

REGULATION IMPACT STATEMENT

Requirement on Telstra for a local presence plan

Purpose

This Regulation Impact Statement (RIS) examines the rationale for, and impact of, the Government's decision to require Telstra to have, publish, comply with and report against a local presence plan.

The Regional Telecommunications Inquiry has interpreted 'local presence' to include a high degree of decentralised management with a greater capacity to understand and respond to local needs, both in terms of service provision and service maintenance.

Introduction and Context

The report of the Telecommunications Services Inquiry (TSI) in September 2000 identified concerns in relation to Telstra's customer service interactions, particularly in regional, rural and remote Australia.¹ These concerns included poor customer service from call centre staff and poor performance on the ground due to lack of local knowledge and staffing.

The TSI report indicated that these issues highlighted the need for:

- greater engagement with consumers in undertaking effective, local consultation and providing candid information about network and service plans;
- processes that allow customers to feel they have some control over their interactions with their provider;
- front-line (call centre) staff to have an understanding of the circumstances of the customer, in particular their geographic location; and
- Telstra to accept greater responsibility for assisting customers to get the most out of their service, through providing objective advice about service options and technical issues.²

What is Telstra Country Wide?

Telstra Country Wide (TCW) commenced operations on 1 July 2000, shortly before the TSI reported. The TSI viewed TCW as a promising development for addressing many of the local service issues identified above.

TCW is a business unit within Telstra, established as a result of a commercial decision by Telstra to gain a better understanding of the requirements of its regional customers, and to provide a better focus on the delivery of Telstra services in regional, rural and remote areas. Inherent in the TCW concept is the devolution of a high

¹ TSI, *Connecting Australia, Report of the Telecommunications Service Inquiry* (2000) 78-79.

² Ibid 86.

degree of responsibility to managers in regional areas for building business opportunities and servicing regional customers.

TCW covers residential and small business customers in outer metropolitan, rural and regional areas. As such TCW serves almost five million customers whose expenditure is estimated at \$5 billion in revenue. TCW's headquarters are in Albury-Wodonga on the New South Wales-Victoria border.

TCW is headed by a Group Managing Director. To assist with its operations, TCW has an external advisory board comprised of respected regional Australians. Under the TCW structure, regional Australia is divided into four service regions—Queensland, New South Wales, Southern (Victoria and Tasmania) and Central Western (South Australia, Western Australia and the Northern Territory). Each region has a Regional Manager. The four service regions are further subdivided into 35 areas, each with an Area General Manager (AGM). Each AGM has a high degree of autonomy and local responsibility.

Regional Telecommunications Inquiry

To assess service improvements since the TSI, on 16 August 2002 the Minister for Communications, Information Technology and the Arts initiated the Regional Telecommunications Inquiry (RTI.) Term of Reference 5 required the RTI to advise the Minister on the ongoing commitment of Telstra to maintaining a local presence, such as TCW, in regional, rural and remote Australia.

In responding to this Term of Reference, the RTI examined TCW's operations, the benefits it had delivered to regional, rural and remote Australia and the need to require Telstra to retain a local presence, such as that provided by TCW. A particular focus of the RTI's assessment was the impact TCW's operations had had in relation to the concerns identified by the TSI.

The RTI found:

FINDING 8.1

The establishment of Telstra Country Wide (TCW) has significantly improved Telstra's capacity to respond to local telecommunications needs and issues. TCW is generally accepted and valued by regional, rural and remote customers, although there is still a need to better inform customers of its benefits.³

While Telstra had publicly indicated TCW is a profitable undertaking for it and it has a long-term commercial commitment to the retention of TCW, the RTI was nevertheless concerned that differing levels of return in regional Australia, changing business conditions and/or changing corporate priorities could see this commitment fade over time. In light of its findings and these concerns the RTI therefore recommended that:

RECOMMENDATION 8.1

Telstra should be required to maintain an ongoing local presence in regional, rural and remote Australia. The requirement should only apply to Telstra consistent with its status as the primary universal service provider. The requirement should not be

