

Assistant Secretary, Networks Competition Branch
Department of Broadband, Communications and the Digital Economy

Via email: regreform@dbcde.gov.au

June 2009

**Re: National Broadband Network: Regulatory Reform for 21st Century
Broadband discussion paper**

Thank you for the opportunity to provide input to the National Broadband Network (NBN) regulatory reform discussion paper. Our comments pertain only to the questions raised in Chapter 4.

We have concerns with the breath of many of the questions posed, in that they appear to be a de facto consultation on the adequacy and ongoing relevance of key consumer protections requiring that are usually subject to regular, separate, and targeted investigation. These questions are distinctly different from what should be the central issue of how the NBN regulatory framework should operate, and should be addressed in separate reviews. We note that many of these areas have been reviewed already recently and we are still awaiting an outcome – for example the 2008 review of Emergency Service Call arrangements and the 2007 review of the Universal Service Obligation. Others do not rightfully have a place in the scope of this review, such as questions seeking input on the validity of Telstra's suggestions to the Productivity Commission's recent review of regulatory burdens on business.

The adequacy of existing consumer protections applied to essential services is very important to consumer groups, and we think the protections that will apply to the NBN are critical. Given the transition period is likely to be quite long, and the NBN won't be ubiquitous, there is an ongoing role for regulation applying to the copper network and we would encourage the government to consult on any changes separately.

About CTN

The Consumers' Telecommunications Network (CTN) is a national peak body of consumer and community organisations, and of individuals representing community interests, who participate in developing national telecommunications policy. CTN's members are national and state organisations representing consumers from non-English speaking backgrounds, deaf consumers, indigenous people, low income consumers, people with disabilities, young people including children, pensioners and superannuants, rural and remote consumers, women and consumers in general. CTN has been involved in telecommunications regulatory debates for 20 years.

As of July 1 2009, CTN will become part of the Australian Communications Consumers Action Network (ACCAN). The purpose of ACCAN is to enhance consumer advocacy, reduce duplication, maintain and enhance existing skills and diversity of representation, undertake research and analysis from a consumer perspective. The overarching objective guiding this new body is to ensure effective and equitable communications for all Australian citizens.

Introductory comments

The consumer protection principles that now underlie the standard telephone service must be upgraded to reflect the fact that the NBN will be the delivery medium for future voice, data and video services. Competitive principles must be protected within the regulatory framework, so that consumers can access multiple service providers. Infrastructure providers must not be given regulatory exemptions that create effective monopolies; barriers to investment can be addressed in alternative ways. Regulation should be consistent across all broadband service providers, and will need to cover pricing arrangements to ensure affordable and equitable access for all.

Most importantly, the regulatory framework should not be static, but reflective of changes in user needs, for example basic minimum speeds that reflect usage patterns. Any new network deployed must provide a Community Impact Statement (CIS) based on consultation with consumer and community groups, including the identification of any barriers to accessibility and how these will be ameliorated. This must include adverse impact on all consumers, including non-English, rural and remote, Indigenous, and so on. Impacts are not restricted to technologies implemented, but also those displaced by new systems (for example the closure of AMPS network, GSM and hearing aids).

The NBN is essentially the next incarnation of the copper-wire network that reaches most (though not all) of the population. Accordingly, we have an opportunity to apply an ideal consumer protection framework to the NBN, which will help ensure everyone benefits equally from a high-quality and reliable network.

If we imagine an ideal network, it has the following elements:

- Ubiquitous network – 100% geographical availability;
- Large capacity, with ability to improve as technology evolves;

- High degree of service reliability;
- Faults can be quickly rectified (and compensation accessed where applicable);
- Users have a choice of services and equipment that best meets their needs;
- Services are accessible for users of all abilities;
- They can afford the service offerings, and have access to affordability measures where needed;
- Multiple service providers to choose from;
- Service providers can't impose competitively-driven restrictions on data sent over the network;
- Access to fair and quick dispute resolution services with their service provider and with an escalated complaints body;
- Programs and funding available to train new users and develop content which will encourage usage and uptake of services;
- A Community Impact Statement assessment that identifies and addresses potential issues.

These basic considerations need to guide the development requirements for the NBN and attendant regulatory framework.

In 2007, CTN, Media Access Australia (MAA) and the Australian Communications Exchange (ACE) created the Accessible Broadband for All Australians project, outlining how practically broadband should be made available. The recommendations apply nearly in full to the NBN proposal; the recommendations pertaining to regulatory arrangements were as follows:

- a) Mandate access to broadband as an essential service by extending the Universal Service Obligation or an equivalent regulatory mechanism to cover broadband services, for example through legislating a Broadband Guarantee;
- b) Develop a self-regulatory Code to address net neutrality to ensure priority of communications over broadband networks;
- c) Ensure any publicly funded (or partly publicly funded) network is subject to structural separation to ensure wholesale competition which will allow consumers to have a choice;
- d) Require Community Impact Statements that ensure all broadband infrastructure roll-outs are accessible. These can be implemented in the same way as regulatory impact statements.

Appendix A contains a full list of our recommendations from that project.

