



# When Is A Carrier Not A Carrier?

**The announcement that Networks Seven and Nine have joined with Optus and the large US cable operator, Continental Cablevision, to form Optus Vision caught both the broadcasting and telecommunications world by surprise.**

While it had been clear for some time that the PMT (Packer-Murdoch-Telecom) consortium formed last year to pursue new media opportunities was increasingly fragile (indeed, its dissolution was announced on 9 September), the alignment of all these major forces with Optus nevertheless came out of the blue.

The joint venture looks straightforward enough: Optus will have a 35 per cent shareholding in the venture, Nine and Seven 15 per cent and 20 per cent respectively, and Continental Cablevision, 30 per cent. The venture announced it will spend \$2.5 billion over the next four years to roll out a hybrid fibre-optic/coaxial cable network to over three million homes. The network will provide pay television and entertainment services as well as telephony, giving Optus direct access to customers. Rather than use Telecom's ducts, Optus Vision will be stringing its network over power poles in urban centres. And, newspaper stories implied, the television networks would have preferential access to the capacity of that cable network.

Many of the issues raised by the advent of Optus Vision were highlighted in the press: the new competition Telecom faces in what has been its monopoly over local calls, and the future of Telecom's own plans to provide cable infrastructure for pay TV through its 'Vision Stream'.

One less obvious, and less understood, question is how the scheme is allowed under the Telecommunications Act. If the network is being constructed by Optus as a *telecommunications carrier*, Optus is surely obliged to offer other service providers access to its network; nor can channels 7 and 9 claim preferential access to the network capacity.

If, on the other hand, the network is being constructed by Optus Vision as a provider of broadcasting services and in this role, entitled to install the network, the question arises whether Optus - as carrier - is planning to lease the venture's network capacity to provide calls.

In fact, the arrangement hinges on the wording in the Act of provisions setting out what carriers have exclusive rights to do.

Under the Act, carriers alone can install and maintain telecommunications networks. The Act does not, however, specify who owns the network, once it is installed. So Optus - as carrier - will install and maintain the network, and use it to provide telephony. CU was told that the network will be **owned** by Optus Vision - and it is Optus Vision which decides who else gets access to network capacity.

## Carrier Responsibilities

It all sounds quite simple. But while the proposed arrangements may be permitted by the Act, they also raise some fundamental issues. For a start, on the face of it the arrangements look like a clever way to minimise legislative responsibilities. Carriers have the right to install and maintain infrastructure and charge commercial rates for its use, but in return they are expected to fulfil certain obligations

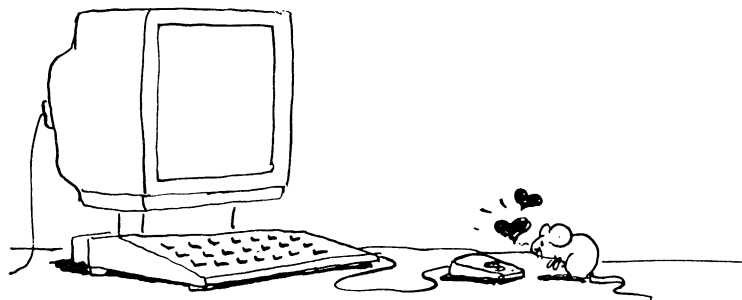
such as giving access to other carriers and service providers and meeting USO obligations. The question which then arises is whether the Optus Vision proposal is a clever ploy by Optus to exercise its carrier rights while ducking a carrier responsibility or two.

There are also important trade practices issues. The Broadcasting Services Act has no cross-media restrictions for cable-delivered subscription broadcasting television services. The Seven and Nine Networks can therefore comfortably combine in a venture to provide pay TV as well. But already this is being challenged by rival pay TV provider Australis, which claims that the TPC is bound to block an arrangement allowing two networks which already control 70 per cent of the commercial TV market 'to join hands at the first sign of competition' (AFR 30/9/94).

Optus Vision will also present a challenge for the government's telecommunications policy review - particularly if the venture has already defined what carriers can or cannot do before policy decisions about rights and obligations in a multi-carrier environment are taken.

AUSTEL has formed an internal task force to look at the issues raised by Optus Vision, and will consult with both the TPC and the ABA during the course of its examination. The Optus Vision horse, however, may have well and truly bolted, leaving the stable doors flapping idly in the faces of AUSTEL and the Government. □

Holly Raiche



Mouse Love