³ Regional Telecommunications Inquiry *Connecting Regional Australia* (2002) 300.

unduly prescriptive or burdensome, and should be broadly compatible with Telstra's commercial interests.⁴

and

RECOMMENDATION 8.2

Telstra should be required to develop and publish a local presence plan that sets out the range of activities and strategies it would deploy in regional Australia to address the Government's broad objectives. Telstra would be required to regularly report on its achievements against the plan and to demonstrate to the Government, and to regional communities, that it was providing an effective and beneficial local presence.⁵

The RTI saw its recommendations in relation to local presence as being part of wider future proofing arrangements recommended in Chapter 9 of its report.⁶

Issue Identification

The Government accepts the RTI's finding that TCW has contributed significantly to the improvement of telecommunications services in regional Australia and that Telstra should continue TCW into the future.

Given the RTI's clear recommendations, the Government's key concerns have been to ensure its recommendations on the nature of a local presence requirement are sound and that there are no better alternatives. While the RTI did canvass different options in this area, it did not assess each in detail, nor did it fully analyse the costs and benefits of these options. Analysis of these costs and options is the purpose of this RIS.

The essential issues the Government has had to consider have been whether:

- a local presence requirement needs to be imposed on Telstra by regulation; and
- what form any such requirement should take.

The Government agrees with the RTI that a local presence requirement is required of Telstra. Telstra has a ubiquitous presence across Australia, and that presence is linked to its regulatory obligations as the primary universal service provider and a digital data service provider. The Government considers it would be unproductive and unnecessary to impose such requirements on other providers at this time. The presence of other carriers in regional, rural and remote areas is much more sporadic and scattered than Telstra's. Any meaningful local presence would be difficult to specify, and even more difficult to justify in a business sense. In any event, requiring Telstra to provide a local presence would be a positive inducement for other carriers to do the same in order to effectively compete. However, formally requiring all carriers to provide a local presence could act as a disincentive for competitive investment, to the detriment of regional, rural and remote consumers. The option of industry-wide local presence requirements is therefore not considered further.

⁴ Ibid 303.

⁵ Ibid, 305.

⁶ Ibid, 285.

Objectives

In considering a local presence requirement, the Government's objectives were to:

- ensure regional, rural and remote Australians would have a high degree of certainty that Telstra would provide an ongoing and meaningful local presence in their area;
- ensure the nature of that local presence was transparent and its provision could be assessed, reported on and, if necessary, enforced; and
- ensure the burden of the local presence requirement on Telstra and its shareholders was not unduly prescriptive or burdensome, and should be broadly compatible with Telstra's commercial interests – as such requirements should be reasonably flexible.

Stakeholders

The key stakeholders affected by a local presence requirement are:

- regional telecommunications consumers – for whom a local presence should deliver a higher level of service;
- Telstra – who will face the costs and any operational restrictions, and possible competitive disadvantage, flowing from a local presence requirement;
- Telstra's shareholders, including the Commonwealth – who may face a lower return on their investment due to any additional cost imposts on Telstra;
- metropolitan telecommunications consumers – who may face higher than necessary telecommunications charges as a result of Telstra cross-subsidising its local presence requirements from metropolitan revenues;
- Telstra's competitors – who may be competitively disadvantaged by a local presence requirement on Telstra;
- the Australian Communications and Media Authority (ACMA) – which may face higher operating costs due to increased monitoring activities;
- representatives of local government bodies in regional, rural and remote parts of Australia – who are required to be consulted and may make submissions to Telstra about its draft proposed local presence plan;
- representatives of end-users of telecommunications services in those parts of Australia - who are required to be consulted and may make submissions to Telstra about its draft proposed local presence plan; and
- representatives of the interests of people in rural, regional and remote parts of Australia – who are required to be consulted and may make submissions to Telstra about its draft proposed local presence plan.

Options

The Government considered four main options by which a Telstra local presence could be maintained in regional, rural and remote Australia. These options are described below.

