Interconnection Conference Report

*Report of selected proceedings of AIC's **Interconnection** Conference, held in Sydney on 27-27 February*

A well-attended conference largely comprising representatives from the incumbent carriers enjoyed a dynamic and, at times, heated exchange of perceptions and opinions about how the post July access regime would or should shape up.

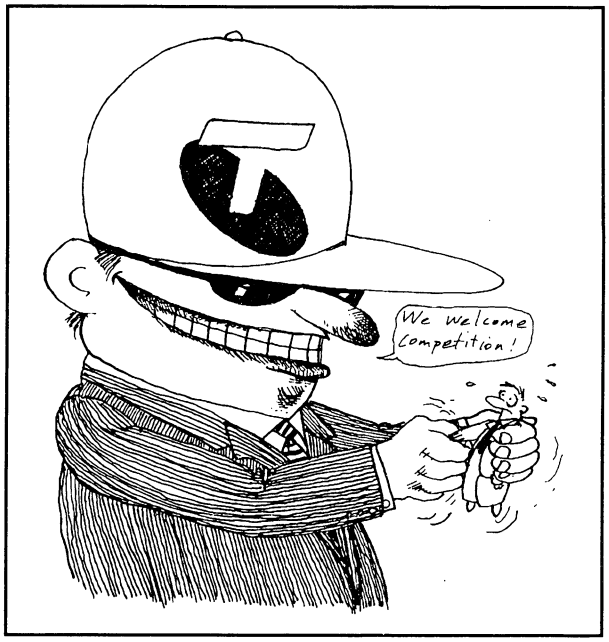
The first speaker, the ACCC's **David Lieberman**, prefaced by some hours the release of his organisation's Draft Access Pricing Principles, outlining instead the ACCC's role and functions in the new environment. Following the presentation, ATUG's Allan Horsley raised two contentious issues: whether access-seekers will have the opportunity to access points of interconnection closer to the customer than the current high levels; and whether the price of access for all seekers will match those available to carriers or substantial access-seekers. Lieberman remarked that the ACCC recognised some balance would need to be struck, but that the answers were still some way off.

The TAF

Alan Petts, International and Interconnect Manager, Optus Communications, then outlined the role of the Telecommunications Access Forum (TAF), a body to be created by the new legislation which is responsible for the development of access principles as part of the regime's move towards increased self-regulation.

The model is as follows:

1. Certain services will be 'declared services', either by the ACCC based on a TAF recommendation or on the results of a public inquiry, or by transitional provisions based on existing access agreements
2. The provision of declared services are then subject to Standard Access Obligations (SAOs), which impose non-discriminatory technical and operational standards.



3. The next level of regulation concerns the terms and conditions on which declared services (including the relevant SAOs) are provided to access-seekers. There are three alternative paths:
   - either the TAF or the ACCC must develop an ACCC-registered set of Telecommunications Access Codes, which contain model terms and conditions for access to a declared service and are consistent with the SAOs. An access-seeker must then be provided with access in accordance with the Code.
   - in addition, an individual access provider may unilaterally develop its own Access Undertaking - a statement as to the terms and conditions it will supply access, which must be consistent with the relevant SAOs. Ideally, it should also (from a regulatory perspective, at least!) be consistent with the relevant Telecommunications Access Code; but if it is not, the ACCC must publish the undertaking and consider any submissions received in response before deciding whether to register it.
   - Alternatively, individual access providers and seekers may reach their own commercial agreements.
4. Disputes concerning the application of SAOs or the terms and conditions associated with those obligations, however derived, may be arbitrated by the ACCC. ACCC directions are enforceable in the Federal Court.

Although not yet formally in existence until the legislation is passed, an anticipatory 'port-TAF has been created, whose present members include AAPT, Austar, Axicorp, BT Australasia, Global One, Vodafone, Telstra and Optus. Others have applied. At this stage, the likely declared services are domestic PSTN, AMPS and GSM originating and terminating access, as well as local number portability services.

