The following provisions of the new draft Code will directly enhance the rights of State or Territory authorities.

- Carriers **must notify** each relevant State and Territory authority in writing prior to engaging in **any** prescribed activity, and prepare a Prescribed Activity Proposal (which must set out various details).
- Carriers **must modify a Prescribed Activity Proposal or the manner in which they propose to engage in a prescribed activity** so as to comply with any recommendations of a relevant State or Territory authority **unless** a carrier has reasonably determined that it:
 - would not be feasible on economic grounds; or
 - would not be practicable on technical grounds; or
 - would be incompatible with the configuration, or intended configuration, of the carriers's telecommunications network; or
 - would be likely to have a greater adverse effect on the environment than not giving effect to that recommendation; or
 - would require the carrier not to proceed with a Prescribed Activity Proposal, or not to engage in a prescribed activity in a particular manner, with effects so significant to the operation or development of the carrier's telecommunications network that, having regard to the objects of the National Code: the Prescribed Activity Proposal should proceed; or the carrier should engage in the prescribed activity in that manner, without regard to the recommendation.
- If the Prescribed Activity Proposal will have a high or medium impact and if requested by a relevant State or Territory authority, carriers **must notify** the public of the Prescribed Activity Proposal (via advertisements in a daily newspaper, public notices and the distribution of information leaflets).
- If the Prescribed Activity Proposal will have a high impact on the environment and if requested by a relevant State or Territory authority, carriers **must consult** with the community (via advertised public meetings at which the carriers attends). Further, if the relevant State or Territory authorities make recommendations as a result of the consultation, the carriers must respond to such recommendations.
- Dispute resolution is through AUSTEL, which may make directions to a carrier about how the carrier should comply with its obligations under the *Telco Act* or the Code. A breach of such obligations may cause a carrier to incur penalties up to \$10 million.

Further, the following provisions of the new Code will indirectly impact upon the rights of State or Territory authorities.

- Carriers must co-operate with other carriers and public utilities to share sites and must relocate as far as practicable. However, a carrier is not required (except in relation to aerial cabling) to co-locate where it is not economically feasible, not technically practicable, incompatible with network, would have a greater adverse effect on the environment or would be inconsistent with standards.
- Carriers cannot install aerial cabling unless aerial cabling of some type is already in place. Carriers must relocate underground when all others do so and contribute a reasonable amount to the costs of so relocating.
- Carriers **must notify**:
 - the Chairperson of the Australian Heritage Commission (but only where activities are to be undertaken in certain "heritage" areas); and
 - the Secretary of the (Cth) Department of the Environment, Sport & Territories (but only where activities are to be undertaken in or near certain areas or in a manner that, inter alia, could have an adverse effect on a threatened species of flora or fauna), in writing prior to engaging in any prescribed activity, and prepare a Prescribed Activity Proposal.
- Carriers **must modify a Prescribed Activity Proposal or the manner in which they propose to engage in a prescribed activity** so as to comply with any recommendations of a the Chairperson and/or the Secretary.

(d) *Benefits to State Governments from the new Codes*

While the new National Code does not grant State or Territory Governments the absolute right to stop or change carrier network rollout, it does grant such bodies powers which are a useful starting point for negotiation of commercial access.

Such Governments can facilitate installation of facilities by streamlining procedures: they has the power to direct (or not direct) carriers to notify the public of their plans and to consult with the community at public meetings.

In addition, the co-location and aerial rollout restrictions provide an opportunity for State or Territory Governments to force carriers to utilise the facilities of the various agencies of such Governments (particularly ducts and other conduits and rights of way). Of course, such co-location would be on a commercial basis.

The new Code sets out various incentives to get carriers to use the facilities of public utilities and government authorities, including the opportunity to downgrade the impact assessment status of a prescribed activity (which could enable carriers to avoid the possibility of State or Territory Government authorities requiring public notification and community consultation).

2.2.6 Closure of the AMPS network by 1 January 2000

On 15 July 1996, the Government confirmed its commitment to phasing out the AMPS mobile phone network by 1 January 2000, subject to appropriate safeguards.

