services provided by radio telephone were not part of "the standard telephone service" and that this service was not reasonably accessible to them on an equitable basis when only accessible by HF radio. Telecom's legal response was firstly, that the communities had no legal entitlement to bring proceedings against it, and secondly, that there was no breach of Telecom's obligations, as Telecom had taken reasonable and proper steps to satisfy its obligations within a reasonable time, by progressively rolling out DRCS in accordance with plans and strategies approved by the Minister.

The court's findings

The court construed section 27 as calling for, in each case, "an adjustment between ideal goals and what Telecom is able to do". The judge found that "it is Telecom which must make that adjustment, notwithstanding that other sections [of the Australian Telecommunications Corporation Act] require it to do so subject to the direction of the Minister". As competing considerations required the balancing of individual interests to achieve the broader public interest, section 27 should be read as imposing a duty upon Telecom to achieve the set goals within a reasonable time, having regard to these competing needs, the resources available, and Telecom's assessment of the relative priorities of each need. The judge concluded that as the broad duty imposed by section 27 involved the development and application of policy objectives, to be performed nationally, the fulfilment of which, being subject to many constraints, could not be achieved absolutely and could be achieved (so far as was possible) in many different ways, it was Telecom that must make the assessment of when and how to implement its plans.

Justice Burdnett stated:

"Finance, manpower and the availability of equipment being all subject to limitations, it could only have been disruptive to have conferred a right such as that which the applicants claim: a right enforceable in the Courts, and not restricted by the wide discretion which the nature of the problems suggest".

Accordingly, the Court concluded that section 27 was not intended to allow complainants, such as the Aboriginal communities, to "interfere" with the staged implementation of plans fulfilling Telecom's community service obligation. The powers of direction conferred upon AUSTEL suggested that it was AUSTEL, not the courts, that should deal with cases where Telecom's performance of its CSO's is challenged. As the policy issues were so complex and intertwined, it was not appropriate for the courts to determine how Telecom should allocate its priorities in fulfilling community service obligations.

For similar reasons, the court rejected the Aboriginal communities application under the Administrative Decisions (Judicial Review) Act for the court to exercise its discretion to review Telecom's exercise of its administrative discretions (ie its RRAP programme). The nature of the discretion conferred upon Telecom was such that it would be extremely difficult to find that the limits of the exercise of Telecom's administrative discretions had been passed, and the court was not well equipped to undertake such a policy enquiry. Further, given that the communities could seek a review by AUSTEL of Telecom's decision, adequate alternative avenues of redress were available to the applicants.

Implications of the decision

On the basis of this decision, only in most unusual cases will a court intervene in decisions as to when and in what manner Telecom will fulfil its community service obligations. The case stands in strong contrast to United States administrative law cases and demonstrates the conservative attitude of Australian courts towards intervention in decision making by public instrumentalities.

The court did not say that Telecom was immune from private challenges as to performance of its community service obligations. Instead, the Judge said that "nothing put before me suggests that Telecom has gone outside of the bounds of the very wide discretion conferred upon it. At least unless it does so, section 27 creates no private right of action as the applicants seek to pursue". Accordingly, except in the most blatant and unreasonable cases of refusal to provide switched telephone service, the appropriate avenue for redress will be complaint to AUSTEL and a request that AUSTEL exercises it's discretion to give directions to Telecom requiring it to provide switched telephone service or a public payphone for a particular place or area.

It should also be noted that the case does not say that HF radio telephone service is an acceptable level of service in discharging Telecom's community service obligations. Rather, the case acknowledges that Telecom's obligation to provide switched telephone service must be qualified so as allow Telecom a reasonable time to roll out such service, having regard to competing priorities and needs.

The case confirms the importance of AUSTEL's role and responsibilities in monitoring and reviewing Telecom's performance. This places a heavy responsibility upon AUSTEL to keep abreast of Telecom plans and to make its own evaluation of the extent to which competing needs are being met. This also means that isolated and remote communities will need to pay attention to Telecom strategic plans as submitted to the Minister and focus their requests for improved service at the political level or, failing Ministerial assistance, through AUSTEL.

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EDI: the legal fuss

Ian Cunliffe examines some of the legal issues raised by this news technology

EDI - electronic data interchange - is in many ways the child of transactions which for hundreds of years have been conducted by people exchanging bits of paper - quotations, order forms, offers, acceptances, contracts. However, while there is a lot in common between Mitsubishi placing an order electronically for a thousand mufflers, and placing the same order by mail, telex or even fax, there are also important differences.

In the first place, over the hundreds of years that we have been buying and selling things with bits of paper, the courts have worked out most of the hard but important questions - like when an acceptance is made and thus a binding contract is entered - or conversely, the latest time at which an offer can be revoked.

Some of that law translates readily enough to the electronic analogy of paper transaction (i.e. EDI). But some of it does not. Questions like the following will arise:

- When is an acceptance effective where, for example, the acceptance is sent to an electronic "mail box"?
- Is an order which was automatically generated by a malfunctioning computer, without any human intervention, a binding offer or acceptance?
- Does the fact that an EDI transaction is recorded on CD Rom, with electronic "signatures" of the parties, sufficient to satisfy the requirements of laws like the Statute of Frauds which require that certain agreements be "in writing" and "signed" by the parties?

