

## AUSSAT AND COMMUNICATIONS POLICY

PETER B. WHITE\*

### I. INTRODUCTION

The debate about a domestic communication satellite for Australia has generated discussion about the regulation of telecommunications and broadcasting in Australia. This paper discusses some of the issues which have been raised in that debate.

AUSSAT Proprietary Limited is the company which was formed in 1981 to own and operate the Australian communications satellite system. The Satellite Communications Act 1984 regulates certain aspects of the organization's operations. It directs that AUSSAT's primary objective should be to own and operate a communications satellite system for Australia in accordance with sound commercial principles. The Act also enables AUSSAT to provide its facilities for use in communication systems for neighboring regions. AUSSAT'S operations are funded by a mixture of equity capital and commercial borrowings. The share capital of the company may be beneficially owned by the Commonwealth of Australia and the Australian Telecommunications Commission (Telecom) with Telecom holding not more than 25% of the issued share capital at any one time.<sup>1</sup>

### II. COMMUNICATIONS INFRASTRUCTURE IN AUSTRALIA

AUSSAT was created after a long period of discussion about the adequacy of the Australian broadcasting and telecommunications system. Some of that concern was generated by private sector organizations which wanted to see an alternative telecommunications carrier to Telecom. Some also wished to

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\*Dr Peter White is Chairman of the Centre for the Study of Educational Communications and Media at La Trobe University. He was the guest editor of the recently published special AUSSAT edition of *Media Information Australia*.

1 AUSSAT. 1986 Annual Report i.

become private sector providers of telecommunications service, something which was denied them by the Telecommunications Act 1975. Other commercial broadcasting organizations saw a satellite system as a necessary element in a system of national television networking.

During the late 1970s many of the proponents of a satellite system based their arguments on the geography and demography of the country. They noted that approximately two thirds of Australia's fifteen million residents lived in the south-eastern coastal region. The remainder were clustered in smaller regional centres or scattered throughout the remote and often inhospitable outback. Because of the uneven spread of population and the vast distances involved, access to Australia's telecommunications and broadcasting systems varies quite markedly. Where one lived determined the range and level of broadcasting or telecommunications services which were available.

On one end of the spectrum, residents of Sydney and Melbourne, had access to high quality telephone, telecommunications and postal services, and up to twenty radio stations and five colour television services. On the other end of the spectrum, some residents of the remote outback had to be content with an irregular postal service and an unreliable two-way High Frequency (HF) radio service as their links with the outside world. For many residents in the remote outback, broadcast television and telephone services were non-existent, short-wave radio provided the timely news and entertainment service and unreliable HF radio provided the only communication link for business, health and educational services.

Of course not everyone lived at the extreme ends of the spectrum. While many people outside the major cities had high quality telephone services, they had to be content with far fewer radio and television broadcast services than those in the major cities. For example, in 1977, when the public discussion of a satellite system was initiated it was estimated that more than 3.5% of the population (490,000 people) lived outside the service areas of the national television service and 1% of the population could not expect to receive television services by conventional means. When the people who lived within television service areas and received inadequate or unsatisfactory reception were taken into account 10% of the population (1.4 million people) received either an inadequate or no national television service.<sup>2</sup>

In 1977, access to commercial television services was less satisfactory. While 60% of the population received three commercial television services, 31% of the population (4.2 million people) received one or no commercial television service.<sup>3</sup> Non-capital city commercial television broadcasters, known as regional broadcasters, usually had no commercial competitors. Their only television competition was from the national ABC service.

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2 Commonwealth Government Task Force on a National Communications Satellite System, *Report*, AGPS, Canberra, 1978, 11.

3 *Id.*, 14.

Parallel limitations were evident with the telecommunications system. In 1977 Telecom's telephone system was predominantly automatic with a penetration rate of seven telephone services for every ten dwellings, and with plans to penetrate nine out of ten dwellings by 1987. One third of all telephone services were in rural area and the 100,000 manual services were entirely in those areas. It was estimated that the conversion to automatic exchanges would be completed by 1990 but that this would also require an upgrading of many subscriber erected telephone lines. While Telecom partially subsidized the costs of providing those lines, part of the cost was the responsibility of the subscriber. Some subscribers were concerned about the economic effect of the costs involved in the upgrading of those lines.<sup>4</sup>

Telecom's trunk network was also used by television broadcasters for the distribution of programming. While the ABC had its own dedicated network, the commercial broadcasters, who often needed access to the system at the same time and required a minimum cost service, relied on pre-emptible "protection bearers". The lower level of service provided on these networks caused some concern in the commercial television industry.<sup>5</sup>

It was within the context of a broadcasting and telecommunication system which provided differential access to services depending on where viewers or subscribers lived that the debate about a communication satellite system emerged.

