



Committee Secretary  
Senate Environment, Communications, Information Technology and the Arts  
Committee  
Department of the Senate  
Parliament House  
Canberra ACT 2600

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9 September 2005

*Re: Inquiry into the Transition to Full Private Ownership of Telstra, Amendments to the Telecommunications, Future Proofing & Other Related Bills*

Dear Secretary,

Thank you for providing the opportunity to present a submission to this important Senate Inquiry. Whilst we welcome many of the consumer protection and “future proofing” measures proposed by the amended Bills & new Bills under consideration, we are not convinced that the regulations go far enough.

- **CTN strongly encourages the Government to strengthen consumer protection regulations before the privatisation of Telstra proceeds.**

The Consumers Telecommunications Network (CTN) offers these comments as a national peak body of consumer and community organisations, and of individuals representing community interests, who participate in developing national telecommunications policy. CTN advocates policies for better access, quality of service and affordability of telecommunications facilities for all residential consumers.

We note that the Senate ECITA Committee was given only 6 days to call for input and then report. Whilst we recognise that the ECITA Committee had no control over this timeframe, it must be noted that CTN’s ability to thoughtfully consider and widely consult with our constituents on the issues raised in this inquiry are severely restricted as a result. Similarly, the narrowness of the terms of reference restricts our capacity to comment on other matters that are relevant to the full privatisation of

Telstra. We are concerned that this process may expose the Senate to criticisms that its Inquiries are without substance and undemocratic.

The telephone is not a luxury item— it is essential not only for contacting emergency services, but also for participating fully in society. Consumers believe there must be a declaration that a telephone is an essential service, in addition to the rights already afforded Australians by the Universal Service Obligation (USO).

- **CTN members believe that it is imperative in the government's reaffirmation of the USO, that telecommunications is declared as an Essential Service, so that there is NO question that all Australian's have a right to a telephone.**

CTN has just completed a survey gauging consumer opinions about consumer safeguards and the proposed full privatisation of Telstra. Consumer Safeguards were listed in order of importance. Notably, the survey revealed that consumers regard the provision of high quality emergency services as the most important safeguard which must be guaranteed despite the full privatisation of Telstra. To date there has been no mention in the Bills being proposed which addresses this public concern.

Consumer Safeguards listed in order of highest importance in the recent CTN Privatisation Survey.

1. Provision of Emergency Services
2. Access to services and equipment for people with disabilities
3. Infrastructure Safeguards
4. Customer Service Guarantee and Quality of Service
5. Specific Rural and Remote regions Safeguards
6. Universal Service Obligation
7. Foreign Ownership of Telstra safeguards
8. Sale funds NOT to be used to service debts
9. National Relay Service
10. Protection for customers against failure to provide a Standard Telephone Service
11. Free Directory Assistance
12. Payphone provisioning
13. Price Control arrangements for Telstra

- **The Government must reaffirm its commitment to the provision of high quality emergency services and ensure that this is preserved regardless of the ownership of Telstra.**

We offer the following comments on the terms of reference of the inquiry.

*The operational separation of Telstra*

- **CTN endorses moves toward operational transparency as an important step toward achieving greater transparency, particularly with regard to how much it actually costs Telstra to provide services to end users.**

Whilst not as stringent as structural separation (which CTN has advocated for previously), organisational separation is better than the status quo and should ensure better prices for non-Telstra customers. CTN is aware that complaints about the lack of transparency of Telstra's structure has hampered the efforts of regulators (particularly the ACCC) in obtaining information that it may require. We are concerned that the Bill does not specify how operational separation should occur, and appears to leave this to Telstra. We'd like to see some clearer guidelines and more detail about how this will be enacted.

*The role of the Australian Competition and Consumer Commission (ACCC), including:*

- i. the requirement that it consider the costs and risks of new infrastructure investment when making access decisions, and*
- ii. streamlining the decision-making processes, including the capacity for the ACCC to make procedural rules;*

- **CTN supports the need to ensure that the ACCC has the appropriate powers to regulate a fully privatised Telstra, especially to ensure that the proposed organisational separation is effective.**

Competition can only benefit consumers if the marketplace operates effectively to ensure prices are pushed downwards and choices are optimal. We have grave concerns that once Telstra is fully privatised there will be a stronger imperative for Telstra to use its size and market share to dominate the Australian telecommunications market place. In our opinion the ACCC must have the powers to be an effective regulator, otherwise consumers will loose out by increasing not decreasing prices and less choices as competitors are pushed out of business by predatory practices.