The Minister has asked the Spectrum Management Authority (SMA) to establish a timetable for the withdrawal of AMPS spectrum. The Minister noted that the phase out will take into account the need to preserve the existing coverage and quality of mobile service to the greatest extent possible, as the analogue system is gradually replaced with digital technology.

Also, the Government recognised that mobile phone users in rural and remote areas will have particular concerns about coverage and that the SMA have been asked to consider options for dealing with these as part of its consultation process.

The reaffirmation of this policy is primarily due to the Commonwealth's contractual obligations to Vodafone and Optus to close substantially all of Telstra's AMPS analogue network by 1 January 2000. Failure to do so, would mean that the Commonwealth would be in contravention of its agreement with Vodafone (unless Vodafone consents to a new closure date) and that the Commonwealth may be in contravention of its agreement with Optus Mobile, unless the Commonwealth follows certain prescribed processes. The consequences of a contravention by the Commonwealth of these agreements are significant, with the Commonwealth potentially liable for any losses suffered by Optus and/or Vodafone as a result of that contravention, whether such losses are direct, indirect or consequential.

The Commonwealth's licensing agreements with each of Vodafone and Optus provide that the Commonwealth will not vary in any material degree provisions of the public mobile licences. Provisions of such licences have been set out in various declarations. In particular, the Telecommunications (Public Mobile Licences) Declaration 1/92 provides, inter alia;

- restrictions on the installation and operation of an AMPS network and the supply of AMPS services, in particular, prohibiting public mobile licensees from installing or operating AMPS networks after 1 January 2000;
- that between 1 January 1996 and 1 January 2000, a licensee must comply with any plan in writing determined by the Minister in relation to:
 - (a) ceasing installation or operation of an AMPS network; or
 - (b) ceasing the supply of AMPS services; or
 - (c) ceasing to use the radiocommunications spectrum used in relation to AMPS services; and
- that Telstra may continue to instal or operatean AMPS network in an area:
 - (a) contrary to the requirements of the Minister's band plan; or
 - (b) after 1 January 2000;when:
 - (c) the Minister and all public mobile licensees agree in writing; or
 - (d) the Minister agrees in writing after:
 - (i) the Minister has consulted with each mobile carrier; and
 - (ii) the Minister has determined that the installation or operation of the AMPS network will not erode unduly the practical value of a mobile carrier's rights.

The Explanatory Notes to this Declaration state that whilst it is the intention that digital technology will replace AMPS as the main platform for public mobile telephony services, it is possible that there will be circumstances where the ability to use AMPS may be useful, such as in rural and remote areas of Australia.

As a result, the Minister may authorise the continued use of AMPS in certain rural and remote parts of Australia after 1 January 2000, provided either all public mobile licensees agree, or the Minister is satisfied that there will be no erosion of the value of the rights of the licence to public mobile carriers as a result.

Therefore, despite the confirmed policy of the Coalition to shut the AMPS network, it is likely that the Government will legislate to maintain part of the existing AMPS network in rural and remote parts of Australia. **The extent of this would be of particular concern to Western Australia.**

2.2.7 Auctioning of spectrum Proposals Papers

(a) Clearance of occupied spectrum

The current licensing processes contained in the *Radiocommunications Act 1992* require spectrum to be cleared before it is reallocated to new users. Spectrum clearance has the potential to be a time and resource consuming process.

Proposed amendments to the *Radiocommunications Act 1992* (Refer to Section 2.2.7 below) will allow for the sale of spectrum while it is occupied. This raises particular concerns for State and Territory Governments, who are significant incumbents on the spectrum and will face the possibility of having to vacate that spectrum in the near future.

(b) Proposed Spectrum Licences

Currently persons occupying the spectrum do so under a renewable 12 month apparatus licence. This system is to be replaced by 10 year spectrum licences which authorise the licensee, or a person authorised by the licensee, to operate radiocommunications devices within specified boundaries of frequency bandwidth, area and time.