In response to questions from the floor, Petts acknowledged there were 'clear tensions' within the TAF on key issues. These tensions included:

- the level of detail Codes should contain [the significance is that the

largest access providers want Codes to be little more than statements of general principle, so that the greater part of any consequent agreement will rely on commercial negotiation in which they enjoy the advantage. Smaller access-seekers, on the other hand, seek as much detail as possible];

- whether services such as data/ISDN and frame relay should be declared services; and
- whether TAF decisions are made by consensus or majority.

The (A)CIF

Peter Darling, Group Manager, Technical Regulation, Telstra, then spoke about the (Australian) Communications Industry Forum.

The Telecommunications Bill requires that industry develop consumer, technical and access codes, for ratification by the appropriate regulatory body and application within the new regime. While it was assumed that the TAF would develop access codes, a wider consultative forum was required for the others. As the legislation specifies no particular body, the Communications Industry Forum (CIF) has grown from the two year old NIIF to fit the bill, and is now seeking official recognition from the government. While the CIF's functions have not been finalised, it anticipates that it will take over AUSTEL's soon-to-be disbanded Standards Advisory Council (SAC) in the setting of technical standards, and that it will undertake some of its stated functions and delegate others to bodies such as Standards Australia.

At present, the CIF is meeting fortnightly and is working on a number of regulatory issues as well as the matter of its own legal incorporation (as a company limited by guarantee) and structure. Darling envisaged the CIF would comprise a small, full-time executive Board and a larger Assembly that would meet three or so times per year. Membership would be open to all industry participants, with a range of membership categories.

The story so far

Neil Tuckwell, Chairman of AUSTEL, outlined key elements of the proposed regime, which he described as 'evolutionary rather than revolutionary'.

Australian telecommunications has been well served for the past five years, Tuckwell said, with 'one of the most effective and efficient regimes anywhere in the world'. For carriers, the access regime showed that each access issue was unique and there was no 'one size fits all approach' to determining fair terms; that it was essential to have a well-defined regulatory regime; and that 'interconnection is a zero-sum game'.

Information asymmetry was an ongoing - and largely intractable - problem in access disputes

Outcomes for service providers were more diverse. Switched resellers have had to accept lower levels of functionality at higher costs from Telstra than has Optus, with consequent limits on their ability to compete, especially in relation to residential and rural markets. Switchless resellers have had to operate on low margins with their success constrained by the ability of carriers' billing systems. Their market share is already reducing, particularly in the IDD market, where it has dropped significantly over the past six months. Arbitrage started 'with a bang, not a whimper', but will eventually fade away. Switched data resellers face the same issues as switched voice resellers, outcomes in this area have not been good, with resellers having had conditions imposed on them without any ability to negotiate terms.

The experience of applying pricing guidelines for interconnection issues has revealed the importance of being able to translate pricing agreements to practical outcomes. The principles had difficulty coping with the fact that costings were always forward-looking; and AUSTEL identified inadequacies in carrier costing mechanisms - the algorithm was OK, but the data was not always up to scratch. Overall, though, the guidelines enabled arguments to be confined to 'a certain dimension'.

Arbitration also has had positive and negative aspects. Being based on representations, it is difficult for the arbitrator to take all relevant considerations into account; and the parties don't 'own' the outcome. However, the process does fundamentally address *interests* rather than *rights* and is less adversarial. Tuckwell agreed that Allan Petts that information asymmetry was an ongoing – and largely intractable – problem in access disputes; but stated that, in AUSTEL's experience, arbitration provided the best opportunity to 'flush out information'. He noted, though, that in some circumstances, 'the person who is claimed to be withholding information doesn't actually have it'.

In response to a question from AAPT's Brian Perkins about likely arbitration times under the new regime, Tuckwell felt that they would be quite lengthy - six months and upwards for substantial issues. He pointed out that because arbitration was subject to judicial review, the imperative of due process prevented the imposition of strict time limits.

Access principles controversy

A discussion of access principles provided the audience with an example of the tension within the industry over the extent of regulatory proscription needed to ensure the achievement of competitive outcomes.

Peter Gerrand, Professorial Fellow in Telecommunications at the University of Melbourne, outlined key elements of his report *Access Pricing*

Principles, co-authored with Professor Roger Buckeridge and commissioned by ATUG, AIIA and SPAN. The Report, he said, attempted to take a practical view of Network Service Elements (NSEs) that should be declared services under the access regime. There were three lists of NSEs for progressive declaration by 1 July 1997, 1 January 1998 and 1 July 1998 [*the report's elements are discussed in the following article*].