*The role of the Australian Communications and Media Authority, including:*

- iii. the provision of additional enforcement powers,*
- iv. (See below)*

- **CTN is pleased that our support for a stronger and better resourced regulator is reflected in the current bills, even if there remains too much emphasis on self regulatory instruments.**

As highlighted in the “Consumer Driven Communications” Report 2004, consumers seek workable regulation and effective enforcement in the telecommunications industry to ensure that they get the products and services they need in an environment with adequate safeguards. Enforcement is a key component of successful consumer protection.

CTN acknowledges the work that ACIF have commenced on code compliance monitoring by implementing a Compliance Strategy. Ultimately, however, consumer protection requires more than statistical research and industry seminars aimed at implementing better practices. Only a strong regulator with adequate enforcement powers and resources for compliance auditing will ensure there are more signatories to codes and greater compliance with codes in the market place. Consumers need to be shown that they can have more confidence in self-regulation than they have had to date, and this will only occur through more widespread visible compliance with industry codes. ACIF has a role to play however in order to achieve this goal, and needs to partner and co-operate with the regulator.

- **ACMA must be given guaranteed resources to ensure it can implement adequate industry compliance auditing on an on-going basis to compliment its increased enforcement powers.**

Consumer protection is, however, squarely the responsibility of governments and regulators. At present we see consumers exposed to excessive risk as a direct result of the industry’s unwillingness to address consumer concerns because of the potential constraints on their commercial imperatives. Further to this, CTN does not believe that satisfactory outcomes for consumers can be achieved through self-regulatory approaches in all instances. We firmly believe there is still a place for direct regulation, enforced by strong and well-resourced regulators. One example is the Customer Service Guarantee.

CTN welcomes the announcement this week that the NRF and the CSG will be improved we would like to make the following additional recommendations.

- **The Customer Service Guarantee must be improved and simplified so that more consumers benefit from it. The CSG must also be better publicised. The question of exemptions and how they are now being applied to VoIP providers also needs to be clarified. Consumers must be consulted and fully informed before exemptions are granted.**

We believe that widespread non-compliance codes and regulations such as the Customer Service Guarantee is simply not being detected at present. In fact CTN has major concerns regarding compliance with the ACIF Complaints Handling Code

and lack of apparent referrals to the TIO of customer complaints. This is just one very serious example of the nexus between the obligations codes of practice impose, and their implementation in practice. In light of this week's revelations about the high level of faults being reported (over 14 million faults reported relating to 14% of phone lines) this must be addressed before the full privatisation of Telstra when the Government will loosen some of the current reporting requirements on Telstra.

- **Before Telstra is fully privatised, there must be an independent inquiry into complaints handling in the telecommunications industry.**

CTN has also advocated for the adoption of a Single Consumer Protection Code or Charter using a Customer Lifecycle approach (as referred to in the CDC Report) to take the place of the current miscellaneous collection of stand alone codes. This will link regulatory requirements to the experience a consumer has in the marketplace. This approach would also serve to eliminate duplication, gaps and overlaps that exist between current codes. The clear objective of this work must be to improve consumer protection and must not in any way regress from standards embodied in current Codes.

- **A Single Consumer Protection Code or Charter should be mandated prior to the full privatisation of Telstra.**

CTN members believe that the government does need to acknowledge the limitations of self-regulation. While many consumers have voiced concerns about self-regulatory process, other groups such as representatives of people with disabilities, have seen direct benefits from their involvement at ACIF. Undoubtedly, self-regulation needs to be improved not abolished. A number of recommendations have been made in the ACA Consumer Driven Communications Report (CDC) 2004 about improving self-regulation and compliance with in self-regulatory frameworks. These recommendations demand a well considered response and should be supported by both government and industry.

- **The Government should provide a detailed response to the CDC Report Recommendations before any further debate on the sale of Telstra.**

*The role of the Australian Communications and Media Authority, including:*

- v. *(see above)*
- vi. *improvement of the effectiveness of the telecommunications self-regulatory processes by encouraging greater consumer representation and participation in the development of industry codes.*

CTN applauds the inclusion of a mechanism to fund the development of industry codes. In particular we welcome the criteria for such funding which stipulates that

consumers are adequately represented in the process for the development of such codes. Whilst consumer input is recognised as important, quite often adequate consumer representation is not a reality in code development processes. We endorse the proposed approach to generate these funds through carrier license fees, thus ensuring that there more equitable distribution of the cost of code development across the entire telecommunications industry.