Recommendation: That the Department incorporate the above benchmarks into the regulatory framework.

Communication Service Standard

CTN certainly supports the development of a Communications Service Standard with clear benchmarks to deliver services with the same underlying drivers of the USO – namely that appropriate services must be made available to all Australians regardless of where they live and work.

We don't, however, believe that the CSS can totally replace the USO, nor do we support the relevant standards being set by the Minister alone. It's important to ensure the CSS is legislated and subject to review only through formal process, rather than Ministerial discretion. We think that an independent forum is far more appropriate, to ensure all interested parties have the chance to develop these standards. It is highly likely that these standards will change as technology continues to develop and the NBN expands its coverage, which will of course impact on all aspects – fault rectification times, quality of service parameters, and so forth. A standing committee with representatives from major stakeholder groups (including consumers) with the expertise to make these recommendations is a better way forward.

Recommendation: The CSS should be complementary to the USO, and legislated and subsequently reviewed through an independent process that includes consumer groups and other stakeholders.

In our 2007 Universal Service Obligation (USO) review submission, we were critical that the current policy framework puts the onus on a single universal service provider, presently Telstra, to supply a particular type of service that it wishes to provide, rather than what the consumer actually needs for effective communications (for example shared public access to a payphone, or access to a mobile phone service). We advocated for a Government policy shift with the USO that makes the needs of the consumer the central consideration.

The communication needs of consumers should be met through the most appropriate form of communications for them. This might mean that access to a mobile phone service in a remote area, or access to a broadband connection, which can support a voice application or an internet relay service for Deaf consumers, running over the top of the connection. We strongly believe that all Australians have a right to an *appropriate* basic communications service for them, and that the present approach to the USO is not fulfilling this need to the greatest extent.

The real issue is meeting the communications needs of the individual consumer most effectively whilst recognising that people's needs are different. Much attention has been given to the fact that younger consumers are tending to have only a mobile phone, rather than a fixed phone service, largely due to the lack of perceived benefit of having a landline given the relative cost and convenience of having a mobile only. Similarly, for Aboriginal people in remote areas, a mobile phone is a culturally appropriate technology. A USO that covers only landlines and payphones is not aligned with usage trends which usually follow the fitness for purpose of the most appropriate technology. Again, if meeting the basic communications needs of the individual user is the central objective, policy priorities must change accordingly.

If we step back and ask what is the best policy approach to ensure that everyone is given access to a basic service, the answer is to provide assistance to providers who are willing to supply services that end users need. This means that there will be an incentive for suppliers to make services available, by way of subsidy if necessary, and the end user has a choice of provider and the service they want as their basic service.

There is already an appropriate model that has been devised to give consumers the right to access and provides for assistance to suppliers to provide that access where there is not a business case – namely the Australian Broadband Guarantee (ABG). CTN believes there is an opportunity for the ABG to be made into a legislative obligation for the purpose of fulfilling the objective of the USO. The function of the guarantee means that, effectively, all Australians will be able to access a metro-comparable broadband service with a financial incentive payable to the service provider if necessary to ensure access. This is an excellent policy initiative that recognises the importance of internet access and seeks to ensure people take up broadband services. Clearly there will be issues around when a provider should be eligible for the subsidy, but this should be considered as part of a consultative process.

Our submission identified 3 key elements of a user-centric universal communications access regime that is underpinned by a legislated right to access basic services:

1. Legislate the Australian Broadband Guarantee
2. Create an Australian Voice (or Voice Equivalent) and Text Telecommunications Guarantee which hands Choice back to Consumers.

This will be the cornerstone of the regime. All consumers, regardless of their location, should be able to nominate their preferred any-to-any service type and provider that allows for voice or voice equivalent communication. Incentives would be available to service providers to provide that service to ensure access similar to the model previously implemented by the Higher Bandwidth Incentive Scheme program. Given the roll out of a ubiquitous high-speed network, it is feasible this basic service could be supplied via a broadband connection; similarly there are a number of mobile phone networks with extensive coverage that could be extended with funding from an appropriate source. Programs that addressed low income and general affordability issues would need to be created as part of a package of reforms. Due consultation with a broad range of consumer groups will be critical if this approach is to be considered and widely supported. This approach may mean there is not one single Universal Service Provider but (potentially) many, as consumers will make their own choices and drive more competition in the marketplace.

3. Establish an Australian Communications Social Safety Net

We envisage a number of aspects to a Communications Safety Net that recognises the ongoing need to support consumers who would have difficulty accessing their basic service without ongoing assistance. A package of programs would need to support the ongoing availability of a text and video relay service; public phones, (particularly in remote areas); the creation of a Disability Equipment Program; a Communications Allowance; a Remote/Regional and

Indigenous specific access program; and a monitoring program implemented by the Australian Communications and Media Authority that ensured that access to services was improving, rather than declining.

Recommendation: That a user-centric universal communications access regime that is underpinned by a legislated right to access basic services in 3 parts: Legislate the Australian Broadband Guarantee; create an voice (or equivalent) and Text telecommunications guarantee which hands choice back to consumers; and establish an Australian Communications Social Safety Net.