Spectrum licensing confers a form of property right over the spectrum. Licensees may trade licences, or parts of licences, provided they follow any rules about trading made by the SMA. Licensees are able to acquire licences or parts of licences from each other in the market place and aggregate them to form licences covering larger areas or licences permitting use of a wider frequency bandwidth, or both. Licensees may also divide their licences into smaller parts and market surplus spectrum as licences covering narrower bandwidth, or licences covering smaller areas, or both.

Spectrum designated by the Minister for spectrum licensing may be used for any purpose, subject to the core conditions of the licence, any technical conditions imposed by the SMA and any other conditions imposed under the *Radiocommunications Act*. Therefore, Spectrum licensees have the flexibility to change their equipment, antenna, siting, or any other aspects of their spectrum use

(c) Proposed sale and licensing arrangements for 1.8 GHz

In July 1996, the Spectrum Management Agency released a paper setting out proposals for the allocation of radio frequency spectrum in the 1.8GHz bands. The paper provided an opportunity for the public to make representations about the major changes proposed to access arrangements to this spectrum band, prior to 30 August 1996.

The auctioning of the band will provide for the introduction of new Personal Communication Services (PCS), which will introduce further competition into the mobile cellular and mobile local access markets.

The SMA proposes adopting the US style of auctioning spectrum, employing a simultaneous ascending bid multiple round auction. Under the proposed system, prospective licensees will be able to acquire a great deal of band width in one area, or a limited amount of band width across a number of areas, or any combination of band width and area, according to their business plan. In a simultaneous ascending bid multiple round auction, all the lots on offer are auctioned simultaneously rather than in sequence. Bidders can bid on any lots or any combination of lots, up to an individual limit that has been declared in advance.

The SMA wishes to develop an approach that will be clear and easy for potential purchasers to follow. The approach needs to be consistent with the policy intentions of the Government, particularly in facilitating the introduction of new services and new entrants into the market. The SMA believes that the allocation lots should be small enough to permit new entrants

to come into the market on a modest scale, without, for example, having to acquire spectrum on an Australia wide basis or in very large frequency blocks. At the same time, it is recognised that spectrum lots must be of sufficient size to enable reliable services to be operated, and that having allocation lots too small could tend to work against maximising utility for consumers.

In the 1.8GHz Proposals Paper, comments were sought on the following issues:

- the amount of spectrum to be allocated, the bands to be allocated and the extent of the geographic coverage;
- the benefits of the simultaneous sending multiple round auction system or a traditional open-cry auction;
- the desirability of bids being framed in terms of an annual fee with bidders making payments during the course of their licence; or
- alternatively, the more traditional approach which involves successful bidders paying an up front amount;
- appropriate competition and policy rules for the 1.8GHz band;
- the size and nature of lots to be offered in an allocation of the 1.8GHz band;
- the timing and conditions for therecovery and future allocation of AMPS spectrum.

The SMA has not yet released details of its findings.

2.2.8 Draft telecommunications legislation

On 16 August the Federal Government released for public comment the first package of the draft post 1 July 1997 telecommunications legislation containing the *Radiocommunications Amendment Bill 1996*, the *Australian Communications Authority Bill 1996* and part of the *Telecommunications Bill 1996* relating to technical regulation and numbering.

A second package of draft telecommunications legislation was released for public comment on 13 September 1996 containing the *Trade Practices Amendment (Telecommunications) Bill 1996*, the *Telecommunications (Transitional Provisions and Consequential Amendments) Bill 1996* and further parts of the *Telecommunications Bill 1996* relating to the licensing of carriers, regulation of service providers, powers of the Australian Communications Authority and the Australian Competition & Consumer Commission to undertake public inquiries and investigations, and information gathering and enforcement powers for the Australian Communications Authority.

A further package of draft telecommunications legislation, yet to be finalised for exposure, is expected in early October 1996 and will include provisions relating to: international aspects of activities of the telecommunications industry; the universal service regime; emergency call services; defence requirements and disaster plans; untimed local calls; monitoring the performance of service providers and carriers; reviewing competitive safeguards within the industry; the telecommunications industry ombudsman; calling line identification; pre selection; and service providers rules including directory assistance services, operator (fault and difficulty) services, itemised billing and integrated public number database.