Henry Ergas, Visiting Professor of Communications and Network Economics, University of Auckland, responded with a stinging critique of these principles, alleging that the paper fundamentally misunderstood the regulatory conditions proposed by the regime, being based on the misapprehension that the primary task devolved to the regulator. He stressed that there should be no one formula that should decide outcomes; and that because regulators should be public custodians but not hidden puppet masters, the principles guiding them must be highly flexible.

Ergas' remarks prompted spirited responses. Peter Gerrand had yet to see Ergas' criticisms and could not, therefore, respond to them categorically. However, he disputed that the Report was inconsistent with the underlying principles of the new regime, finding it hard to believe that he and Ergas had read the same piece of legislation. He wished that access arrangements could be achieved solely by commercial negotiations, but felt that anyone adopting such a view 'would have to be kidding themselves'. He opined that if the new regime proceeded according to Ergas' propositions, 'the market would go backwards' in terms of market access. Co-author **Roger Buckeridge** stated that there was no dispute that the clear expectation of the new regime was that for access issues should be decided primarily by commercial agreement. 'The last thing we want to see is the over-use of any arbitration process', he said, 'but unless there's a clear set of pricing principles, there'll be a poorer chance of having an efficient commercial negotiation process'.

Allan Horsley stated that the Report was compiled by those with a disparate interest in the interests of end-users of telecommunications services, who were particularly concerned about how a fair and reasonable marketplace commenced. He suggested that 'Henry's expose is about a world with more equal access than we enjoy now', and for those that live in the practical world there is as yet no sign that the need for fair access would be recognised. The terms of the legislation are by no means robust...and it's pretty clear where the government's advice is coming from not to move in that direction', he said.

'unless there's a clear set of pricing principles, there'll be a poorer chance of having an efficient commercial negotiation process' - Roger Buckeridge

AAPT's Brian Perkins asked Ergas whether he was engaged as a consultant to Telstra and, if so, how he reconciled this apparent conflict of interest between his personal views and those of the company. Ergas replied that he was not engaged by Telstra, but that even if he was, there would be no conflict since 'they'd be exactly the same as those I hold now'.

The New Zealand experience

David Stone, Industry and Standards Manager, Clear Communications, expressed 'a degree of envy at the gentlemanly and consensus environment in which interconnection is negotiated' compared to Clear's experience with Telecom NZ as its first competitor in the deregulated environment.

The NZ Telecommunications Act imposes no obligation on Telecom NZ to interconnect with Clear or any other company - this is only derived from the application of general competition laws under the Commerce Act. Lacking either industry-specific regulation or regulator, the telecommunications industry relies upon the general competition regulator, the Commerce Commission, for interpretation of industry practices. However, having been defeated soundly by the carrier in court actions several years ago, Stove alleges that 'the Commission considers Commerce Act action against Telecom too difficult and too risky, and has effectively abandoned its enforcement role in telecommunications'. Facts obtained under freedom of information legislation reveal that the Commission has fully investigated only one of the 86 complaints lodged with it since 1994 regarding Telecom, and no legal action has been instigated. Stone concluded that Telecom NZ had frightened the Commerce Commission into submission.

Telecom NZ claims to own the national numbering plan, by virtue of the sale of the SOE to Bell Atlantic and Ameritech in 1991, and acts as the de facto regulator by allocating its own parcels. In litigation presently before the courts [to be reported in the next issue of *CU*] Clear alleges that Telecom has misused for commercial purposes information provided by Clear for the purposes of code allocation.

Rather than delivering better consumer outcomes, 'light touch' regulation has seen customers pay higher than the OECD average. Clear pays Telecom the highest interconnection charging rates in the world.

Despite these difficulties, Stone did not advocate amendments to the Telecommunications Act, industry-specific regulation or an industry regulator. Possibly reflecting the fact that Clear is an access-provider as well as an access-seeker, he said that Clear 'had learned to live with' the situation.❑