Even with a change to the rights-based approach to having a basic service, there will still be an ongoing need to have a Network Reliability Framework and Customer Service Guarantee timeframes that apply to the basic nominated services.

One of the problems of allowing mobiles and broadband services to be nominated to provide basic services as per an expanded USO is the lack of adequate quality of service parameters around those services. The 'best endeavours' approach to internet fault identification and restoration, and mobile coverage maps that are indicative rather than definite, could mean that consumers who choose either as their basic communications service, would not have equitable access to a reliable service. CTN has long supported greater certainty around the area of quality of service for these services, and suggest DBCDE convene an expert group to consider these parameters, to ensure a partnership approach is fostered in developing co-operative policy going forward.

Recommendation: Develop quality of service parameters for broadband and mobile services.

The Customer Service Guarantee (CSG) is a fairly effective mechanism and should be extended to cover mobile and broadband services as appropriate, if such services are USO equivalent services. One of the flaws of the CSG is that a customer can only receive redress when their service provider is at fault. For example if a fault on a service in a rural area is caused by a fault on a neighbouring property, the person who is merely affected by the fault can't report the fault and get it acted on and can't get redress under the CSG. Again, the policy priority should be consumer oriented and encourage swift rectification of the fault and ensure access to redress for service outages.

Recommendation: Extend the CSG to cover mobile and broadband services that are delivered as part of an expanded USO.

Accessibility: The availability of a type of telecommunications service is not, in itself, enough to ensure people are getting the services they need. Issues around appropriate technology need to be addressed. For example, a Deaf person who lives in a rural area without access to broadband apart from a satellite service will have difficulty accessing an appropriate communications service. If they had a real broadband service, they could have the opportunity to use a relay service to communicate in an equivalent way. Disability access to the range of potential basic services needs to be actively supported, particularly through a Disability Equipment Program.

Affordability: One important way to ensure affordability of services is to understand the barriers to access. Whilst the availability of services is of course critical, this USO Review must also consider the costs of equipment to use services. Particularly for consumers with disabilities, often there is a significant additional cost for the assistive equipment that actually allows the communication to take place (eg voice recognition software). Telstra has a Disability Equipment Program, but it is fairly limited. Consumers need access to a larger range of communications products. This approach will ensure that consumers with disabilities are not bound to one provider but will enjoy the benefits of competition and can choose between providers.

At present, affordability is not part of the principles underpinning the USO. It is CTN's view that the USO regime would benefit by being expanded to encompass affordability issues. There is little purpose in having services that are unaffordable for people on low incomes, as it effectively reinforces the digital divide. Whilst the price controls regime currently applies to only Telstra, it seems sensible to have some kind of affordability benchmarking apply industry wide as an important principle of treating all industry players equally. The Access for Everyone program currently available to low-income Telstra customers needs to be applicable industry wide, and adjusted in light of any changes to the USO regime.

Another key way to address affordability and uptake is to consider the creation of a specific Communications Allowance. This would allow consumers to maintain their choice of provider and service, rather than simply subsidise the provider for an unknown benefit to unknown parties. It would empower the consumer to choose the best service for their needs and support competition. Again, the level of subsidy would need to be decided through a consultative process, because the subsidy would need to be flexible and targeted.

Recommendation: Low income measures need to apply across all service providers, and include a Communications Allowance.

Monitoring: We recognise the generally excellent performance measured by the Network Reliability Framework. A similarly high level of performance will be expected by consumers, given the high level of public funding of the NBN and similarly high performance expectations.

In a general sense, a self-reporting mechanism by any universal service providers would be most appropriate, with oversight by ACMA. Key performance indicators should be developed around availability of the network; reliability/serviceability; plans for growth of network coverage; plans for growth of network capacity; speed attained (not claimed); number of users; security measures; consumer satisfaction; international comparisons of like indicators; and an analysis of complaints to the escalated dispute resolution agency.

Recommendation: Monitoring of the performance of the NBN should be developed around availability of the network; reliability/serviceability; plans for growth of network coverage; plans for growth of network capacity; speed attained (not claimed); number of users; security measures; consumer satisfaction; international comparisons of like indicators; and an analysis of complaints to the escalated dispute resolution agency.

Monitoring is important, but is not simply enough to identify problems, as per ACMA's current approach. We'd like to see a much more rigorous approach to monitoring and reporting that actually requires an action plan to address problem areas.

Payphones

Many of the questions raised in the discussion paper belong in an actual review of payphones as a stand-alone area of inquiry. In 2004, the then Australian Communications Authority 2004 report on payphones, they are heavily utilised by low-income consumers who run out of credit on their mobile phones. It would be timely for the DBCDE or ACMA to undertake research this year to see if this remains true.

Public phones remain essential services in many rural and remote communities. Local residents know where they can find local public payphones, and this is often necessary for reporting faults and for back up (for example a generator for a phone runs out after only around half an hour, which is very little time in cases of black outs). They are, of course, important for regular users, particularly low-income consumers and pre-paid mobile phone users who are reliant on access to public phones to make calls. Public phones are critical in emergencies and are especially also vital where mobile phone coverage is non-existent or unreliable.

