Telecommunications Bill 1989

Date Introduced: 13 April 1989
House: House of Representatives
Presented by: Hon. Ralph Willis, M.P., Minister for Transport and Communications

Digest of Bill

Purpose
To provide for greater competition in the provision of value added services (VAS) and private network services (PNS). The Bill will also reserve certain telecommunication services for Telecom, OTC and AUSSAT (the carriers), and establish the Australian Telecommunications Authority (AUSTEL) as a statutory corporation responsible for the regulation of the telecommunications industry.

Background
The global telecommunications market is worth several hundred billion dollars a year, of which Australia is estimated to contribute approximately $15 billion. The Australian telecommunications services industry is presently dominated by three Commonwealth statutory corporations: Telecom, which provides domestic services; OTC, which provides Australia with international services; and AUSSAT, which is responsible for Australia's domestic satellite communications system. Telecom's revenue in 1988 rose 19% to $8 billion and after tax profit rose more than 75% to $777 million, while OTC's profit increased 29% to $103.6 million on revenue of $1676 million. AUSSAT recorded an operating loss after tax of $5.296 million (before tax $10.233 million) on revenues of $104 million. Communications revenues in Australia are estimated to grow at an average annual rate of 17.7% between 1987 and 1993. As well, by 1990 the private sector is estimated to earn approximately $2.6 billion per annum from the telecommunications service industry.1

The future direction of government communications bodies was outlined on 25 May 1988 when a Ministerial Statement, titled 'Australian telecommunications services: a new framework', was tabled in the Senate. The more significant of the policy directives outlined in the Statement was the extent to which private networks can operate and the ability to compete in VAS. Private networks are an arrangement by which a user operates facilities, such as PABX, which it has provided for its own internal communications needs. Under current arrangements, Telecom regulates private networks through its pricing of leased circuits; by imposing restrictions on the use of those circuits; and by charging for the interconnection of Telecom and AUSSAT leased circuits to privately provided facilities. Telecom's regulations are also the benchmark for restrictions on the use of private networks supplied by OTC and AUSSAT. The Statement proposed the transfer of regulatory control of private networks from the carriers to a
new regulatory agency, AUSTEL, and the creation of a PNS licence. Licences will be granted on the basis of notification in situations where the network is to be used by a single entity. Approval will depend on specific review where several users may be involved. Limitations on third-party use, restrictions on the transfer of licences and technical standards will comprise the main conditions of a licence.²

A VAS is one delivered or accessed by telecommunications means and involving the addition of significant value to the basic switching and transmission functions, in the form of information processing, delay or other intervention. Examples of types of VAS include secretarial and personalised answering services, information providing services such as recorded information, electronic mail, and electronic databases. Telecom presently authorises value added services. Telecom's approach to authorising new VAS has been to make case by case assessments of the degree to which such services impact on its reserved service role. Where there has been a significant encroachment on reserved services, Telecom has rejected applications. The Statement proposed the transfer of regulatory control of VAS from Telecom to AUSTEL, and the creation of a VAS licence. AUSTEL will implement a process to screen proposals to provide VAS by using a licence mechanism.³

Main Provisions
The objects of the Bill are contained in clause 3 and include ensuring that the standard telephone service supplied by Telecom is reasonably accessible to all Australians; maximising the efficiency of the carriers; ensuring carrier accountability; and promoting the development of other sectors of the economy through provision of telecommunications services at the lowest possible prices.

AUSTEL will be established as a corporation by clauses 16 and 17.

The functions and powers of AUSTEL are contained in clauses 18–25 and include the economic and technical regulation of the Australian telecommunications industry; protection of networks, facilities and services reserved to the carriers; protection of competitors from unfair practices of the carriers; protection of consumers; and promotion of efficiency of the carriers.

The Minister may notify AUSTEL of general government policy and may give directions to AUSTEL (clauses 28 and 29).