### III. THE AUSSAT DEBATE

Even though there were strong arguments in favor of a domestic communication satellite system, there were equally strong arguments to the contrary. As a consequence AUSSAT had a stormy conception and birth. Its creation was vehemently opposed by Telecom management and unions. Regional broadcasters led the opposition on another front.

In retrospect it is obvious that the opposition was not simply to a satellite for Australia. Rather opposition hinged on a satellite organization which would be allowed to do certain things. For example Telecom did not want a satellite which would 'skim the cream' from its profitable markets. According to Telecom this would upset the complicated cross-subsidy of uneconomic services by profitable services. Regional broadcasters did not want a satellite system which would put them at the economic mercy of national television networks created by the television stations in Sydney and Melbourne.

These tensions between some of Australia's most powerful interest groups have led to a fascinating set of government policy decisions. Historians will probably delight in the decision which allowed Telecom to take a one quarter shareholding in AUSSAT. This level of ownership is large enough to guarantee that Telecom does not attempt to threaten the viability of

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<sup>4</sup> *Id.*, 6.

<sup>5</sup> *Id.*, 7-9.

AUSSAT. It is also small enough to ensure that Telecom's views cannot dominate. Equally fascinating is the decision to allow regional television stations to take part in the Regional Commercial Television Service (RCTS).<sup>6</sup> Again, early opponents of the satellite system have been given a chance to profit from AUSSAT.

So what are the AUSSAT-related policy issues which are likely to arise in the next few years? Which areas of government policy are likely to be put to the test? What are the policy implications of some possible uses of AUSSAT?

Before considering the policy issues which AUSSAT has raised, it is important to note that AUSSAT will be used in a number of predicted and relatively conventional ways. It will be used by radio and television broadcasters to distribute their programmes to the stations in their networks so that they can be retransmitted by terrestrial transmitters in conventional ways. Television viewers will receive programmes in the traditional way and AUSSAT transmission will merely replace the use of Telecom terrestrial links to interconnect television stations. The Australian Broadcasting Corporation (ABC), Special Broadcasting Service (SBS), and the commercial radio and television networks will use AUSSAT in this way.

AUSSAT will be used by Telecom as a way of improving and extending its existing telecommunications services such as telephone and data services. But most of those uses will be invisible to the user of the telecommunications service.

It has also made new services such as ITERRA, a remote satellite-based telecommunications service, possible.) Government departments and large businesses will use AUSSAT to provide their own telecommunications network. Finally, the ABC and RCTS operators will use AUSSAT to provide a direct broadcast television, radio and data services to remote outback residents.<sup>7</sup>

But these and other services being developed will raise interesting questions for policy makers. These services, and the entrepreneurs behind them will force the development of new policies and possibly the creation of new mechanisms for the management of those policies.

#### IV. TELECOM, AUSSAT AND REGULATION

As was noted earlier Telecom did not support the establishment of a domestic communication satellite. During Telecom's early consideration of a satellite system its opinion was that:

[a] national satellite system cannot be justified on purely economic grounds for the provision of services which are the responsibility of Telecom Australia...<sup>8</sup>

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6 This service will allow people who cannot receive a conventional television service to receive commercial television programmes direct from the satellite.

7 Direct Broadcasting Satellite services are services transmitted by satellite so that they can be received by relatively inexpensive ground stations in individual homes. In Australia these ground stations cost approximately \$3,000 installed.