For users in remote areas, it may be the only option, and it is unlikely that the NBN, with its 90% population coverage aim, will reach them where the copper-wire network hasn't. The NBN will not be able to immediately meet the needs of many remote communities. For communities with few or no services, the skills needed to use services hinging on the NBN may take years to develop.

In our consultations with CTN members and rural and remote communities as part of the RTIRC submission process, we found that public payphones remain an important community safeguard. Having a community payphone is important particularly in rural areas due to lack of mobile phone coverage, safety, and reporting faults and keeping in touch during power and service outages which often last over 24 hours at a time.

It is no great surprise that there are ongoing tensions between communities and Telstra (as the USO provider) over payphone services. Only around half payphones are owned by Telstra, meaning that privately operated services are effectively unregulated and don't contribute to the public interest aspects of public phone provision. In recent years, payphones have been attacked, particularly by Telstra, as an outdated and increasingly redundant service, arguments that are usually supported by claims about declining payphone revenues. However, using revenue received from payphones is not an appropriate measure of how necessary they are to users.

USO designated payphones need to be more clearly identified, because Telstra refuses to identify which are phones supplied under the USO for commercial purposes. Whilst a payphone locator on Telstra's website is a useful planning tool, it's not great for people who are looking for a payphone, rather than sitting at a computer. It also means that in disputes, consumers cannot know with any certainty

which payphones are provided under the USO subsidy. We have long argued for greater oversight of payphone removal. One approach may be a requirement on any provider receiving subsidies for USO services be required to apply to ACMA for approval to remove a service.

We note that in ACMA's 2007-2008 Communications Report that only 16% of applications to for a new payphone were accepted¹. CTN has had contact with communities who fight to have a payphone remain in their community find that the process for review and complaining about Telstra's removal policy does not help them to keep the payphone in question. Over the years we have had complaints from communities who find the application process too difficult to access, or their application is never acknowledged by Telstra. We recognise that Telstra has in recent years attempted to make their payphone removals more transparent, by using stickers for set periods and offering a phone number to complain about removals. We have no direct information on how effectively this has worked, so ask that a full review seek feedback from communities who have lost phones.

There are still communities where people live permanently and do not have access to a phone service. We acknowledge that the Indigenous Communications Program will deliver community telephones to around 300 remote Indigenous communities that do not currently have access to a public telephone, but think there is a broader need to look at who qualifies for a community phone under the USO.

Last year, CTN received some feedback from organisations in areas where the community phones program was rolled out. They were concerned that pilot projects, including the roll out of community phones, are not covered by the USO. The pilot was centred on what the service provider will provide, rather than what's needed to meet community needs. As a result, there is not a genuine attempt to actually meet people's telecommunications needs. Pilot programs should not be automatically exempted from legislative safeguards that apply for the benefit for end users.

Payphones should be available where there is an identified need, and communities have access to making their needs known – such as a public register for example. Having a process which encourages and supports communities to apply for community phones is important, and should form part of the payphones review.

Recommendation: A review of payphones is undertaken, with a view toward creating a framework that ensure USO services are rolled out where requested and quarantined from removal where they are identified as the primary communications service in that area. Communications services for remote communities need an urgent review and upgrade.

Customer Service Guarantee

CTN strongly supports the ongoing need for a well-targeted CSG and a complementary reporting regime that ensures service providers compensate consumers where they fail to provide services in circumstances that are generally agreed to be fair and reasonable. Essential communications services will be

¹ Australian Communications and Media Authority, *ACMA Communications Report 2007-2008*, p103.

delivered over the NBN; accordingly, the CSG needs to be expanded to cover that network, even though it will be applied at the retail level.

Again, we recognise the generally high level of compliance with CSG requirements. We expect that the Department has already seen the most recent that noted that some rural and remote areas service levels dipped below the 90 per cent benchmark over the past two years, although these were isolated cases. Average CSG compensation payments made by Telstra remained stable over the period, but increased for Optus, AAPT and Primus².

The effectiveness of the CSG is achieved not just through compensation for the individual consumer affected by the service outage, but the penalty on the CSP for not meeting the agreed timeframe. There is scope, therefore, to consider not just an additional fee to be recompensed to the consumer but perhaps a larger penalty to be applied to the CSP for habitual breaches of the CSG or lack of information provision to eligible customers about the CSG.

It may be worth considering the establishment of a penalty system which could feed into a fund that could be used for any range of purposes- for example a funding a public education campaign about the CSG in areas with low applications but high potential applications (for example areas frequently affected by Mass Service Disruptions). Possibly an “in-kind” penalty could be suitable, which may for example require the offending party to provide notice to all customers about the existence of the CSG. This is an idea that should be progressed in consultation with consumer groups.