However, the proposed section 136A of the *Telecommunications Act*- Application for the eligibility for reimbursement of costs of development of consumer-related industry codes would exclude consumer organisations including CTN from redeeming costs incurred by participating in code working groups due to its current funding arrangements with DCITA. A large proportion of CTN's current work is its ACIF committee workload. The workload is ever-increasing and at times becomes burdensome to this community organisation staffed by 4 people, 2 of whom participate in ACIF as a majority of their workload. In the period from 1 October 2004 – 31 March 2005, CTN attended over 50 meetings and participated in 26 different ACIF Councils, reference panels, working committees and ad hoc groups. This period of CTN work was dominated by the development of the Consumer Contracts Code. CTN wrote off nearly 500 hours of unpaid staff time and there was also considerable contributions made by CTN volunteers also during this time.

As we all now acknowledge the Consumer Contracts Code was a project that could not be quantified prior to our application for funding from the DCITA Grants Scheme for consumer representation, but this project had to be accommodated in CTN's general activities regardless as it was absolutely a high priority. Currently CTN is working on the Review of the ACIF Credit Management Code which is also requiring considerable resources.

CTN has established itself as a consumer champion with over 15 years of consumer advocacy in the telecommunications sector. Therefore we recommend that ACMA should provide reimbursement for the intensive work in code development that CTN performs. This would be well received by all consumers and could only advance the consumer input, time and number of consumer representatives we could involve.

- **We urge that the legislation be amended to expedite CTN's ability to be declared as an association able to be reimbursed for costs of consumer-related code development.**

*The establishment of a perpetual \$2 billion Communications Fund.*

CTN has welcomed the announcement by the Government of the Communications Fund. It has been CTN's policy for sometime that such a Trust fund be established with any funds generated by the further sale of Telstra. In our recent survey, respondents strongly indicated that the funds from the sale not be used to service other debts. The profits that will be made from the Telstra sale belong to the tax payers who have contributed to making the infrastructure a valuable asset. Proceeds from the sale must be ploughed back into communications infrastructure.

- **CTN seeks a guarantee that all funds generated from the further sale of Telstra be directed for use on communications services only.**

The *Telecommunications Legislation Amendment Future Proofing And Other Measures) Bill 2005* provides a cap of \$2 billion for the total amount of cash that may be credited to the Communications Fund Special Account.<sup>1</sup> Financial assets including shares in Telstra may be taken to be included in this \$2 billion. Prima facie there could be a cash shortfall tying up immediately accessible funds that could be used to service recommendations of the Regional Telecommunications Independent Review Committee (RTIRC). Any notional transferal of Telstra shares will obviously be valued at the time of transfer and therefore allow the Communications Fund's value to be partly contingent on share market oscillations.

The additional \$1.1 billion for the Connect Australia package provides funds for 4 key areas. It is not apparent whether these are mutually exclusive programs that because of the nature of allocated funds will not fall under the auspices of the RTIRC even if those key areas require greater fund allocation.

The requirement for a cost benefit assessment by the RTIRC<sup>2</sup> in regards to formulating a recommendation to the Commonwealth Government should address market and non-market values so as to reflect the spirit of the Universal Service Obligation (USO).

According to the Esten's Inquiry remote Indigenous communities remain the most disadvantaged telecommunications users in Australia<sup>3</sup>. The Inquiry urged the Government to put in place a strategic and accepted framework to resolve the difficulties faced by remote Indigenous communities in accessing appropriate and affordable telecommunications services. In light of these findings and to ensure equity the composition of the RTIRC should include a remote Aboriginal and Torres Strait Islander (ATSI) identified position. To ensure cultural parity the Minister's ability to be able to terminate the appointment of an RTIRC member must have due regard to the ATSI RTIRC member's cultural responsibilities.

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<sup>1</sup> Proposed subsection 158ZJ(2)

<sup>2</sup> Proposed subsection 158Q(4)

<sup>3</sup> Finding 5.1

- **The RITRC needs to have representation on it from residential consumers, indigenous consumers, and people with disabilities.**
- **A legislated guarantee that the Regional Telecommunications Independent Review Committee is required to consider telecommunication service provision in remote Indigenous communities and services for people with disabilities as part of its review process.**

It has been suggested that the Trust fund needs to be at least \$7 billion in order to generate the interest income to provide on-going upgrades to services. The estimated interest from a \$2 billion fund will be approximately \$100 million- however the cost of upgrading the network to the basic standards required in Australia has been estimated in recent days as high \$4 billion. The proposed size of the Fund would seem to us far too small to be effective, and we urge such calculations to be undertaken by government with the view to increasing the Fund allocation.

