

not always acted as a common carrier.

The Policy Statement provided for the worthwhile policy of a new supervisory agency, AUSTEL, which would police any intrusion on Telecom's monopoly, but also ensure that the monopoly carrier acted fairly and without discrimination. For example, when AUSTEL licensed their value added service through a private network, the Policy Statement provided that the licensee would have an automatic right of access to the Telecom public network and Telecom could not discriminate on the terms on which that access was provided (par 4.38).

Subsequent to the publication of the Policy Statement, the Department has circulated draft guidelines for industry comment. These guidelines have concerned three areas:

- Standards for Customer Premises Equipment (CPE);
- Licensing of private networks, and
- Class licences for value added services.

Considerable debate arose in connection with those guidelines and the future rights and role of Telecom, once AUSTEL was established. The following issues have emerged:

### **Should Telecom be able to review or approve AUSTEL applications?**

One issue which has been very contentious is whether Telecom should have a role in reviewing or approving applications to AUSTEL for value added services or private networks. The Policy Statement contemplated that there may be challenge to an application, but did not specify how this would operate in practice.

The principal thrust of the Policy Statement was that there would be full competition in all areas of telecommunication, other than "reserved services". The onus was to be on Telecom to justify the boundary of these "reserved services".

Telecom should not, however, be able to review all proposals for value added services in any application to AUSTEL prior to approval and dispute the proposed approval of any new service, involving lengthy delays or litigation. Telecom must not be able unilaterally to withhold interconnection to the public network whenever it believes that the licensed service infringes its monopoly.

### **Licensing system should not be bureaucratic and cumbersome**

The Policy Statement contemplated that AUSTEL would introduce an efficient regime for licensing value added services, which was inductive to a competitive environment. That system would proceed on a "class licence", under which, it seemed, that there would be minimum regulation. Ex-

cept in the case of services which may offend the monopoly conferred on Telecom for "reserved services", a licence was to proceed automatically by notification.

The UK system of class licences has not proved successful and, it is understood, the Department does not intend to follow that system. Rather, it is hoped that AUSTEL will establish at an early stage various classes of licences which replicate all of the current services which Telecom has approved, both in its "readily approved category" and approvals issued on a case by case analysis, in accordance with its current Value Added Services Policy.

### **The debate over "reserved services"**

It is necessary to consider an appropriate definition of "reserved services", for incorporation in the new Australian Telecommunications Authority Bill, due for release in April 1989.

The Ministerial Statement of 25th May 1988 provides a number of guidelines as to how "reserved services" should be defined. The most important policies enunciated in the Ministerial Statement which bear upon a definition of "reserved services" were:

- (1) any telecommunication service not explicitly reserved to Telecom, OTC or AUSSAT would be open to competitive provision (par 4.37 of the Ministerial Statement): that is, the definition should be so cast as to be exclusive, rather than inclusive,
- (2) the definition of "reserved services" would be made by the government, and not AUSTEL: AUSTEL would merely give effect to the government's policy in that definition: that is, before the establishment of AUSTEL, it is important that the government prescribe a definition of "reserved services" which is not descriptive of particular services, but rather represents the policy; and
- (3) the basic monopoly of Telecom is to be the provision of "basic switched voice" services (para 3.52), with that monopoly extended only to additional services which are provided jointly with public switched voice services (ISDN) or as a direct substitute for those services, eg leased lines, or have derived from voice services, eg public switched data, (par 3.57).

### **Essential features of "reserved services"**

The definition of "reserved services" should confer on the common carriers, Telecom and OTC, a right in relation to services which fulfil these policy aims of the government. There are four essential requirements of any "reserved service":

- (1) the service must be a basic voice or

data service: the definition should exclude from "reserved services" any service component which is "value added";

- (2) "reserved services" must be "public switched" services or a direct substitute therefore: a switched service is one where an interconnection is provided on demand, ie it is not a "dedicated" service;
- (3) any "reserved service" must be "public" switched: the term "public switched" is one of common industry usage and refers to a service made available to any member of the public on a non-discriminatory basis, where connection from one subscriber, being a member of the public, to another subscriber is available on demand at a common tariff and on common terms; and
- (4) any "reserved service" must be provided by the carrier as a common carrier. This fourth characteristic is implicit both in the Ministerial Statement and in Telecom's own description of what is a public switched service. Telecom, in its Interconnection Policy of January 1988, defines "public switched network" to be the exchanges, lines and circuits controlled by Telecom for the provision of telecommunication services between customers in its role as national common carriers.

The Ministerial Statement suggests that the definition of "reserved services" serves a twofold purpose: firstly, it defines the area within which Telecom has a monopoly, and secondly, it prescribes the area of conduct within which the carriers may act as monopolist, and so be protected from the provisions of the Trade Practices Act. The definition of "reserved services" is crucial not only for the defence of the carriers, but also for the promotion of competition outside the role of common carrier. One can compare this policy with that which has emerged in the United States where government policy has conferred limited monopolies on carriers, but only to the extent that they "common carriers". A body of law has emerged to define the characteristics of a "common carrier" which is entirely consistent with the regulatory environment contemplated by the Ministerial Statement.

Telecom, OTC, ATUG and AIIA have, it is understood, each provided comprehensive statements as to how reserved services should be defined. The issues

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