Many customers are not aware of their rights with regard to the CSG, and many would not think to complain to the Telecommunications Industry Ombudsman about a missed or broken service appointment, because their emphasis is on getting their service fixed rather than potential compensation. Late last year CTN’s office received a complaint about a landline service that did not function for over 3 weeks, despite repeat complaints from the customer to the CSP. The customer only became aware of the CSG after contacting CTN for assistance in resolving the matter, because the CSP had not provided their customer with information about her entitlements. In this type of situation we see a pressing need to ensure CSPs are complying with CSG requirements and suggest this would be the type of occurrence that could be addressed through a penalty scheme. At CTN’s 2008 Conference, one of the speakers outlined a situation whereby their phone service was out for 7 weeks because of mix ups between his CSP and the contractor arranged to fix his service. He too was unaware of the existence of the CSG.

A customer should have recourse if the CSP does not meet the CSG, but to rely on the customer to rectify supplier inaction seems illogical. If a customer doesn’t know about the CSG then they don’t receive the compensation and the penalty effect is also negated. This is an inherently inequitable situation, as it favours those who are more aware of their rights, rather than their deservedness for compensation. For this reason we think higher penalties for missed appointments are required, so that it acts as a disincentive to breaking/missing appointments. Appointments should only

² *Communications Report 2007-2008*, Chapter 4

be made when they can be fulfilled, because they usually entail the customer having to be present at the premises, often at great inconvenience.

ACMA's Communications report 2007-2008 clearly demonstrates people in rural, regional and remote areas are more likely to have access to a single telecommunications service than those in metropolitan areas. The disadvantage suffered as a result of delays in fault rectification and cancellation of appointments is exacerbated. Given a longer CSG timeframe applies, it would seem only logical that additional compensation should be allocated when the CSG is breached.

We remain concerned that the mere offer of an interim or alternative service is sufficient to exempt a CSP from the CSG, regardless of how reasonable that offer was and whether it was taken up by the customer. It is important to keep in mind that an offer may not be a reasonable one to the consumer- for example a mobile service should not cost a customer more to make calls than their regular service would have cost. That said, we are pleased that the definition will be incorporated into the CSG standard.

Price Controls

It is difficult to address this matter adequately through this review, and we recommend a more targeted review be conducted.

We do not support the recommendations made in the Productivity Commission's Consumer Policy Framework final report related to pricing. Losing control of basic pricing arrangements in the transition period is short-sighted and risks seriously disadvantaging those in rural and remote areas, who would most likely be subject to price rises as their services cost more to provide. Given that only 90% of the population will be able to access the NBN, it should be recognised that those people who will likely end up paying more for their services will be the same people who miss out on the NBN, doubly disadvantaging them.

In our submission to the Productivity Commission, CTN argued there was a continuing need for a price control regime – albeit an expanded regime that applies across the industry as a whole. Australians have a notably high up-take of new technologies; recent examples include mobile phones, premium rate short and mobile message services (SMS and MMS respectively), and of course the internet. Any suggestion that price controls stifle innovation and technological progress is without merit or substance. The very nature of innovation is such that new technologies will emerge and create their place in the market based on their merit and suitability to the end users, whether locally developed or imported. We support new and innovative technology, and we do not accept that protecting the interests of telecommunications users is correlated with stifling such developments.

CTN is concerned that affordable pricing of basic communications services would not happen without being specifically mandated. Some consumer groups believe that discounts afforded under the current regime are largely inadequate. Pensioner discounts are tokenistic and don't take into account that they are heavy users of telecommunications; rural subsidies do not extend far enough in any sense of the term. Any watering down of provisions will impact hardest on those who can least

afford it, as has been the effect of allowing the process of “rebalancing” the costs of line rental and call costs.

There is also a need for the Price Control regime to better reflect the primacy of certain communications services. A good example is mobile phone usage and disadvantaged consumers; we think there is a clear case for SMS to be included in the regime. There is no correlation between the amount a service costs a provider and the amount a consumer is billed for that service. Various estimates suggest SMS makes a staggering profit margin for the service provider. The Australian Association of the Deaf suggests that Deaf consumers use SMS at 10 times the average rate. Uncapped SMS costs, therefore, disproportionately affect the affordability of telecommunications for deaf consumers³. In the interests of equity, price controls on text-based services is needed to protect vulnerable consumers who rely on a heavily marketed and heavily utilised service.

The pricing of mobile services are also of the utmost importance to young people. Research conducted for the Youth Action Policy Association several years ago indicated around \$1 billion is spent on SMS each year, of which a significant proportion is likely to belong to young people⁴. Like other low income consumers, pre-paid services are used widely by young people as a means of avoiding debt, but one of the biggest trade off’s they make is that they often pay higher rates for calls. Price controls are therefore an appropriate means of protecting vulnerable young consumers whose access to telecommunications services can be impeded for a variety of reasons, such as not being old enough to sign a contract, deemed a credit risk by contract service providers due to their age, or having no steady income to enable them to sign up for a plan with all their cost benefits.

Should any major amendments to the current regime be recommended under this review, an inquiry which fully explores all the potential ramifications for disadvantaged and vulnerable consumers must first be undertaken.

Recommendation: That the price control regime remain in place, with expansion to cover mobile service and broadband services.