8 Telecom Australia, *National Satellite Communications System Studies*, Melbourne, 1977, 10.

The report went on to argue that while there might be “national advantages” to be gained from the wider distribution of television programmes, improved medical and educational services in remote areas and upgraded defence and Foreign Affairs communications capabilities, these priorities were “not within Telecom Australia’s capacity to evaluate”.<sup>9</sup>

It is understandable why Telecom came to that conclusion. With its large investment in a terrestrial communication system and the government-imposed requirement that at least 50% of its working revenues be generated from trading income and its commitment to a principle of users paying for costs, it was clear that where a marginal expansion of the terrestrial network was not feasible, it would be uneconomic to invest in a satellite system which would be used by a small number of users remote from the terrestrial network. The additional costs of a satellite system would have been unacceptable. But the establishment of the Satellite Task Force by the Government indicated that the Government wanted to examine the satellite issue in a context which was broader than that of Telecom’s institutional needs.

The dispute between Telecom and the government over the establishment and the ultimate ownership and control of an Australian domestic communication satellite system was partially resolved when Telecom became part-owner of AUSSAT. As was noted earlier Telecom now has a financial interest in the success of the AUSSAT system and sufficient control to ensure that AUSSAT could not become a threat. Also, the Satellite Communications Act 1984 specifically excluded AUSSAT from providing public switched telephone and data services, services which are at the core of Telecom’s operations.

But even though potential conflict between Telecom and AUSSAT has been resolved on the surface, there are still significant areas where conflict between the two authorities could occur. Conflict could arise, because AUSSAT and Telecom have quite different priorities. AUSSAT has every incentive to generate business and expand its zone of influence. On the other hand, while Telecom has to ensure that its financial investment in AUSSAT is not endangered, Telecom has a much larger investment in its existing terrestrial network and it must ensure that the viability of that network is not threatened by the activities of AUSSAT. The Telecommunications Act 1975 makes Telecom responsible for providing a basic telecommunications system nationally and AUSSAT does not have such an extensive responsibility.

How then does Telecom ensure that the economic viability of its network is maintained? Telecom encourages users to use the public switched network and Telecom minimizes the financial impact of private networks by levying fees for connecting private networks to the public switched network.<sup>10</sup>

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9 *Ibid.*

10 A private network might involve privately owned telecommunications lines and switching equipment, lines leased from Telecom or satellite capacity leased from AUSSAT.

These 'interconnection fees' are used to compensate Telecom for the loss of revenue caused by private networks and to ensure that the owners of private networks contribute to the maintenance of the public switched network. These interconnection fees are charged whether the private network uses lines leased from Telecom or services supplied by AUSSAT. And of course the level of these fees will influence the ultimate viability of private networks which are to be interconnected to Telecom's public switched network.

But the establishment of private networks is not open to anyone. For example it is not possible for an organization to establish a private network and then sell communication services to other individuals or organizations. This is because Telecom has a statutory monopoly on the provision of telecommunication services in Australia. Its enabling legislation enunciates policies and procedures for ensuring that this monopoly is not threatened. For example the Telecommunications Act 1975 specifically restricts other organizations from setting up competing telecommunications networks. Unless particular organizations are specifically exempted from that requirement, organizations cannot set up competing telecommunications networks and sell those telecommunications services to the public. This carriage of "third party traffic" is specifically excluded. Organizations wishing to share a dedicated network have to demonstrate to Telecom that they could be classified as a "common interest group" and that they are involved in a common business which is *not* the supply of telecommunications services, or that they were "exempt" from that requirement of the Act.<sup>11</sup>

Similarly, the Satellite Communications Act 1984 restricts customers of AUSSAT from reselling satellite communications services to others. AUSSAT customers can share a private network. However, as in the case of Telecom customers, users of an AUSSAT-based private network must demonstrate that they are either exempt from that requirement of the Act, or members of a common interest group and not using the private network as a means of obtaining cheaper communication services.

But while Telecom has every incentive to interpret the "common interest group" rules in a narrow way as a means of protecting the revenue which it derives from its public switched network, AUSSAT does not have those same pressures. AUSSAT does not have another revenue base to protect and so a more liberal interpretation of the "common interest group" would be in its interests.

While determinations of "common interest group" or "exempt" status can be appealed to the Minister, aggrieved parties do not have an automatic right of appeal. The Minister need only act if he feels that such action would be in the "public interest".<sup>12</sup>

This issue arose early in AUSSAT's life when little of AUSSAT's capacity

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11 See S. White and J. Wilkinson, "AUSSAT and the future: Some legal conundrums" 38 *Media Information Australia*.