The Government proposes to put the full package of legislation before Parliament in late 1996.

(a) *Radiocommunications Amendment Bill 1996*

The *Radiocommunications Amendment Bill 1996* amends the *Radiocommunications Act 1992* to:

- enable the sale of spectrum while it is occupied;

-
- apply section 50 of the *Trade Practices Act 1974* to the issue of spectrum and apparatus licences and to the authorisation of third parties to operate under such licences;
 - make changes necessary to enable the making of electromagnetic compatibility (EMC) standards;
 - ensure that the health and safety of persons using radiocommunications transmitters or receivers is protected; and
 - remove all provisions in the current Act that relate to technical licence specifications.

(b) *Australian Communications Authority Bill*

The *Australian Communications Authority Bill 1996* establishes the Australian Communications Authority (ACA) from 1 July 1997.

The ACA will be constituted by a merger of the Spectrum Management Agency (SMA) and the Australian Telecommunications Authority (AUSTEL). AUSTEL's competition policy functions will be transferred to the Australian Competition and Consumer Commission (ACCC).

The ACA's main functions will be regulating telecommunications in accordance with the *telecommunications Bill 1996* and managing radiofrequency spectrum in accordance with the *Radiocommunications Act 1992* .

(c) Telecommunications Bill 1996

The parts of the draft *Telecommunications Bill 1996* released so far provide for the following.

(i) Parts 1A and 2 - Licensing of carriers & the use of network units

The object of these Parts is to ensure that open market access is established for both telecommunications infrastructure and service providers. Current restrictions on the installation of telecommunications infrastructure will be removed and carrier licences will be required only from persons wishing to use infrastructure to provide services to the public.

There is a prohibition on the use of *network units* to supply carriage or content services to the public without the owner of the *network unit* being licensed as a carrier or there being a carrier willing and able to take on all carrier-related responsibilities in regard to that *network unit*. Limited exceptions apply to this prohibition for certain persons and uses, such as for defence or transport purposes, and use by broadcasters or electricity supply authorities.

A *network unit* is being used to supply a carriage service to the public where it is used to supply end-users not in the *immediate circle* of the owner of the *network unit* (or nominated carrier, as relevant). The concept of *immediate circle* is extensively defined in relation to individuals, body corporates and Commonwealth, State and Territory entities.

A *network unit*, which is closely based on the existing concept of *reserved line links* under the *Telecommunications Act 1991*, includes:

- a single *line link* connecting distinct places in Australia at least 500 metres apart;
- multiple *line links* owned by the same person or persons which connect distinct places in Australia, the aggregate distance between which is at least 5 kilometres;
- *designated radiocommunications facilities* which connect a point in Australia with one or more other points in Australia; and
- facilities specified in a Ministerial determination.

The ACA will be responsible for licensing carriers, with no restriction on the number of carriers. Carrier licence conditions will include, in particular, obligations:

- to provide other carriers with access to facilities for the purposes of enabling the other carriers to provide competitive facilities and competitive carriage services or establish their own facilities;
- to provide other carriers with access to certain information relating to the operation of telecommunications networks;
- to comply with the provisions of the *Telecommunications Bill* and the *Trade Practices Amendment (Telecommunications) Bill* relating to access obligations, the competition rule, tariff filing directions and record keeping rules.

Where the owner or owners of a *network unit* wish to allow the *network unit* to be used to supply carriage services to the public, but do not wish to be bound by the carrier obligations and a licensed carrier is willing to accept responsibility for those obligations, then the carrier may apply to the ACA for a nominated carrier declaration.

(ii) Part 2A - Service provider rules

The object of this Part is to avoid unnecessary regulation of private network operations and to take a light handed approach to the regulation of service providers by not requiring individual licences.