NBN price controls

Affordability issues, as well as regulatory issues, need to be addressed as the NBN is rolled out to ensure that fixed and low-income consumers can access basic communications services derived from this massive public investment.

There is a public policy imperative involved that far outweighs any competitive issues. The NBN has to be affordable at the retail level – full stop. This won’t happen without at least some initial regulatory standardisation, until the market finds its feet. We see an ongoing role for the ACCC to monitor changes in the pricing of retail broadband services, particularly where there is no guarantee that there will be even

³ Australian Association of the Deaf, *Mobile Phones and Deaf People Discussion Paper* online at: <http://www.deafau.org.au/download/MobileIssues.pdf> as at 20 May 2009. AAD is now Deaf Australia.

⁴ Youth Action and Policy Association (NSW), “YAPA and SIMplus Mobile release Newspoll data on young people and mobile phone use”, accessed May 23 2007 at: <http://www.yapa.org.au/youth/facts/mobilespending.php>

one retail service provider, particularly in rural and remote areas. We outlined earlier our ongoing support for the price control regime, expanded to include the NBN.

Affordability is a broader issue than just the cost of a broadband service. It also includes the initial and ongoing cost of computing equipment (including specialised equipment for people with disabilities and ongoing security upgrades) and the cost of a broadband connection of high enough quality to support the communications needs of the user. Similarly, disproportionately high costs for some users must be offset to ensure equitable affordability; for example, Deaf users seeking to access a Video Relay Service need high-bandwidth services, which are more expensive.

We also think there are serious questions that need to be answered about the validity of arbitrary charges such as late fees which accrue interest and exacerbate difficulties that vulnerable consumers may have in paying their bills. CTN's members report that these charges are falsely inflating the cost of a basic telephone service and are having a significant effect on affordability for consumers.

Ways forward include:

1. Create a communications allowance or rebate to enable affordable services, available to all who are recipients of government benefits;
2. Allowance/rebate be available to users who require premium services to meet basic communications needs (eg access to Video Relay Service);
3. ACCC to have price controls over NBN;
4. Protect against the ongoing issue of unexpected high bills resulting usage of supposedly 'unlimited' services;
5. Introduce equipment rebates or vouchers for low-income consumers for start up costs and users of assistive equipment.

Recommendation: Implement the above recommendations to ensure retail offerings of services are affordable for all Australians.

Priority Assistance

If the NBN will be offering services intended to replace the existing Standard Telephone Service, all existing consumer protections need to be transferred to that environment. We recognise the efforts of AAPT and Primus to offer Priority Assistance (PA) in accordance with Communications Alliance's Priority Assistance for Life-Threatening Medical Conditions Code. CTN's position is that PA should be a license condition for all Carriers so that those vulnerable consumers have more choice with regard to whom they choose. Therefore we support a mandatory priority assistance requirement to be extended to all service providers.

Expanding PA to all consumers with a disability has been debated by consumer groups in the past, with the conclusion that such an expansion would be unworkable. Not all disabilities are life threatening, and around one fifth of the population is

considered to have a disability. Should people in certain age brackets be automatically eligible for PA too? The expansion of PA runs the risk of diluting the value of the service. Without greater detail, we would not be in a position to support the expansion of PA.

Recommendation: Mandatory priority assistance requirements be extended to all service providers.

Emergency Services

The NBN will offer opportunities to increase the quality of relevance of information delivered with an emergency call – for example accessing surveillance units and maps of the site of an emergency at the time the call is delivered to the emergency response agency. Ensuring network intelligence can be fully utilised will be an critical end product of a ubiquitous NBN.

Consumers have very high expectations of being able to successfully have their call carried to emergency services. Given that quality of service parameters exist for landline services, we'd assume consumers expect that like-services will have similar performance qualities, regardless of the underlying network – mobile, fixed, or via broadband. From the end user perspective, a seamless call that connects the required service in a timely manner is a very basic expectation. The reliability of existing arrangements must be maintained in the NBN transition period.

Recommendation: The reliability of existing emergency calling arrangements must be maintained in the NBN transition period.

The issues raised in the paper about who should run the Emergency Call Service (ECS) are critical questions. It seems too soon to be able to address these issues seriously, given the uncertainty around configuration of the NBN, the fact it will NOT be ubiquitous, and the fact that the wholesale network will be sold after 8 years and there are no parameters around who that will be sold to (with attendant questions about their ability to provide emergency services).

We note that in April 2008, ACMA began broad review of the emergency calling arrangements, including the ECS Determination, with particular reference to community expectations and the rapid pace of technological change. The review is considering the future arrangements under which the ECS should operate and how the various industry players should cooperate to continue to deliver this essential community service. We expect that the findings of that review will be relevant to the NBN.

CTN submission argued that free access to timely and efficient emergency services is a critical right for all Australians that must be preserved. Whilst Voice over Internet Protocol (VOIP) provides a number of practical challenges to providing universal access to Triple Zero and 106, a policy response of downgrading consumer protection attached to these services is not acceptable. We strongly advocated for SMS access to emergency services for Deaf consumers, because at present access to emergency services is not available equitably to Deaf consumers.