Option 1: Rely on commercial incentives for Telstra to maintain a local presence (status quo)

Option 1 involves Telstra continuing to maintain a local presence of its own commercial volition. This is the basis on which Telstra has already established TCW. Telstra has indicated publicly that there are strong commercial incentives for Telstra to retain TCW without being formally required to do so.

Option 2: Require Telstra to maintain a local presence without requiring a plan

Option 2 would involve a general legislative or regulatory requirement on Telstra to maintain a local presence. There would be no transparency or statement of Telstra's capacity to respond to the telecommunications service interests and issues of customers in rural, regional and remote parts of Australia. There would be little, if any, specification of what the local presence would involve. The nature of the presence would very much be at the discretion of Telstra. There would be no requirement for Telstra to document its local presence commitment or to publish a plan. There would be no provision to assess Telstra's performance against the plan, and little practical scope for enforcement. (Enforcement requires a suitable degree of specificity.)

Option 3: Require Telstra to maintain a local presence and have a local presence plan (RTI proposal)

Option 3 is based on the recommendations of the RTI. It involves a regulatory requirement on Telstra to retain a local presence. Telstra would also be required to prepare, publish and comply with a local presence plan. The requirement would provide broad guidance on the matters and objectives the plan would need to cover. Telstra would then prepare the plan, setting out how it intended to meet its broader regulatory requirements. The plan would then be submitted to the Minister (or ACMA) for approval. As such, the conferral of decision-making powers of an administrative character on the Minister or ACMA would be required. As Option 3 is somewhat akin to a contractual arrangement, there is scope for negotiation between Telstra and the Government. Once approved Telstra would be obliged to comply with the plan. Its local presence performance would be assessed against its own plan. If necessary, compliance with the plan could be enforced or the broad regulatory requirements could be revised. Option 3 reflects the approach used previously with industry development plans, the Universal Service Obligation (USO) and Digital Data Service Obligation (DDSO) plans and the priority assistance arrangements.

Option 4: Require Telstra to fulfil specified local presence requirements

Option 4 would involve detailed legislative provisions or licence condition requirements on Telstra to maintain a local presence, which would specify to a high degree what that presence should entail. This could include, for example, the specific management structure, service areas, delegated authority, retail outlets, programs and publicity. At a minimum, the requirements would likely reflect the current TCW arrangements or impose greater ongoing requirements about the growth, positioning and service levels required of Telstra in non-metropolitan areas of Australia.

Discussion

Whether a local presence requirement is needed, and if so, the degree of specificity in any such requirement, are key determinants of the approach taken. In all circumstances it is assumed any requirement would be grounded in primary or subordinate legislation. This is because of the importance regional communities ascribe to a guarantee of an ongoing Telstra local presence. If the Government wanted to be highly prescriptive as to what it requires in terms of a local presence, it would need to specify the requirements in detail. As the Government wants to leave a reasonable degree of discretion to Telstra in determining its local presence, only broad guidance is required.

Effectiveness of options and impact analysis

An assessment of the effectiveness of each of the options and an analysis of its impact on key stakeholders is provided below.

General comments on the cost of options

The cost of a local presence requirement is difficult to estimate and obviously depends on the nature of the requirement. Key cost components include accommodation, staff, travel, telecommunications services, monitoring and reporting, and publicity. (Service provision costs are already incurred regardless of the degree of 'local presence'. These costs are directly offset by revenues.)

Telstra's current local presence arrangements provide a benchmark for assessing the cost of options. Telstra has indicated publicly that TCW is a profitable business unit within the corporation. The options discussed below assume a local presence of a similar magnitude. Option 4, however, gives the Government the greatest control in setting the local presence requirements and as such raises the possibility of higher costs or inefficient business outcomes for Telstra.