Subject to clause 39, Telecom will have an exclusive right to install, maintain and operate telecommunications networks (networks) within Australia (clause 37), and OTC will have the exclusive right in respect of networks in Australia relating to communications between Australia and the rest of the world (clause 38). OTC and AUSSAT may also operate networks within Australia, but only to the extent that they have a right to do so under clauses 52–61 (see below).

Clauses 37 and 38 will not apply in relation to networks provided solely by means of radio communications; transport authority networks; broadcasting networks; or networks that do not cross property boundaries (clause 39).
The boundary between a public telephone network and a private telephone network will, subject to the regulations, be the first point where public and private networks meet within private premises (clause 40).

The boundary between a public telephone network used to supply public mobile telephone services and a private network used to supply private mobile telephone services will, subject to the regulations, be the outside of fixed equipment supplying the transmission (clause 41). The regulations may set the boundaries for other networks (clause 42).

The carriers, subject to clauses 44–46 (see below), will have an exclusive right to supply, install, maintain and operate all equipment, lines and other facilities connected to and within the boundaries of networks operated by them (clause 43).

Clauses 44 and 45 provide that, subject to clauses 52–61, AUSSAT will have an exclusive right to operate satellite-based facilities within Australia and may install, maintain and operate facilities incidental to the operation of satellite services.

AUSTEL may, with a carriers agreement, authorise a person to supply, install, and operate a facility within the boundaries of a network operated by a carrier (clause 46).

Telecom will have an exclusive right to supply, install and maintain the first telephone of a basic telephone service until 30 June 1991, or such further periods as prescribed. Telecom will also have an exclusive right to supply, install and maintain public payphones within Australia (clauses 47 and 48).

A telecommunications service is a reserved service if it consists only of functions necessary for the carriage of a telecommunications service across a network, and the carriage across the network complies with prescribed service delivery standards, and is between two or more separate places or persons. All other telecommunications services will be classified as VAS. The carriers, and certain prescribed international telecommunications suppliers, will have an exclusive right to supply reserved services (other than PNS supplied under a licence). The supply of VAS will be open to competition (clauses 52 and 53).

The regulations may prescribe the functions and standards of reserved services (clauses 54 and 55).

Proposed Division 3 of Part 3 of the Bill (clauses 52–60) deals with the difference between the services reserved for the carriers and VAS, which will be open to competition. Basically, reserved services will be those operated on networks (as described above), that connect operators in separate locations. If there are two or more operators in the same location, a reserved service will be deemed to have been supplied to each separate title. All other services will be deemed to be VAS.
Clauses 56 – 59 deal with which carrier may supply the various telecommunications services. Telecom will have the principal right to supply reserved services. However, OTC may provide such services between Australia and a ship at sea or an aircraft. AUSSAT will have a similar right in respect of its satellite services and OTC for other international services. However, in both cases AUSTEL may authorise the appropriate excluded carrier to operate a reserved service that is incidental to its main operation. All carriers will be able to supply each other.

Proposed Division 4 of Part 3 of the Bill (clauses 62 – 66) will allow the Minister to control the charges relating to the supply of reserved services. Such determinations will be subject to Parliamentary disallowance.

Part 4 of the Bill (clauses 70 – 104) deals with licensing arrangements for VAS and PNS. The VAS and PNS licensing principles provide that VAS and PNS are not to infringe on the exclusive right of a carrier or allow private networks to be disposed of by a person (other than a carrier) to third parties (clauses 71 and 72). As well, an object of the Part is to safeguard competition in the VAS market (clause 70).

Proposed Division 3 of Part 4 of the Bill (clauses 75 – 95) deals with licences. The scheme of licences will allow AUSTEL to issue licences for VAS and PNS that specify how such services may be supplied. Such standards are to be reached in consultation with the carriers. The proposed Division also provides for the varying of class licences and the review of such decisions.

AUSTEL is to establish a public register for VAS and PNS licences (clause 87).

