



Cabling the latest hurdle for Optus Vision

Comments about the Optus Vision cables being strung between power poles around the country have ranged from 'plain ugly' to 'environmental vandalism'. While the overhead roll-out is the quickest and most economically viable option for Optus Vision to introduce competition into the pay TV and local telephony markets, it has landed the company in the courts, with litigation to date in both NSW and Victoria.

Only a few weeks after the Optus Vision service was launched, local councils in NSW commenced their protests against the overhead cables in the NSW Supreme Court to force Optus Vision to put its cables underground. The councils claim Optus Vision has not complied with certain provisions of the Telecommunications National Code. Similar action is underway in Victoria.

The Telecommunications National Code

The National Code sets out the responsibilities of the carriers when installing telecommunications infrastructure, including the requirement to consult with relevant State and Territory authorities in advance of installation and adherence to technical, safety and environmental standards.

The Code aims to facilitate the provision of efficient, modern and cost-effective telecommunications services and imposes requirements on carriers as part of their development and provision of telecommunications network infrastructure. These requirements include a provision that carriers provide that infrastructure in

a manner that has full regard for the need to maximise the protection of Australia's natural environment and cultural heritage. Carriers are also required to be accountable to government bodies and to the public for their activities.

AUSTEL, the telecommunications regulator, has just completed a review of the Code and made 57 recommendations to the Government regarding its operation. AUSTEL says its recommendations would place more stringent obligations on carriers when installing telecommunications infrastructure and give local government authorities greater influence over the process.

In the courts

Councils in Victoria and NSW have complained that Optus Vision has not complied with provisions of the Code relating to the preparation of environmental plans and notification to the Department of Environment, Sport and Territories before stringing cables from power poles. In NSW, 16 councils have sought a declaration to restrain Optus Vision from continuing with its plans until it has complied with the provisions of the Code. The hearing will be held in March.

In Victoria, a Supreme Court judge granted a request from a local council in late December 1995 for a temporary injunction to stop Optus Vision from rolling out its cables from existing poles in Melbourne's eastern suburbs. The Court found the regulations granting exemptions under the Telecommunications Act had created widespread uncertainty about when the exemptions apply. The Court

found that Regulation 6 was arguably invalid because Federal Parliament had failed to adhere to a constitutional requirement to identify state laws from which carriers are exempt.

In its defence, Optus Vision argued that it did not require a permit from council because Regulation 6 exempted it from certain state laws, including planning and environmental regulations.

The Administrative Appeals Tribunal of Victoria decided on 21 February 1996 to restrain Optus Vision from proceeding with overhead cabling in the city of Stonnington. Optus Vision is more than likely to appeal this decision. Meanwhile, in Victoria, the shire of Nillumbik has begun discussions with the Eastern Energy power utility in an attempt to have some power cables moved underground, with Optus Vision sharing the cost. Discussions about placing the cables closer to existing overhead power lines, rather than a meter or so below these lines are also going ahead. This consultative tactic has been criticised by the NSW Local Government Association which has called for all councils to work together.

Proposed reforms

In response to concerns over the cabling issue, the Federal Government announced in late January that, in future, it would force Telstra and Optus Vision to lay cables underground in areas where cables are already buried and give councils new powers to insist on underground cabling. However, because of the election, the Government is unable to implement its new initiatives until



May at the earliest, if it retains power.

The Coalition has promised that it would introduce a new and tighter Code, involving greater consultation with local residents and greater power for local government. Specifically, the Code will require the dissemination of proper information to residents; giving of adequate notice regarding infrastructure development proposals; and consideration of a compensation regime where residential property values are substantially affected.

The Government's intention to force Optus Vision to negotiate with local authorities and to share facilities with Telstra are expected to affect the viability of the network, with underground cabling alleged to be three to five times more expensive than overhead cabling. Optus Vision also expects significant delays in application approval times for access to Telstra's ducts.

Hurdles

Optus Vision is, naturally, keen to relieve itself of its dependence on Telstra for interconnection and to avoid paying the significant fees for access to Telstra's network. Changes to the infrastructure development rules and carrier powers and immunities are the latest in a number of hurdles faced by Optus Vision since its commencement in mid-1994.

Back then, its first hurdle was whether it complied with the access provisions of the Telecommunications Act, which requires carriers to provide general access to its network for other telephone companies. The Optus Vision plan involved the use of the cable for pay TV and telephony, with Optus Communications leasing the network back from Optus Vision for telephony.

Optus Vision saw this plan as being consistent with the Government's general philosophy of open access,

insofar as Optus Vision would provide access to the telephony side of its cable, but would retain a closed (or managed) access pay TV side. Optus Vision's needs were based on the premise of control of the delivery of pay TV services, the need to secure control over content and reap the commercial rewards by being able to choose the product to be broadcast that would attract the most subscribers.

Its next battle was an attempt to avoid head-to-head competition with the better-resourced Telstra by avoiding facilities duplications and creating a series of regional monopolies for cable operators throughout Australia. This involved dividing the country into geographical sectors to give it and Telstra equal shares of the market. Telstra, naturally, opposed this move.

Details of the proposal were said to include a provision whereby the company with the rights to the area would have four years in which to lay its cable and then other companies could move in. It was anticipated that this would have led to acceleration of the cable roll-out and a significant reduction in the capital costs for all parties.

But in 1994, the Minister for Communications and the Arts, Michael Lee, announced that the duplication of communications infrastructure was essential for competition. Mr Lee also commented that the Government was committed to open access to promote competition, diversity and development of Australian content for cable broadband services. He made an exception for pay TV for a couple of years in order to ensure that there would be no delays in the roll-out of cable services.

This decision almost signalled the end of Optus Vision's \$3 billion cable network. However, it survived and restructured in January 1995. Since then, it has faced and overcome other hurdles. Firstly, Australis Media took

action in the Trade Practices Commission alleging a concentration of broadcasting influence resulting from the involvement of both the Seven and Nine commercial television networks in Optus Vision.

The next hurdle was a threat to the proposed float of its parent company, Optus Communications. In June 1995, the Treasurer, Ralph Willis, announced that he would not allow a capital reconstruction of Optus Communications in preparation for the public float because of foreign interest limits. A revised proposal submitted in July 1995 was subsequently approved.

More recently, Optus Vision has faced the prospect of a merged Australis Media and Foxtel. However, the Australian Competition and Consumer Commission has announced that such a merger would probably lead to a substantial lessening of competition. As *CU* went to press the ACCC was considering a further merger proposal from Australis and Foxtel.

The future

Decisions relating to facilities-based competition were made many years ago, with environmental sacrifices being accepted as the price to be paid for the sake of telecommunications competition. Today, those decisions and the theory of facilities-based competition are being put into practice in the market place and along our streets.

The commercial, political and environmental consequences of those decisions are now being felt. It is somewhat ironic, then, to note how things have changed. Today, it is not the environment that will be sacrificed for telecommunications competition. Rather, it is the telecommunications industry and the sale of Telstra that will be offered to fund the Coalition's environment package. □

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