12 Ultimately Ministerial action or inaction can be reviewed under the Administrative Decisions (Judicial Review) Act 1977.

had been leased. The Queensland Government proposed the establishment of Q-NET which would use AUSSAT services and an integrated set of satellite earth stations to provide cost-effective communications within and between user departments and essential service applications. The original application was criticized by Telecom unions who argued that the system would result in Telecom traffic being diverted to the AUSSAT-based network. The potential Commonwealth/State confrontation was resolved when the Queensland Government signed three separate leasing contracts with AUSSAT. Interconnection between the three systems covered by the three contracts was forbidden. But even though the problem was resolved the 'three contract resolution' might have little effect on the ultimate use of the satellite network.

Soon after, the Department of Communications issued a formal statement describing Government policy in this area. It noted that a number of States and the Northern Territory were considering the development of satellite-based private networks which covered entire States and that it was possible that these networks would eventually seek to interconnect with each other. The statement re-affirmed the Government's existing policy which was that State Government telecommunications networks would not be allowed to become *de facto* common carriers. As a consequence it argued that it would not be possible to establish a separate telecommunications network which covered all State departments and authorities. Rather, the Government was prepared to accept that more limited groups of departments might operate private networks which conformed to existing policies on common interest groups.

While the Government has resolved its immediate political problems by allowing Queensland to proceed with a superficially modified system, the common interest group issue will keep arising. It is bound to arise in the private sector when diversified conglomerates seek to set up their own private networks and where it would be impossible to demonstrate that they had a common business which was not the supply of telecommunications services. Common ownership and the supply of telecommunications services might be the only things which the independent units of a diversified conglomerate might have in common.

The difficulties inherent in determining eligibility for common interest group status will be compounded as communication systems rely more and more on digital techniques and as user-owned equipment becomes more sophisticated. And given that the economic benefits of private networks are likely to become more attractive, and that the interests of Telecom and AUSSAT in this area are different, it is possible that the Minister for Communications and ultimately the courts will be drawn into determinations of common interest group status. (As yet the courts have not had a case to decide.)

If dispute over the attribution of common interest group occurs with any regularity it is possible that there might be pressure for the establishment of an independent tribunal which would de-politicize the decision-making

process and remove the decisions from Telecom, AUSSAT and the Minister. In particular this kind of development would remove Telecom from the somewhat uncomfortable position of being both a service provider and a *de facto* regulator. It would also mean that the Department of Communications was not the *de facto* regulator. It would also mean that the Department of Communications was not the *de facto* arbitrator of common interest group status by virtue of its licensing of satellite ground stations.

## V. AUSSAT AND THE OVERSEAS TELECOMMUNICATIONS COMMISSION (OTC)

Because much of the demand for AUSSAT's services depended on a radical restructuring of Australia's broadcasting regulatory framework, system planners had considered the possibility that the AUSSAT system might be designed for use by Australia's near neighbours. Guaranteed customers outside Australia would reduce some of the economic uncertainty associated with the project.

During the planning of the AUSSAT system, discussions were held with communication authorities in Papua New Guinea and New Zealand. Eventually New Zealand withdrew and the first generation satellite system was designed so that domestic communication services could be provided to Papua New Guinea. After the system had been designed, but before the construction of the final satellite had been completed, Papua New Guinea withdrew from negotiations. AUSSAT planners then turned their attention to other markets in the Pacific basin.

The use of AUSSAT for communication within the Pacific was encouraged by the work of the South Pacific Telecommunications Planning Development Project (SPTDP). This organization was established by the Forum Meeting of the Heads of State of the independent countries of the south Pacific in October 1983. The SPTDP's main objective was to provide reliable communications to villages in member countries in order to strengthen the economic and social integration of the rural and urban sectors. Both the smaller and larger island countries were to work together to ensure that the benefits of modern telecommunications technology were available to everyone in a coordinated and cost-effective way.<sup>13</sup> At the meeting of the Forum which established the SPTDP, Australia reaffirmed its intentions to consider the Pacific region's needs in the planning for the second generation AUSSAT system.<sup>14</sup>

While AUSSAT had been conferring with the SPTDP on the design of a south Pacific service which could use the second generation AUSSAT

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13 J. Wilkinson, "The South Pacific Telecommunications Development Program: Progress report" in D.J. Wedemeyer and A.J. Pennings (eds) *Telecommunications — Asia, Americas, Pacific* (Proceedings of the 1986 Pacific Telecommunications Council Conference), 105-109.