If matters are not carefully spelt out in advance, there will be uncertainty about what might happen in the event of a dispute.

Secondly, in their present state, the laws of evidence are ill adapted to cope with

proving what happened in an EDI transaction. Those laws differ from state to state, and in some states the only "evidence" of a paperless transaction may simply be inadmissible.

Thirdly, in relation to certain transactions, the question of who carries the risk - and so, who bears a loss if one is suffered - will depend on whether the transaction is by EDI or by paper. The law of negotiable instruments has well-established rules, which are generally conceded to be equitable, to allocate losses when someone is defrauded in a cheque transaction. But the law is not so clear, and may not be so equitable, in an EDI money transaction.

Paper bills of lading for carriage of goods by sea or air themselves confer title in those goods. The goods can be sold while at sea by selling and transferring the paper. What will the EDI analogy be? Will it be foolproof against fraud?

That leads into the fourth point - the question of security generally. Security is needed against the fraudulent and against the malicious. We have well developed means of ensuring that an order for copper wire is authenticated and delivered to the correct address; and that the payment for it is sent to the correct person. There is a danger that we will fall into the trap of regarding the computer as infallible or the information transmitted as incorruptible.

Computer viruses could reek havoc if they got into the systems which keep business running. Increasingly those systems will be EDI systems. If anything, our vulnerability is increased as business embraces the "just in time" (JIT) philosophy of management. Because EDI holds out the promise of greatly reduced response times, and the promise of the ability to monitor stock levels and movement of goods in transit, businesses which aim to be efficient are looking increasingly to working with reduced levels of stock, spare parts and components. The obligations of all participants to maintain security should be clearly spelt out.

The banking industry, which has long experience with electronic transactions, has always understood that where big sums of money are involved, both accuracy and security are vitally important. But even in banking with closed systems used only by bankers, there have been problems of fraud and problems or error which have cost enormous sums of money. Somebody bears the cost of these things. The question is who?

Inevitably similar problems will arise with EDI transactions. For one thing, those transactions will give rise to large payment orders. Secondly, very valuable commodities will sometimes be involved in these transactions - for example a ship load of wheat or iron ore. The danger there is not so much that somebody will fraudulently make off with the cargo, but that somebody will fraudulently create the appearance that they have title to the cargo and will sell it or raise money using it as security.

There is also the unhappy fact that businesses do fail. When a company goes into liquidation, for example, it becomes a vitally important question as to whether a particular shipment of goods had passed, or as to whether a particular payment has been made, or is still incomplete and capable of being stopped.

The attitude that problems within industries should be sorted out by negotiation and without resort to litigation is probably to be encouraged. But our courts are full of examples of former trading partners unable to compromise and resolve matters without the intervention of the courts. In those cases it is vitally important to know just what the legalities are. Prudent business people will want to know that in advance. And they will derive little satisfaction from seeing their company's name in the High Court lists - even if in the end they prevail - when they reflect that a well-drafted agreement negotiated at the outset might have saved all that trouble and expense.

Public television in Australia

Beth McRae argues that public television is being ignored

The campaign to establish a community based public TV service in Australia has had a long and contentious history stretching back to 1974, when community resource video centres flourished. By the early 1980s organisations such as Open Channel in Melbourne and Metro in Sydney transmitted public TV programming on SBS television.

The costs of broadcasting and lack of any real commitment on the part of the federal government contributed to dissipation of the demand for an alternative television service until the late 1980s when a resurgence of demand led to the then Minister for Transport and Communication, Gareth Evans, making the inspired decision to permit the first test transmission on a separate UHF frequency.

Since mid 1988, approximately 20 weeks of test transmissions have gone to air in metropolitan Sydney, Melbourne and Adelaide, produced by ten locally based public TV groups. Nearly all have had high levels of programs produced by or for community groups. Programming has at times been dazzling in its ambitious nature, particularly considering inadequate financial resources and the dependence on volunteers.

In the telecommunications debates of recent times, public television barely rates a mention. Considering the fundamental notion that the airwaves are a public resource on licence in the public trust, one can ruminate endlessly about why the issue is so thwarted and regrettably marginalized.

Financial viability

Inevitably it comes down to dollars. There are no potential profits to be made and financing the cost of operation is not simple. While public television groups have ample evidence of strong community demand for public TV it has been impossible to date to convincingly prove that the financial models will work. Because legislation to permit sponsorship announcements during test transmissions is still before parliament, the degree of potential sponsorship revenue has yet to be tested. The public TV sector has always expected to use sponsorship as an important revenue source. Sale of air time, subscriber membership fees, workshop training and program sales would generate additional revenue.

As with public radio, the issue of financial viability for public TV is difficult. Although the federal government has made it clear it will not provide funding, the public TV sector is likely to seek initial assistance for start up costs. State government departments and local councils are a more realistic possibility for on-going assistance. Already local government organisations have shown strong interest in test transmissions. Given that the essence of public TV is local community access, control and ownership, indications are that local government may become intensely involved.

Reports and reviews

Over 15 years there have been no fewer than nine reports into the feasibility of

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