

Line must be held on telecoms certainty

*Labor should review telecoms regulation before sinking billions of dollars into a broadband network, writes **Ross Kelso**.*

As Senator Stephen Conroy, Labor's Minister for Broadband, Communications and the Digital Economy, basks in the glory of the Rudd government's ascension to power, he and his advisors are busy setting up offices, receiving departmental briefings and laying down policy.

With the promise of a new national broadband network a major election issue and the booty of a thumping parliamentary majority, surely it will be plain sailing towards a new vista of broadband for all and digitally enhanced wealth? Conroy's maiden voyage requires skilful navigation to avoid the fatal rocks of unforgiving self-interests.

The less well-publicised Labor promises of a review of the universal service obligation regime and an inquiry into broadband pricing are initially administrative exercises, as the previous Minister had already initiated the USO review.

Yet these promises disguise the critical nature of the need to review telecommunications regulation in its entirety, thereby exposing the substance of the power struggle between Telstra and the previous Minister that had become more bitter over the past two years. That review is formally scheduled for 2009.

A briefing will soon advise Senator Conroy that Labor's policy for a government-funded broadband network with a national coverage of 98 per cent may have to be revised to achieve perhaps only about 70 per cent, due to the roll-out of the Optus/Elders network approved by the previous government. The campaign promise for the new contract process to be settled within six months must then confront the special-interest lobbying and the inevitable Senate inquiry, while demonstrating the carriage of due process.

The new Senate will not sit until July 2008, so a hostile inquiry from the coalition parties is a certainty before then. Thereafter, the Greens and/or independents may back an extended inquiry or a new one – either way, feeding off and fuelling the heightened expectations of industry competitors. Inquiries are good at exposing the rawness of undeveloped public policy but their recommendations often ignored.

The broadband contract is more likely to be awarded by the end of 2008. Industry lobbying will intensify, as the network winner could be awarded up to \$4.7 billion of public money. Telstra hasn't cosied up to Labor for nothing – it is very confident of winning this contract. The stakes are extremely high.

Since January, Telstra has been challenging the validity of the Trade Practices Act administered by the Australian Competition and Consumer Commission. This action claims the telecommunications access regime amounts to unjust acquisition of property.

If the contract is awarded to Telstra, a stricter regime for separating retail from wholesale services, perhaps even full-blown structural separation, will become inevitable. Telstra's conviction that it is in its interests to again take legal action would be significantly buoyed if it had succeeded in overthrowing the Trade Practices Act.

Given that Telstra has always said it intended to roll out a fibre-based broadband network with its own funding, the offer of public money could be viewed as compensation for lost economic rent in having to ensure an open access network (or in having to structurally separate retail and wholesale, when seen from that perspective).

If the selected winner is not Telstra, two outcomes are almost certain: Telstra will launch its promised “mother of all class action law suits” with even greater vigour, and roll out its broadband network – which it has been legally able to do since first announcing plans in 2005. That network would be closed to effective competition.

Whatever the outcome, there will be considerable dissension within the telecommunications industry and confusion for users. Whoever wins is ideally placed to command an enduring bottleneck in the market for fixed-line services for many decades to come.

Since the framework of existing telecommunications legislation was conceived in 1997, there has been significant change in technology, delivery and user requirements. The 2009 review offers a rare opportunity to reset the essentials for the next decade or more.

The auction of a slab of public money is no substitute for a reasoned debate open to independent and public scrutiny, with the interests of telecommunication users being given at least as much favour as the interests of shareholders.

The future of telecommunications, for users and for providers, will become more certain only if government policies are transformed into plans based on sound public policy principles. The review needs to be brought forward and settled before Labor sells off a new natural monopoly for broadband.

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