Access to emergency services for people with disabilities has been on our agenda for a long time. We believe there is a clear and demonstrable need for SMS emergency services. The current problem with the 106 emergency service is that it is only accessible to Deaf people or other NRS users in situations when a TTY or computer with modem is available. Also TTY relies on the use of electricity and is not portable, so in the event of power outages or when an accident happens outside the range of a TTY, the Deaf person's options for obtaining assistance are severely jeopardised⁵.

The Deaf community has dramatically reduced TTY use in favour of SMS, email and MSN. TTY is generally only used to access the NRS when other options are unavailable, and many younger Deaf people do not bother with TTY access at all. Even if TTY's were widely used they are not a mobile technology that you have with you when you are out and about and confront an emergency. In addition, there is no CLI blocking on text messages, so the originator is more easily identified. It is conceivable that the current IPND based ECLIPS service used to drive the 000 emergency service could be adapted to assist with mobile call identification.

Deaf, hearing and speech-impaired people do not have optimal access to emergency services, new technologies, and we need to make significant investments to improve this access. It is acknowledged that SMS is not a 'real-time' communication and that priority is not given to SMS in the network, however this is a case of 'something is better than nothing' for those concerned. Deaf, hearing and speech impaired consumers could register for an SMS service and would have to be informed of the limitations involved. Similarly to the FCC service offered in the US, affirmative acknowledgement from all customers that they are aware of and understand the limitations could be an opt-in requirement. An automatic acknowledgement system could assure text callers that their message has been received, the 'reliability' issue may be largely resolved.

Recommendation: Develop appropriate emergency access arrangements for Deaf consumers.

CTN remains concerned that consumer understanding and awareness of VOIP services remains under developed. VOIP applications remain largely unknown to most consumers. Active efforts must be made for industry to explain the pros- and cons- of VOIP services to the community particularly in relation to calling the Emergency Call Service (ECS). For instance, consumers must be made aware that when calling the ECS from a VOIP phone that their location information provided to ESO's may be inaccurate – and most importantly, emergency service delivery procedures need to reflect limitations, such as ensuring callers are prompted for their location details.

There are no situations where it would be reasonable to allow an exemption from the requirement to provide free 000 access. Relying on judgments made by an ECP as to whether a caller's address is known or unknown should be minimised. The system

⁵ Deaf Australia, "Emergency Services and Deaf People Position Paper" accessed 20 May 2009 at: http://www.deafau.org.au/info/policy_emgser.php

of using flags works when accuracy of information in the IPND is high and the ECP uses all the available information. Reliable and unambiguous information is critical, and given the problems identifying the location of VOIP services at present we would be hesitant to adopt this proposed approach. High levels of accuracy of IPND data, and appropriate flagging of services that are not location dependent, are key issues that may best be addressed by ACMA as a result of the ECS review and within ACMA's Emergency Services Advisory Committee.

CTN has made strong representations to various parties that formal consumer representation must be reinstated on ECSAC – a point we can only again reinforce in this submission.

Recommendation: That consumer representation be formally reinstated on ECSAC to ensure consumer issues raised in relation to the provision of emergency services in an NBN environment are taken into account.

Red tape removal

Debates about the views proffered in Telstra's submission to the Productivity Commission's review of Regulatory Burdens on Business should be held elsewhere. Organisations like CTN, and in the future ACCAN, are happy to provide input to proposals regarding directories, when we have a concrete proposal that has some apparent policy background. This requires a stakeholder consultation process, and as such, we are not in a position to provide a view as part of this submission. CTN recently undertook some research with our members into their use and views about directory services, and would be happy to submit that information to the Department as part of an appropriate inquiry process.

CTN also submitted to that review, and pointed out that what constitutes "unnecessary regulation" is often contentious. We agree that telecommunications is subject to complex regulation, but do not think it is necessarily redundant or part of the reason telecommunications providers have so much difficulty adhering to the self-regulation regime that has developed over the past decade. The introduction of a new consumer protection law currently being developed by the Treasury will impact heavily on the telecommunications industry. Several key proposed areas of legislation are covered in the over-arching Telecommunications Consumer Protection Code (TCPC), the key self-regulatory consumer protection instrument. Clearly the new legislation will take precedence over the TCPC and the Code will have to be amended accordingly. An industry-wide regulatory review with generous time for public input should be held after the impacts of those new laws have come into effect.

Recommendation: That red-tape removal proposals be considered after the Australian Consumer Law has been implemented as part of an appropriately constituted inquiry.

Enforcement

Consumer groups have become disillusioned with ACMA and its apparent reliance on corporate 'good citizenship' as a means of regulation. Although ACMA appears to have appropriate and adequate powers of regulatory oversight, and the information and resources to initiate enforcement activities, in practice there is a non-interventionist culture that isn't appropriate to an industry with high levels of customer complaints. Its 2007-2008 Communications Report noted Spam and Do Not Call register related enforcement, and that audits of telecommunications code compliance also occurred⁶ – yet there is minimal information about what precisely these audits were, and no level of analysis about the results and their implications.