The benchmark for assessing the cost impact of the different options is the current cost to Telstra of TCW. TCW's operating costs are not published. These costs are currently incurred by Telstra of its own commercial volition on the basis they add to profitability of Telstra's regional business. For example, in March 2003, Telstra expanded TCW's coverage to include an additional two million customers in outer metropolitan areas. As its operational costs are borne by Telstra by choice, the main factor in assessing the cost of the options is whether they would be likely to increase the cost of TCW to Telstra. While data is not readily available to quantify these costs, qualitative judgments can be made.

Options 1 and 2 leave the nature – and the cost – of Telstra's local presence largely to Telstra. It is assumed the local presence would be comparable to that currently in place. Option 3 assumes a comparable local presence to that Telstra now has in place. Some additional costs may be incurred in preparing, complying with and reporting against the proposed local presence plan. These costs are not expected to be high and it is expected there would be some overlap with current TCW planning, reporting and promotional activities. Option 4 assumes there would be greater Government

involvement, which could lead to higher costs. Also, as Option 4 is more prescriptive and less flexible, there may be an additional cost penalty due to the reduced scope to quickly adapt to change or the needs of customers.

Option 1: Rely on commercial incentives for Telstra to maintain a local presence (status quo)

Effectiveness: There is a strong likelihood that under Option 1 Telstra would retain an ongoing local presence comparable to what is presently in place, thereby continuing to deliver the benefits its local presence has delivered in regional Australia. As Telstra would be determining the nature of the local presence, it would have the minimum impact on its commercial discretion: Telstra – and ultimately its shareholders – would retain control of the cost. Importantly however, the delivery of an effective local presence, while likely, would not be guaranteed and, over time, might be reduced in response to competitive or market pressure. As noted by the RTI, it would be susceptible to varying commercial returns between regions, changing market conditions and changing business priorities. The degree of transparency and reporting would also depend largely on Telstra. There would be no basis for enforcement.

Impact analysis: Regional telecommunications consumers would likely benefit from some form of ongoing Telstra local presence but its nature and longevity would be uncertain. As such, principal concerns of the RTI would not be addressed. There would be no guaranteed transparency or basis for assessment. Option 1 would have the least impact on Telstra and its shareholders. As Telstra would be determining the nature of the local presence, it would have the minimum impact on its commercial discretion: Telstra – and ultimately its shareholders – would retain control of the cost. It is doubtful that metropolitan customers would face any cost burden as telecommunications prices are subject to price control and competition in metropolitan markets inhibits Telstra's ability to pass costs on to these consumers. The competitive impact on Telstra's competitors would be a result of Telstra's commercial decisions, not Government regulation. Any additional administrative burden on the Government or ACMA would likely be small, arising, for example, from periodic reports on Telstra's local presence.

Option 2: Require Telstra to maintain a local presence without requiring a plan

Effectiveness: Option 2 would provide certainty that Telstra would maintain an ongoing local presence of some kind, thereby continuing to deliver the benefits its local presence has delivered in regional Australia. There would be some guarantee that this presence was ongoing, regardless of varying commercial returns between regions, changing market conditions and changing business priorities. As Telstra would largely be determining the nature of the local presence it would have a minimum impact on its commercial discretion as Telstra – and ultimately its shareholders – would retain control of the costs. Importantly however, there would be little if any Government control over the nature of Telstra's local presence. Moreover, there would be no guarantee of transparency or assessment against pre-specified performance objectives.

Impact analysis: Regional telecommunications consumers would benefit from some form of an ongoing Telstra local presence but its nature would be uncertain. There would be no guaranteed transparency or basis for assessment or enforcement. Option 2 would have little cost impact on Telstra and its shareholders. As Telstra would largely be determining the nature of the local presence, subject to the Government's broad requirement to maintain a local presence, it would have a minimum impact on its commercial discretion. As with Option 1 Telstra – and ultimately its shareholders – would retain control of the cost. It is doubtful that metropolitan customers would face any cost burden as telecommunications prices are subject to price control and competition in metropolitan markets inhibits Telstra's ability to pass costs on to these consumers. The competitive impact on Telstra's competitors would largely result from Telstra's commercial decisions, not Government regulation. Any additional administrative burden on the Government or ACMA would likely be small, arising, for example, from annual reports on Telstra's local presence.