Service providers will be (with limited exceptions):

- *carriage service provider* s which include:
 - any person supplying, or proposing to supply, carriage services to the public using *network units* that are owned by carriers or in respect of which a nominated carrier declaration is in force;
 - carriers or persons using capacity which has been acquired by a carrier from networks which are exempt from carrier licensing requirements supplying carriage services to the public; and
 - any other person supplying, or proposing to supply, carriage services declared by the Minister by disallowable instrument (where it is necessary to regulate such service providers for particular purposes); and
 - *content service providers* which include persons using, or proposing to use, carriage services to supply content services to the public.

Service providers must comply with the *service provider rules* which include obligations to:

- provide directory assistance services and itemised billing;
- assist in the maintenance of a complete integrated public number database
- join the Telecommunications Industry Ombudsman scheme;
- establish protection for residential customers against failure of service providers to provide pre-paid services; and
- in the case of *carriage service providers* only, comply with any standard access obligations that are applicable to the provider, the competition rule and with any tariff filing directions or record keeping rules that are applicable to the provider.

(iii) Part 3 - Numbering

The ACA is required to prepare a numbering plan, including rules in relation to allocation and portability. Numbers are to be allocated in accordance with a price based system.

The ACA is responsible for appointing an industry body to manage electronic addressing.

(iv) Part 4 - Technical regulation

This Part establishes a scheme for the technical regulation of telecommunications primarily by industry self regulation, addressing the matters of standards, compliance, cable installation and labelling.

(v) Parts 15 and 16 - ACA and ACCC powers to hold inquiries and investigations

The ACA or the ACCC may hold public inquiries about matters concerning carriage services, content services, the telecommunications industry, or a matter relating to the ACA's or ACCC's telecommunications functions or powers. Public inquiries may be held following a direction from the Minister or on the initiative of the ACA or the ACCC. The findings of the ACA or ACCC following its public inquiry must be set out in a report.

The ACA may investigate certain matters relating to telecommunications, including a contravention of the *Telecommunications Bill*, a matter relating to the supply of a carriage service, a matter relating to the connection of customer equipment, and a matter relating to performance, or the exercise, of the ACA's telecommunications functions or powers. An investigation may be initiated by a complaint from a person to the ACA, or at the instigation of the ACA. The ACA must investigate a matter if requested by the Minister. Where the investigation has been undertaken at the request of the Minister, the ACA must prepare and give to the Minister a report. Publication of a report is at the discretion of the ACA, except where the report emanates from an investigation requested by the Minister in which case the Minister may direct the ACA to publish the report. Where a report would be likely to adversely effect the interests of a person, the report must not be published until the ACA has given the person a reasonable period to make oral or written representations in relation to the matter.

(vi) Part 19D - ACA information gathering powers

The ACA can obtain information and documents from a carrier, a service provider and other persons whom the ACA has reason to believe have information, documentation or who are capable of giving evidence relevant to the performance or exercise of any of the ACA's telecommunications functions and powers.

(vii) Part 19F - Review of decisions

A person affected by various decisions made by the ACA may have the decision reconsidered by the ACA. Such decisions include the refusal to grant a carrier licence, the cancellation of a carrier licence, the refusal to make a nominated carrier declaration, the revocation of a nominated carrier declaration, the refusal to issue a connection permit, the variation or revocation of a condition of a connection permit, the cancellation of a connection permit, the refusal to grant a cabling licence, the cancellation of a cabling licence, and the variation or revocation of a condition of a cabling licence.

If the ACA affirms or varies its original decision, a person affected by the decision may apply to the Administrative Appeals Tribunal for a review of the decision. There is no right to make an application to the Administrative Appeals Tribunal where the ACA has revoked its original decision.

(viii) Part 20 - Injunctions

The Federal Court may, on the application of the Minister, the ACA or the ACCC, grant an injunction in relation to contraventions or proposed contraventions of the *Telecommunications Bill*.

The Federal Court may grant two forms of injunctions. First, a "restraining injunction" which restrains a person from engaging in conduct which would amount to a contravention of the *Telecommunications Bill*. Second, a "performance injunction" which requires a person to do something, where the refusal or failure to do that thing would amount to a contravention of the *Telecommunications Bill*. There is no need to establish that there will be substantial damage incurred if the "restraining injunction" or the "performance injunction" is not granted.