14 M.D. Harwood, "Aussat: A new era for Pacific telecommunications" in D.J. Wedemeyer and A.J. Pennings (eds) 119-124.



system, the possibility of modifying the third satellite in the first generation AUSSAT system emerged.<sup>15</sup> AUSSAT sought Australian Government approval to modify the third of the first generation satellites so that the beams previously allocated to Papua New Guinea could be switched to the south Pacific.

In April 1985, the Minister for Communications announced that AUSSAT had been given permission to modify its third satellite so that it could provide "facilities that would allow for domestic satellite services within countries in the south Pacific".<sup>16</sup> He noted that the decision to modify the satellite would mean that countries in the south Pacific would have access to AUSSAT services in the first generation of satellites and not in the second generation as had been originally planned.

Potential users of the modified AUSSAT system would be New Zealand, Fiji, Western Samoa, Tonga, Vanuatu, the Solomons, Papua New Guinea, the Cook Islands, Kiribati, Tuvalu, the Federated States of Micronesia, Nauru, Tokalau and Nuie. The crucial point to note is that AUSSAT was given permission to provide domestic communication services to the countries of the south-west Pacific.

By the end of 1985 AUSSAT had concluded negotiations with the New Zealand Post Office for the use of a high-powered transponder. In May 1986 the Australian Government formally approved the contract on the understanding that AUSSAT capacity would be used solely for domestic communications.

AUSSAT continued to explore the possible use of the two remaining transponders in the south Pacific. But resistance to any AUSSAT plans which could entail regional or international communications (*i.e.* communications *between* countries in the Pacific region) came from OTC. It argued that an AUSSAT-based regional or international communication system would weaken the INTELSAT system.<sup>17</sup> This opposition needs to be understood in a wider context. The Australian government, through OTC, had been opposing the development of competitive, privately owned satellite systems in the Atlantic region on the grounds that they would lead to market fragmentation and financially damage the INTELSAT system. Consistency demanded that Australia's position on the two matters be the same, although there were economic, foreign and trade policy arguments which supported AUSSAT's entry into Pacific regional and international telecommunications markets.

Conflict between AUSSAT and OTC arises because OTC is Australia's signatory to the Agreement Relating to the International Telecommunications Organization, 1973, (INTELSAT agreement). The obligations of that agreement include the need to consult with INTELSAT to

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<sup>15</sup> *Ibid*

<sup>16</sup> Minister for Communications.

<sup>17</sup> INTELSAT is the international organization which owns and operates international satellite-based telecommunications services on behalf of member countries.

ensure that either a public or specialized telecommunications satellite service which operates within the jurisdiction of the signatory is technically and operationally compatible with the INTELSAT system. But more importantly, Australia through OTC has an obligation to ensure that the INTELSAT system will not suffer any 'significant economic harm' from the activities of any public telecommunications service operated by any organisation within its jurisdiction.

The possibility of economic harm to INTELSAT could be argued if AUSSAT was used to provide telecommunications links between Australia and countries of the South West Pacific. Economic harm could also occur if AUSSAT was used to provide international service between other countries of the South West Pacific region.

The debate about AUSSAT initiatives in the South West Pacific region must be understood within the context of a lively international debate about the future of INTELSAT. For example a number of specialized international satellite-based telecommunications systems have been authorized to carry traffic between Europe and the United States. The authorization of those services has been accompanied by arguments which are reminiscent of the debate about the impact of a domestic communication satellite on the operations of Telecom. For example proponents of specialized non-INTELSAT systems argue that profitable satellite routes such as the US-Europe route are used to subsidize the less profitable parts of the system and that this is inequitable. They argue that telecommunications system users should only pay the actual costs of providing their services and that they should not be expected to subsidize other users.

The dispute between OTC and AUSSAT can be seen as a manifestation of debates which are occurring in other places. Ultimately the Minister will have to decide whether Australia's strategic interests in the Pacific Basin are best served by an AUSSAT involvement which is inconsistent with Australia's position on competition with INTELSAT on the Atlantic Ocean communication route.