Option 3: Require Telstra to maintain a local presence and have a local presence plan (Inquiry's proposal)

Effectiveness: Option 3 would provide certainty that Telstra would maintain an ongoing local presence, thereby continuing to deliver the benefits its local presence has delivered in regional Australia. The need for Ministerial or ACMA approval of a plan would ensure the presence is ongoing and there would be a high degree of transparency and an appropriate level of specificity in the nature of the local presence. There would be a guarantee that this presence was ongoing, regardless of varying commercial returns between regions, changing market conditions and changing business priorities. The Government would have a greater say in determining the nature of the local presence. Telstra, however, would still have considerable discretion as to the exact nature of its local presence commitment.

Impact analysis: Regional telecommunications consumers would benefit from an ongoing Telstra local presence, with the Government, on behalf of the community, able to exercise some control (through the Ministerial or ACMA approval process) over its nature. The plan would make Telstra's commitments highly transparent and it would provide a basis for assessment, and if necessary, enforcement. Option 3 would involve a larger cost impost on Telstra and its shareholders as a result of greater Government intervention but the degree of additional cost would depend on the precise nature of the Government's broad requirements. As broad requirements are proposed, it is envisaged that Telstra would have discretion over much of the detail and therefore the cost. It is doubtful that metropolitan customers would face any cost burden as telecommunications prices are subject to price control and competition in metropolitan markets inhibits Telstra's ability to pass costs on to these consumers. The competitive impact on Telstra's competitors would largely be a result of Telstra's commercial decisions within the context of the broad requirements for the plan. The ACMA would face a greater administrative burden through more detailed monitoring and assessment against the local presence plan.

Option 4: Require Telstra to fulfil specified local presence requirements

Effectiveness: Option 4 would ensure Telstra maintained an ongoing local presence, thereby continuing to deliver the benefits its local presence has delivered in regional

Australia. That presence would be clearly detailed by the Government, providing a high degree of specificity and certainty for regional consumers. Because the Government would be specifying the requirement on Telstra, Telstra's commercial discretion would be significantly eroded. As the details of the requirement would be locked-in by legislation or via a licence condition on Telstra there would be little flexibility and scope to respond to market place changes or the needs of customers in rural, regional and remote areas of Australia. Arrangements could be locked in place which, over time, became inappropriate, but which, due to inertia or vested interests, had become difficult to change.

Impact analysis: Regional telecommunications consumers would benefit from an ongoing Telstra local presence, with a high level of certainty, specificity and transparency. Given the large role for Government and the smaller role for Telstra, there would be an increased risk of the Government imposing burdens on Telstra, which are inappropriate and unnecessarily costly. Under Option 4, Telstra – and its shareholders – would have the least control over Telstra's costs. Option 4 is therefore likely to have the greatest impact on Telstra's shareholder value. It is unclear whether metropolitan customers would face any cost burden as telecommunications prices are subject to price control and competition in metropolitan markets inhibits Telstra's ability to pass cost on to these consumers. The costs would most likely be absorbed by Telstra shareholders. The competitive impact on Telstra's competitors would vary depending on what the Government required of Telstra. Overall it not expected to differ greatly from the impact under the other options on competitors, given their comparatively small local presence in regional areas, however over time it could inhibit competition for services in rural, regional and remote areas. ACMA would face a similar administrative burden as under Option 3.

Consultation

As required by its Terms of Reference, the RTI undertook extensive public consultation, seeking submissions and holding meetings with key stakeholders. The nature of any ongoing local presence requirement was a specific term of reference for the RTI and one on which public comment was specifically sought.