The Federal Court may grant an interim injunction before it considers an application for a "restraining injunction" or a "performance injunction". In these circumstances, the Minister, the ACA or the ACCC is not required to give any undertaking as to damages.

Part 20 does not limit the rights of persons other than the Minister, the ACA or the ACCC to seek an injunction if they otherwise have standing under common law or statute.

(ix) Part 21A - Civil penalties

The Federal Court is able to order a person to pay to the Commonwealth such pecuniary penalty as it determines to be appropriate where a person has contravened a civil penalty provision of the *Telecommunications Bill*.

The Federal Court, in determining the pecuniary penalty, is required to have regard to all relevant matters including the nature and extent of the contravention and the nature and extent of any loss or damage suffered as a result of the contravention. The maximum pecuniary penalty payable by a body corporate for:

- each contravention of a carrier licence condition or a service provider rule that does not relate to a breach of the competition rule is \$10 million;
- each contravention of a carrier licence condition or a service provider rule that relates to a breach of the competition rule is \$10 million plus \$1 million for each day that the contravention continued; or
- all other contraventions is \$250,000 for each contravention.

The maximum pecuniary penalty payable by a person (other than a body corporate) is \$50,000 for each contravention.

Only the Minister, the ACA or the ACCC has standing to institute proceedings to recover a pecuniary penalty.

(x) Part 21B - False or misleading statements

It is an offence for a person to intentionally or recklessly make a false or misleading statement (whether orally, in writing, in a data processing device or in any other form) to an ACA employee or delegate exercising powers or performing functions relating to the regulation of telecommunications matters.

(d) Trade Practices Amendment (Telecommunications) Bill 1996

The *Trade Practices Amendment (Telecommunications) Bill 1996* will amend the *Trade Practices Act 1974* to provide the ACCC with the powers to regulate competition in the telecommunications industry.

In particular, it provides the following.

(i) Sections 65D & 65E- Information standards

A person must not supply a listed carriage service ancillary service or ancillary goods to consumers in contravention of a prescribed product information standard.

Regulations may prescribe information relating to features, performance, kind or quality, promotion or supply, value and legal rights attaching to the goods or services, and may specify the manner and form of disclosure.

The section does not by implication limit existing section 65D of the *Trade Practices Act*, which means that standards could continue to be set for other telecommunications relevant items under the existing provision.

(ii) ***Part XIB - Anti-competitive conduct***

Part XIB sets up a special regime for regulating anti-competitive conduct in the telecommunications industry. This regime will apply in addition to Part IV of the *Trade Practices Act*, which regulates restrictive trade practices in general. The exemptions from Part IV given to carriers under the *Telecommunications Act 1991* will not be continued.

Part XIB aims to facilitate vigorous competition in the telecommunications industry. It is also concerned to prevent members of the industry with a substantial degree of power in a telecommunications market from engaging in anti-competitive conduct. Carriers and carriage service providers with substantial market power should not be able to take advantage of that market power to stifle competition.

The Government intends that the competition rules for telecommunications will eventually be aligned, to the fullest extent practicable, with general trade practices law. Part XIB will apply for the period from 1 July 1997 until some future review (which must be before 1 July 2000) determines that competition is sufficiently established and that the Part or some provisions of the Part are no longer needed.

Competition Notices

The ACCC will be able to issue a written notice, to be known as a *Competition Notice*, stating a specified carrier or carriage service provider has contravened *the competition rule*. The competition rule is that a carrier or carriage service provider must not engage in anti-competitive conduct.

There are two circumstances in which a carrier or a carriage service provider will be said to engage in anti-competitive conduct for the purposes of Part XIB.

A carrier or carriage service provider will be taken to engage in anti-competitive conduct if the carrier or carriage service provider:

- has a substantial degree of power in a telecommunications market and takes advantage of that power with the effect, or likely effect, of substantially lessening competition in that or any other telecommunications market; or
- engages in conduct in contravention of section 45, 45B, 46, 47 or 48 of the *Trade Practices Act* and the conduct relates to a telecommunications market.