## **VI. AUSSAT AND REMOTE BROADCASTING**

One of the major justifications for the creation of AUSSAT was so that it could be used to provide a television service to residents of the outback. In early planning the ABC's Homestead and Community Broadcast Satellite Service (HACBSS) was seen as the sole service to outback residents. But as planning progressed it became obvious that it would be financially sensible for AUSSAT to use its spare high-powered transponder capacity so that a second television service could be provided. So the commercial Remote Commercial Television Service (RCTS) was created with two aims. The first was to provide AUSSAT with extra income and the second was to provide an additional commercial television service to the outback.

Four RCTS licences have been awarded by the Australian Broadcasting Tribunal (ABT). One covers Western Australia, another covers Queensland.

A third licence covers Tasmania, New South Wales and Victoria and a fourth licence, covers the Northern Territory and South Australia. Apart from the Central Zone licence which covers the Northern Territory and South Australia, all licences have been given to groups with interests in regional broadcasting. They will use the service to provide regional interconnection or networking services and to provide direct broadcast television services to residents outside existing television transmission areas.

The issue for communication policy analysts is that the economics of these RCTS licences is far from clear. From the outset the Western Australian licensee will depend on the financial involvement of the Western Australian Government. And various government subsidies have been discussed in the hearings for the Central Zone licence which covers South Australia and the Northern Territory. But what would happen if a specific RCTS service should fail, or at least experience serious financial difficulties? This could happen if government subsidies are not continued or if other revenue projections proved to be inaccurate?

The most likely scenario is that an RCTS licensee would attempt to generate additional revenue from a subscriber supported television service, known popularly as pay-television.<sup>18</sup> (This kind of income generating service was often suggested as a likely source of revenue during the hearings which defined the RTCS service. Pay-television was rejected because it was felt that outback residents should not have to pay for services which were available free of charge in urban areas.) But in the final analysis it is possible that some form of pay-television service directed to remote and urban markets might be necessary to ensure the economic viability of the RCTS services.

Threats to the economic viability of the RCTS services should not be taken lightly. Already, the Nine Network has offered regional broadcasters free satellite access to its real-time programming such as news, sports and current affairs. If regional broadcasters can receive programming direct from satellite distribution systems which are paid for by the Melbourne-Sydney networks then they would have an incentive to either forsake RCTS distribution schemes, or at least question the economic sense of paying for a distribution service which they can receive without charge.

The resolution of these issues must be seen as a part of the ongoing struggle for power between the regional television broadcasters and the Melbourne-Sydney television operators. Resolution of this tension is also complicated by the Governments current attempts to provide more television outlets in regional areas. The November 1986 announcements of major changes to the regulations governing the ownership and control of television stations are all part of the move to provide customers for AUSSAT

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<sup>18</sup> Pay-TV or subscription television gains its income from subscriptions rather than advertising or government subsidy. Only those who pay a subscription are able to receive the encoded television service. The Minister for Communications has announced that reconsideration of subscription television in Australia will occur in 1990. See, Minister for Communications, Press Release 89/96.

and increase the number of regional television stations through the use of networking.

## VII. NEW FORMS OF TELEVISION

Communication satellites have had a fundamental impact on the United States television industry, but the most significant effects have *not* been with the mainstream networks. (They have been slow to use satellite technology.) Rather, the most significant effects have been with the initially fragmented cable television industry. Entrepreneurs such as Ted Turner have used the combination of television broadcasting, satellite distribution and cable television distribution to their advantage. Working on the margins of the television industry they have been able to make use of the major strength of satellites, the point to multi-point distribution of information. Turner, for example, was able to distribute the programming from his minor Atlanta television station and turn it into a nationally networked station.

Quite obviously Australia's infrastructure is different. There are not hundreds of discrete cable television systems which can be linked by AUSSAT. But there is the possibility of creating other kinds of networks. The most developed of these planned networks of the Bond Corporation subsidiary Sky Channel. It uses AUSSAT facilities to distribute sports and entertainment programming to company-owned hotels and hotels associated with the company's brewing interests. Whether or not Sky Channel ties in with the Bond Corporation's other television broadcasting interests in Perth and Brisbane another form of television network could emerge. It would be non-traditional in the sense that it did not link broadcast television stations. Rather it would link venues where large numbers of people could gather.

In order to accommodate these kinds of systems the Government has announced that it will license a new form of service which will be known as Video and Audio Entertainment and Information Services (VAEIS). These will be licensed to provide entertainment and information to non-domestic environments such as hotels, licensed clubs and TABs.<sup>19</sup> It is quite likely that the definition of "non-domestic environments" will raise problems for policy makers and could ultimately be tested in the court.