In all the RTI received 606 submissions as part of its consultations on the arrangements that should be put in place to ensure all Australians continue to share in the benefits of further service improvements and whether telecommunications services in regional, rural and remote Australia were adequate. Submissions, both negative and positive, are quoted extensively in the RTI report. While some submissions to the RTI alleged TCW was largely a publicity stunt, the majority of submissions, particularly those from rural representative groups (for example the National Farmers' Federation, state farming groups and the Isolated Children's Parents' Association), considered TCW was playing an important role in improved telecommunications services in regional Australia. These submissions supported an ongoing presence in regional Australia such as that provided by TCW. Views varied on whether the obligation should be locked in by primary or subordinate legislation and if this were done, how it should be done. The Government gave careful consideration to those submissions before providing its response to the RTI's recommendations.

The RTI also undertook extensive consultation with Telstra, and TCW in particular. As noted above, Telstra considers TCW is an important part of its strategy to improve service levels in regional Australia. It has indicated that it is committed keeping TCW in place because it make good commercial sense.

Section 64 of the Act provides that before making an instrument under subsection 63(5) the Minister must arrange for a draft version of the instrument to be provided to the licence holder and invite the holder to make a submission to the Minister on the draft. Telstra was provided with a draft version of the instrument during a 30 day statutory consultation period. Telstra did not provide a formal response at the end of the 30 days.

The licence condition is based on the recommendations of the RTI and its advice to the Government on “the ongoing commitment of Telstra to a local presence, such as Telstra Country Wide® (TCW), in regional, rural and remote Australia.” The RTI reported to the Minister on 8 November 2003, with the Government response announced on 25 June 2003.

Conclusion and recommended option

Option 3 (regulatory requirement with local presence plan) is the preferred option. Option 3 provides a high level of certainty and transparency and an appropriate level of specificity for regional telecommunications consumers when it comes to Telstra’s local presence. At the same time, however, because of its quasi-contractual nature, it provides scope for negotiation between Telstra and the Government. It affords Telstra a degree of commercial discretion appropriate to its operation as an independent commercial entity. In contrast, Options 1 and 2 do not provide consumers with sufficient certainty and the nature and/or longevity of a local presence. Option 4 is unnecessarily prescriptive, threatening to impose upon Telstra detailed requirements which may be inappropriate or quickly rendered obsolete by changing market conditions.

Implementation and review

The Government proposes to implement the local presence plan requirement by way of a licence condition on Telstra. A licence condition is proposed because this mechanism is already provided for in the legislation for the implementation of such requirements. Compared to a statutory amendment, it can be implemented relatively quickly. It is also relatively simple to modify in the future should circumstances make this appropriate. This approach is also consistent with that recommended by the RTI.

Licence conditions can be imposed by a Ministerial declaration under section 63 of the *Telecommunications Act 1997*. The proposed declaration will amend the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* to require Telstra to maintain a local presence and to have, publish, comply with, and report against a local presence plan as described in Option 3 above. Telstra’s local presence plan may be referred to by the company as Telstra’s Regional and Rural Presence Plan.

To facilitate the possibility of changing arrangements under the licence condition, the Government is also amending the telecommunications legislation to empower the Minister and ACMA to make decisions of an administrative character in respect of any licence condition placed on Telstra to maintain a local presence. This is provided for in the Telecommunications Legislation Amendment (Regular Reviews and Other Measures) Bill 2005.

The proposed local presence arrangements envisage regular monitoring of performance against the local presence plan. This would provide scope for the regulatory obligation to be considered on the same basis. ACMA also reports annually on industry performance and this can include the operation of the licence condition.

As a new regulatory initiative, Telstra's local presence will be subject to close, ongoing monitoring with a view to assessing its effectiveness and impact on stakeholders. A review of the licence condition is proposed after 5 years of operation. The effectiveness and operation of local presence may also be addressed under the proposed regular reviews of the state of regional telecommunications provided for in the Telecommunications Legislation Amendment (Regular Reviews and Other Measures) Bill 2005. These reviews are in response to RTI recommendations 9.1-9.6. The proposed Regional Telecommunications Independent Review Committee (RTIRC) will be required to review the adequacy of telecommunications services in regional, rural and remote parts of Australia. These reviews are proposed by the Bill to occur at least every five years.