The ACCC will be required to formulate guidelines before 31 July 1997, which must be considered by the ACCC in deciding whether to issue a Competition Notice.

A carrier or carriage service provider proposing to engage in a course of conduct will be able to seek an order from the ACCC, to exempt the conduct from the scope of the definitions of anti-competitive conduct. The ACCC must satisfy itself that the conduct will result in a net benefit to the public.

Information gathering, including tariff filing and record keeping rules

The ACCC will have extensive information gathering powers equivalent to those currently possessed by AUSTEL in relation to competition regulations. In particular, the ACCC will be able to require the provision

of information that is relevant to the performance of its functions or the exercise of its powers under proposed Part XIB or under proposed Part XIC.

The ACCC will be able to direct carriers and carriage service providers to file tariff information with the ACCC if satisfied that they have a substantial degree of power in a telecommunications market and the ACCC has reason to suspect that the person has engaged, is engaging in or is proposing to engage in anti-competitive conduct.

Tariff information will only be made publicly available if the ACCC is satisfied that this would result in a net public benefit.

The ACCC will be empowered to make record keeping rules with which specified carriers and carriage service providers will be required to comply. The information contained in these records will assist the ACCC in the exercise of its powers to give Competition Notices, arbitrate access disputes, administer the operation of rules of conduct about dealings with international telecommunications operators, regulate Telstra's charges, and assist the ACA with administration of the universal service scheme.

(iii) ***Part XIC - Telecommunications access regime***

Part XIC provides an access regime specific to the telecommunications industry that is in addition to the general access regime in Part IIIA of the *Trade Practices Act*. It is intended to be the primary access regime for the telecommunications industry, although it expressly does not preclude the right of non-service providers to seek declaration under Part IIIA of the *Trade Practices Act*. If a service is declared under both regimes, service providers are limited to using Part XIC.

The objects of this Part are:

- the promotion of competition (focusing on the removal of obstacles to endusers of listed services gaining access);
- any-to-any connectivity, which is achieved only if endusers are able to communicate whether or not both are connected to the same network; and
- encouraging economically efficient use of, and investment in, infrastructure.

ACCC declaration of services

Part XIC applies to *listed service companies* and to *services that facilitate the supply of a listed carriage service*.

There are two methods of declaring services under this access regime:

- by recommendation of the Telecommunications Industry Forum (TAF) (a body of all carriers and carriage service providers to be declared by the ACCC), in which case the ACCC must declare the service; and
- following a public inquiry.

Effect of declaration - Standard Access Obligations

Once declared (*active declared service*) a service is subject to *standard access obligations*.

An immediate right of access exists, through one of the channels:

- access codes;
- commercial agreement between the parties;
- access undertakings;
- ACCC arbitration.

Access providers must comply with terms and conditions determined under one of these mechanisms.

Access Codes

The TAF may submit draft Access Codes to the ACCC for approval. A draft code will set out model terms and conditions which comply with standard access obligations and are capable of being adopted or incorporated in access undertakings. A Code will only be approved by the ACCC following consultation with industry participants and consumers and must be consistent with Ministerial price determinations, and reasonable.

If the TAF fails to adopt a Code (which is possible given that the TAF will consist of disparate entities), then the ACCC may make an Access Code.

There is no right of review for TAF or ACCC Codes as they do not bind a provider unless a provider submits an undertaking adopting such a Code.

Access Undertakings

Terms and conditions of access may be specified in an undertaking, or adopted or incorporated from a Code and specified in the undertaking.

Where an undertaking does not incorporate a set of model terms, it must only be accepted following a public submission process. In any event, undertaking must be consistent with standard access obligations, any Ministerial price determinations (if it bears a price) and be fair and reasonable.

Access Arbitration

Where the service provider and access seeker are unable to agree on access terms and conditions, the ACCC may arbitrate. The ACCC may not make a finding inconsistent with an undertaking and is restricted in relation to circumstances where it is able to make a determination and the issues that it must consider when it does make a determination.