Because the VAEIS services are not intended for reception by the general public they fall outside the ambit of existing broadcast regulations. As a consequence broadcasting content regulations would not apply. In particular it would mean that restrictions on the advertising of particular products such as alcohol and cigarettes would not be enforceable. The Minister has announced that guidelines covering the content of VAEIS services are being developed and they will form the basis of an enforceable agreement between VAEIS providers and the Commonwealth and will constitute a self-regulatory

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<sup>19</sup> Minister for Communications, Press Release, 89/86.

code of practice which service providers should observe.<sup>20</sup>

Even though the Minister announced that Pay-TV directed to the general public would not be permitted for at least four years,<sup>21</sup> Sky Channel and similar services could also be used to distribute programmes which audience members paid to view. Special sports events could be distributed to public venues such as hotels or clubs and a form of pay-per-view television could emerge. Most importantly, Sky Channel could be used as the basis for a fourth commercial television network. If its owners could purchase the rights to appropriate programming Sky Channel could be used to link a combination of hotels, clubs and traditional broadcast television stations. Regional stations and unaligned major city television stations would be able to choose from the AUSSAT delivered offerings of an additional commercial television programme supplier.

Operations such as Sky Channel pose other threats to accepted notions of broadcast and telecommunications regulation. For example, Sky Channel could be used to link a number of sites for video conferencing. Independent corporations might wish to contract with organizations such as Sky Channel for the provision of a video teleconference service and the supply of meeting rooms and other hotel services. Such a service might be interpreted as the use of Sky Channel satellite facilities for the transmission of third party traffic. For the service to unambiguously fit within existing policy guidelines it might be necessary for the independent corporation to create a separate contract with AUSSAT for the supply of satellite services.

Ultimately it is likely that the question of third party traffic will need to be rationalized so that specific organizations will be empowered to legally carry third party traffic of particular kinds. For example, it is possible that certain organizations will be allowed to operate video teleconferences or other third party traffic. Perhaps the resolution will involve the judgment that the carrier is enhancing the content in particular ways, by providing some specific processing or switching of the signals.

## VIII. PRIVATIZATION

The debate over the privatization of public utilities has waned somewhat in Australia. (It never approached anything like the intensity of the debate in the United Kingdom.) It should, however, be remembered that profitable public utilities such as OTC were often mentioned as likely offerings to the private sector. For obvious reasons there is little private sector interest in the ownership of public authorities which lose money.

The debate about private ownership of AUSSAT has taken a somewhat special form. In the first place ownership of AUSSAT was seen as a partnership between the public and private sectors. Both Liberal and Labor

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<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

governments have seen a place for some participation of the public sector. Given the large investments required and the likelihood that returns on funds invested would be limited in the initial years of operation, there was no strong pressure for private sector ownership of the satellite system, but this might change in the future. As returns on investment improve there could be pressure for private sector ownership. (This pressure could come from sections of the Labor party as well as the Liberal party.) Given that AUSSAT is structured as a private company with Telecom and the Commonwealth owning all the shares, it would not be very difficult to open up shareholding to the private sector.

The irony of this speculation is that while AUSSAT provides little or no return on funds invested there will be no pressure for private equity in the system. But as AUSSAT begins to perform better financially, and there is every expectation that it will perform well, there is more chance that it will be seen as a candidate for either full or partial sale to the private sector.

## IX. CONCLUSIONS

AUSSAT will have revolutionary consequences for the provision of new and improved broadcasting and telecommunications services for many individuals and organizations in Australia. But there can be little doubt that AUSSAT will force a reconsideration of crucial aspects of the broadcasting and telecommunications regulatory regime. Reconceptualisation has commenced with the broadcasting sectors. The development of television, information and entertainment services not intended for reception by the general public is the first stage in a process which will require a rethinking of regulatory structures. This activity will continue for some time to come. But the task is only just beginning when it comes to the provision of telecommunications services.<sup>22</sup>

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<sup>22</sup> The Committee of Inquiry into Telecommunications Services was a Liberal-National Party initiated attempt to review the telecommunications sector and provide for greater private sector participation in telecommunications. The recommendations of that Committee were not implemented.