In our recent survey, access to services and equipment for people with disabilities rated highly in the list of consumer safeguards needed in the light of privatisation. The Connect Australia Fund seems the best place for a strategic national program to meet these needs. We'd also point out that the needs of consumers in rural and remote areas must be considered as part of a broader allocation of the Communications Fund and the Connect Australia Package to ensure equitable and universal services. The adequacy of services in metropolitan areas should not be assumed; the scheduled Metropolitan Broadband Blackspots Program is an example of how non-rural and remote consumers are missing out too due to lack of investment in telecommunications, and government intervention is trying to fill this gap.

CTN has some concern that the legislation currently states that the first RITRC will commence in 2008. By the time the first funds are allocated and implemented to community benefit it is likely to be 2009 or even 2010. How much further will services deteriorate in the mean time? What interim measures are being considered in this time? CTN does not believe that the \$1.1 Billion Connect Australia package will meet the shortfall in this timeframe.

- **The Connect Australia Fund needs an immediate increase to \$4 billion to be allocated as soon as possible in a nationally strategic manner to address service shortfalls to rural and remote consumers, people with disabilities (establishing an independent equipment program and a video relay service for the Deaf) and indigenous consumers.**

The Communications Fund needs to function independently from government. Separation provides an opportunity for public and transparent process for decisions on expenditure of Fund monies on infrastructure to enable equity in non-market areas and in provision of services on an equally accessible basis for low income,

disability, geographically disadvantaged, Indigenous etc. groups. We support this move as a significant step, provided that the Fund structures are subject to ongoing review, and that reporting and decision making mechanisms are appropriate.

- **The Communications Fund needs to function independently from government.**

CTN also supports these recent findings from the Central Land Council, Isolated Children's and Parents Association and the Indigenous Remote Communications Association:

- **The obligations of the universal service provider need to be defined more clearly, and compliance with universal service obligations more actively enforced, to allow the USO scheme to deliver the level of service provision to all Australians that it should be providing. This should include a review process whereby the USO and DDSO are assessed on the basis of how accessible service provision is and whether those people without access to that service are at a significant disadvantage in terms of equitable participation and engagement with the wider community;**
- **An additional condition of Telstra's Carrier Licence to offer a range of service delivery options appropriate to people in remote Indigenous locations;**
- **Amend Telstra's carrier licence to include provision for the offer of products and arrangements to Indigenous communities in remote areas to be endorsed by a Committee whose members are drawn from community organisations representing the interests of Indigenous people in remote areas.**

And finally CTN would like to highlight:

- **An additional area of concern raised by the public but not discussed in the present debate is the matter of foreign ownership. Public concerns about foreign ownership of Telstra must be addressed in addition to ensuring that there is better protection for the "mum and dad" investors who lost considerably on their purchase of T2 shares.**

## **Conclusion**

Consumer protection is squarely the responsibility of governments and regulators. We believe the dual imperatives of high quality and universal availability of future telecommunications services are being de-prioritised in the government's haste to fully privatise Telstra.

The telecommunications infrastructure owned by Telstra is a national asset that has been purchased and paid for by all Australians. The siphoning off of this asset into the hands of relatively few Australians and overseas investors who have no interest other than a financial one is highly questionable. Such an approach is unlikely to address the issues of today - let alone tomorrow. There is an inherent conflict of interest between the provision of a universally accessible national utility infrastructure and profit-motive driven processes.

Given the revelations in the past week, we urge the Government to approach the full privatisation of Telstra with caution so that needs of all Australian residential consumers can be effectively addressed. A more considered approach could mean that the impending legislation is delayed, but in the long term better outcomes from proper public consultation will undoubtedly ensure both the government and the electorate are more satisfied.

As we have highlighted previously to other inquiries, CTN's members have concerns about the adequacy of the present regulatory regime based on their current experience of it. We believe that in order to garner the support of the Australian public, the Government must reveal greater detail about its proposed consumer protections and how consumers in all areas of Australia - particularly rural and remote customers, indigenous consumers and people with disabilities - are going to benefit from a fully privatised Telstra.

Should you wish to discuss this response in more detail please contact myself or Sarah Wilson, Policy Officer at the Consumers' Telecommunications Network where we can be contacted on 02 9572 6007 or at [ctn@ctn.org.au](mailto:ctn@ctn.org.au).

Yours sincerely,

A handwritten signature in black ink, appearing to read "Teresa Corbin". The signature is fluid and cursive, with a long horizontal flourish at the end.

Teresa Corbin  
CTN Executive Director

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This submission was prepared by Teresa Corbin, CTN Executive Director, Sarah Wilson, CTN Policy Officer and Annie McCall, CTN Information Officer. It has been approved out of session by the CTN Council.