Parties have a right of review to the Australian Competition Tribunal which operates as a rehearing, and may also appeal to the Federal Court on questions of law.

(e) ***Telecommunications (Transitional Provisions and Consequential Amendments) Bill 1996***

◦ *Services covered by existing access agreements*

The ACCC, in consultation with AUSTEL, must specify by 1 July 1997 which of the services included in current access agreements registered under the *Telecommunications Act 1991* are to be **declared services** for the purposes of the proposed access regime.

◦ *Registration of existing access agreements*

Access agreements between carriers which were registered and in force immediately before 1 July 1997 are deemed to have been registered with the ACCC under the proposed access regime. Such agreements will continue in force despite the enactment of the new legislation and retain their immunity from the provisions of Part IV of the *Trade Practices Act* until 31 December 1997 or until such agreements are varied, whichever is the earlier.

◦ *Existing carrier licences*

Carriers with a licence in force immediately before 5 June 1997 are deemed to have been granted a carrier licence under the *Telecommunications Act 1996* by ACA on 1 July 1997. This deeming provision does not affect the Minister's powers to make, vary or revoke licence conditions, including those of existing carriers.

2.3 Regulatory Environment Application of General Competition Law

Although the philosophy behind the proposed telecommunications regulatory regime post 1 July 1997 is to move closer to regulation under general competition law, the Government still perceives the need to continue to regulate telecommunications in addition to general competition law.

The current policy of the Government is to make carriers and other participants in the market subject to general competition law (including Part IV of the *Trade Practices Act*), supplemented by broader industry specific provisions to be administered by the general competition regulator, the ACCC.

FOOTNOTES

1. *Australian Telecommunications Services: A New Framework* (known as the Evans Statement).
2. Announced by the then Prime Minister Hawke and detailed in a booklet entitled, *Microeconomics Reform: Progress Telecommunications* (known as the Beazley Statement).
3. Beazley Statement, para. 3096.
4. The Commonwealth has entered into Deeds of Agreement with each of Optus and Vodafone that, inter alia, restrict the Commonwealth's ability to grant further carrier licences (known as the Section 70 Deeds).
5. Telecommunications (Price Competition) Direction 1994.
6. AUSTEL's Report on the Service Provider Industry dated March 1995, found that the service provider industry ~~was~~ performing in a manner which would promote commercially sustainable competition due to, inter alia, the high prices charged by carriers for network access, restrictive conditions applied by carriers for the supply of network services, and the low level of network access and functionality provided to service providers by carriers.
7. Industry discussion paper on number portability, AUSTEL's Number Portability Study Group, 1 May 1996.
8. R v Brislan; ex parte Williams(1935) 54 CLR 262 examined this issue in the broadcasting context.
9. In addition, the Commonwealth has clear powers under Section 51 (xxix) of the Constitution, which is the external affairs power, to regulate telecommunications in the international arena.
10. Section 109 of the Constitution.
11. Optus has recently met with some resistance from the Courts in actions by Local Councils trying to stop the aerial rollout of Optus' broadband network. In a number of actions the Courts have strictly interpreted the carrier obligations under the Code to notify and consult and have required Optus to commence new notification and consultation procedures before continuing to rollout its network.
12. Sections 33 and 34 of the *Telstra Corporation Act 1991* .
13. Clause 14, Telecommunications (General Telecommunications Licences) Declaration (No 1) of 1991; Clause 14, Telecommunications (Public Mobile Licences) Declaration (No 1) 1991.

APPENDIX E :MEMBERSHIP OF THE STEERING COMMITTEE

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Chairperson

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Indian Ocean Centre
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(Member of TIAC)

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MS LESLIE CHALMERS

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MS LYNNE THOMAS

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Representative)

Executive Officer:
Mr Earl White
(TIAC)

**PUBLIC COMMENT
REPLY SHEET**

TO: THE EXECUTIVE OFFICER

WESTERN AUSTRALIAN TECHNOLOGY
AND INDUSTRY ADVISORY COUNCIL

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