Where AUSTEL has reasonable cause to suspect that a person is supplying, or proposes to supply, a VAS or PNS that would not be allowed to be supplied under any licence it may declare the services to be unlicensed (clause 91). Where AUSTEL has declared a VAS or PNS to be an unlicensed service it shall notify each carrier of the service concerned and require them to disconnect it; or AUSTEL may refuse to connect the unlicensed service to any network that it operates (clause 96).

Carriers will be required to connect VAS or PNS to their networks where requested. Services are to be connected within a reasonable time that is not substantially longer than normal for the circumstances. Delays due to reasons beyond the carrier’s control, or due to technical infeasability, are excluded (clause 97). Carriers are not to discriminate in relation to supplying VAS and PNS services (clause 98).

Carriers are to separately identify charges for the supply of any public reserved services, leased circuit services, and any rental fee or other charge (clause 100).
Part 5 of the Bill (clauses 105 – 106) deals with technical standards for customer equipment (e.g. equipment intended to be connected to a network operated by a carrier) and customer cabling (e.g. a line intended to be connected to a network operated by a carrier). AUSTEL may set technical standards for customer equipment and customer cabling connected to a network. AUSTEL is to set a standard only where it believes it is necessary to protect the integrity of a network, persons working on a network, network interoperability, or compliance with international standards (clause 106).

The Minister may give general directions to AUSTEL on the issuing of customer equipment permits and cabling licences (clauses 111 and 112).

It will be an offence to knowingly or recklessly connect customer equipment to a network without a permit for the connection of that equipment, or sell customer equipment knowingly not having a permit, without first informing the buyer. The maximum penalty for breach of these provisions will be a fine of $12,000 (clauses 114 and 115).

A person shall not perform cabling work unless they are a licensee or work under the supervision of a licensee. The maximum penalty for breach of this provision will be a fine of $12,000. The same penalty will apply if a licensee knowingly or recklessly breaches the conditions of their licence or does not take all reasonable steps to ensure that cabling work done under their supervision meets the conditions of their licence (clause 128).

The provisions in respect of a register of licences for cabling equipment, issue of licences, variation of licences, and cancellation of licences (clauses 129, 131, 133 and 136) are substantially the same in form and effect as those in respect of licences for VAS and PNS (see above).

A carrier may cease or refuse to supply a service provided by means of a network if there is connected to a network customer equipment or customer cabling that is a threat to the safety or functioning of a network or the safety of any person. AUSTEL may direct a carrier to supply a service or pay compensation where a carrier has wrongly disconnected customer equipment or customer cabling (clauses 141 and 142).

A carrier, with the approval of AUSTEL, may bring an action in the Federal Court for unauthorised connection to networks of customer equipment or customer cabling (clause 143).

Part 6 of the Bill (clauses 147 – 156) deals with AUSTEL's investigatory powers and its relationship with the Ombudsman and Trade Practices Commission. A person may complain to AUSTEL about the supply of, or failure to supply a service; the connection or failure to connect customer equipment; and the performance or supervision of or failure to perform or supervise cabling work. AUSTEL may investigate these complaints (clauses 147 and 148).
AUSTEL may, prior to investigating a complaint or after it has started an investigation, transfer a complaint to the Ombudsman or Trade Practices Commission when it is of the opinion that the complaint has or could have been made to those bodies (clauses 152 and 153).

Part 7 of the Bill (clauses 157–177) deals with the constitution of AUSTEL. AUSTEL is to consist of a Chairperson and two other members appointed by the Governor-General. A person shall not be appointed unless they appear to the Governor-General to have expertise in either industry, commerce, technology, consumer affairs, economics, law, or public administration (clauses 157–159).

Clause 178 provides that applications may be made to the Administrative Appeals Tribunal for a review of decisions made by AUSTEL in reconsidering its decisions concerning licences and permits under Parts 4 and 5 of the Bill.

The Governor-General may make regulations, including regulations prescribing penalties not exceeding $1,000 (clause 185).

References
1. The Australian, 10 April 1989.

For further information, if required, contact the Economics and Commerce Group.

5 May 1989

Bills Digest Service
Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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