The lack of transparency about actual enforcement activity undermines government policy preferences for self-regulation, and more importantly, has negative impacts on the consumers having problems and the image of the industry as a whole. CTN calls on regulatory agencies to undertake more active enforcement action in order to send a clear message to industry players who do not take regulation seriously that they will be penalised and that regulatory compliance is a pre-condition to operating in the Australian marketplace.

It is one thing to have the rules but effective regulation also requires enforcement and monitoring. ACMA's annual enforcement priorities should be developed in conjunction with consumer organisations, as a means of improving ACMA's responsiveness. This will also require a review of ACMA's enforcement approach to ensure that enforcement action is stepped up in response to ongoing problems year after year. Greater transparency about ACMA's compliance activities through more detailed reporting will be necessary to foster greater faith in the regulator's commitment to actual enforcement where there is evidence of ongoing non-compliance resulting in consumer detriment.

Recommendation: Review of ACMA's enforcement and compliance approach and priorities with the input of consumer groups.


Concluding remarks

We look forward to working closely with the Department when more detailed information about the NBN becomes available. Other CTN submissions referred to in this submission are available on our website.

⁶ ACMA Communications Report 2007-2008, p132.

Thank you again for the opportunity to submit comments on this matter. Should you wish to discuss this submission in more detail, please contact myself or Sarah Wilson at the Consumers' Telecommunications Network on 02 9572 6007 or at ctn@ctn.org.au.

Yours sincerely,

A handwritten signature in black ink that reads "Teresa Corbin". The signature is written in a cursive style with a long horizontal flourish at the end.

Teresa Corbin

CTN Chief Executive Officer

This submission was prepared by Teresa Corbin, CTN Chief Executive Officer, and Sarah Wilson, CTN Policy Advisor. It has been approved out of session by the CTN Board.

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Appendix A

Extract from “Accessible Broadband for All Australians”, Consumers Telecommunications Network Media Access Australia and the Australian Communications Exchange (2007):

Summary Benchmarks:

1. Universal availability

- a) Develop a National Broadband Plan with a blueprint for achieving 100% coverage, with funding preferences to subsidise coverage in un-serviced areas, and regular auditing of existing availability compared with the blueprint;
- b) Department of Broadband, Communications and the Digital Economy (DBCDE) to create a reference group which includes consumer experts to consider applications for funding to achieve universal coverage;
- c) Use the Communications Fund revenue to pay for broadband roll-out; this was derived from the sale of Telstra and should be re-invested in future communications services.

2. Technology Quality of Service

- a) Mandate quality of service levels for broadband services, including minimum speed levels through Industry Standards;
- b) Create a standing expert committee which should include consumer representatives to provide guidance on technology issues.

3. Regulatory Arrangements

- a) Mandate access to broadband as an essential service by extending the Universal Service Obligation or an equivalent regulatory mechanism to cover broadband services, for example through legislating a Broadband Guarantee;
- b) Develop a self-regulatory Code to address net neutrality to ensure priority of communications over broadband networks;
- c) Ensure any publicly funded (or partly publicly funded) network is subject to structural separation to ensure wholesale competition that will allow consumers to have a choice;
- d) Require community impact statements that ensure all broadband infrastructure roll-outs are accessible. This can be implemented in the same way as regulatory impact statements.

4. Affordability

- a) Create a communications allowance or rebate to enable affordable services, available to all who are recipients of government benefits;
- b) ACCC to have price controls over new high-speed broadband networks;
- c) Protection against the ongoing issue of unexpected high bills resulting from usage of supposedly ‘unlimited’ services;

- d) Introduce equipment rebates or vouchers for low-income consumers for start up costs.

5. *Service offerings*

- a) Create a model contract for broadband services, incorporating existing state unfair contract legislative protections, and including protection against restrictive bundling practices;
- b) Establish an independent advisory service that can suggest a suitable provider and plan particularly for vulnerable consumers;
- c) ACCC to police misleading advertising of broadband speeds and unlimited services.

6. *Equipment*

- a) Establish an independently run assistive/disability equipment program, co-funded by industry and government, that can recommend appropriate technology for users with particular needs; an expert consumer committee will be integral to the decision of appropriate equipment;
- b) Inclusive design principles incorporated in Australian and international customer equipment Standards.

7. *Support programs and training*

- a) Use the Communications Fund to create a funding program for ongoing training programs for community educators with sufficient resources to deal with long-term skills creation;
- b) Ensure ongoing skills training so that community educators are up to date.

8. *Content Accessibility*

- a) Audit government websites to ensure they conform with W3C standards;
- b) Ensure that all Internet content that is created by any level of government, or is created using government funds, should have mandatory accessibility provisions, captions and audio description, as well as W3C compliance;
- c) Ensure that material from television (vodcasts, etc) originally presented with closed captions should also be offered on the net with an option for captions (open or closed);
- d) Encourage projects and pilots of innovative information provision, eg Auslan podcasts and captioning of video information, especially for government websites;
- e) Fund accessibility training;
- f) Recognise and promote best practice exponents via regular awards;
- g) Initiate accessibility incentive schemes for content providers.