
**Queensland Government Submission
to
the Australian Government
on
Regulatory Reforms
to be implemented
with the
National Broadband Network**

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1 Background

The Australian Government is providing funding of up to \$4.7 billion for the roll-out of an open access, high-speed, fibre-based national broadband network (NBN) that will provide access speeds of at least 12 megabits per second to 98% of Australian homes and businesses.

On 11 April 2008, the Honourable Senator Stephen Conroy, Minister for Broadband, Communications and the Digital Economy announced the following in a media release:

1. the release of the NBN tender, seeking industry proposals¹ (closing **12 weeks after the date all network information is available**²)
2. an invitation to industry and public interest groups, seeking submissions on possible regulatory reforms to be implemented with the NBN (closing **25 June 2008**)³
3. a call for submissions on policy and funding initiatives to provide enhanced broadband to rural and remote areas (closing **30 June 2008**)⁴.

In his media release, the Honourable Senator Conroy stated, 'We recognise the critical importance of future telecommunications regulatory settings, including ongoing consumer safeguards, to ensure the best outcomes for all Australians and the competitiveness of the economy.'⁵

This paper has been prepared to provide guidance on Item 2. For discussions on policy and funding measures (item 3) refer to the Queensland Government Submission to the Australian Government on Policy and Funding initiatives to provide Enhanced Broadband to Rural and Remote areas.

2 Broad Principles

The broad principles outlined in this section define a model and rules that could be used to effectively implement the NBN.

2.1 The Objects of the *Telecommunications Act 1997* need to be maintained

The objects of the Australian Government *Telecommunications Act 1997* are summarised in **Attachment 1**. Note: A digital data capability is currently defined as ISDN. This should be replaced with a broadband service.

2.2 Single National Network

The NBN should operate functionally as a single national network to ensure consistency of technical standards and a coordinated approach to network expansion.

2.3 Maintaining global competitiveness

The NBN needs to be regularly benchmarked to maintain parity with the best 25% of Organisation for Economic Co-operation and Development (OECD) countries in terms of performance and affordability.

¹ http://www.minister.dbcde.gov.au/media/media_releases/2008/023

² http://www.minister.dbcde.gov.au/media/media_releases/2008/040

³ http://www.minister.dbcde.gov.au/media/media_releases/2008/024

⁴ http://www.minister.dbcde.gov.au/media/media_releases/2008/025

⁵ http://www.minister.dbcde.gov.au/media/media_releases/2008/024

2.4 National Pricing

The NBN provider(s) should be required to provide a national price for access to services and infrastructure. Any support for the provision of services in non-profitable areas needs to be administratively transparent to minimise the negative impact of cross subsidy on competition in highly profitable areas.

2.5 Structural Separation

The NBN provider(s) should be a business/businesses that are established to solely provide wholesale broadband carriage and access services.

Ideally, there needs to be full structural separation between any existing wholesale and retail business units under NBN Providers' ownership or control.

Should the Australian Government not accept full structural separation, all the terms, conditions and pricing for services and access need to be tightly regulated with full accounting transparency. A simple and timely access regime would also need to be established to support this.

Retail companies associated with the NBN provider(s) should not be permitted to obtain wholesale prices lower than those available to non-associated companies. Where instances of this become known, these arrangements should be used to determine future wholesale prices and conditions by the regulator.

2.6 Make Best Use of Funding

The Australian Government should allow overbuild where the NBN provider(s) cannot gain timely, cost effective access to appropriate infrastructure or the infrastructure cannot be accessed with satisfactory regulatory changes during NBN implementation.

2.7 Open Access

The Queensland Government maintains that the NBN must be an open access network, defined as providing all parties with access to services, facilities or capacity on the same terms, conditions and pricing for similar purchases. The terms, conditions and pricing should be based on international benchmarks.

2.8 Backbone Open Access

Regulatory arrangements need to be established to provide a timely and simple process for commercially accessing all pre-existing backbone networks regardless of ownership.

As a condition of Australian Government funding:

- regulatory measures should be instituted which result in all backbone network facilities and services provided by the successful NBN providers(s) being delivered under an open access regime
- the successful NBN provider(s) are expected to deliver open access to all its other networks that are similar in nature within the funded area (eg. where Australian Government funds are used to provide a fibre optic network, all fibre optic networks owned by the NBN provider are deemed to be open access).

The NBN provider(s) are to ensure adequate backbone network capacity and contention ratios are maintained to support high levels of customer service.

2.9 Open Access to the Customer Access Network (CAN)

The CAN should be subject to the open access regime (see section 2.7) where there is only one infrastructure provider.

The CAN should be controlled by the regulator in a way that maximises competition and competitive use. Access to the NBN should be available at the node and other points of higher concentration of customer access lines. In circumstances where optical fibre is used between the exchange and the node, access seekers must be allowed access to customers at the exchange level. It should not be necessary for NBN wholesale customers to have to build infrastructure at the node to provide services to end customers.

Current arrangements associated with access to the CAN should be reviewed to provide a level of certainty for existing providers of broadband services.

Access to copper cable infrastructure should be provided at the exchange, node and any other appropriate location within the existing CAN. Transition arrangements should be established to ensure copper access services between the exchange and the premises are not removed prior to them being available through the NBN. These arrangements would permit existing providers to transition to the NBN infrastructure or services while maintaining a high-level of service to their existing customers.

The node and exchanges should be capable of supporting optical fibre, copper and wireless access networks from multiple providers.

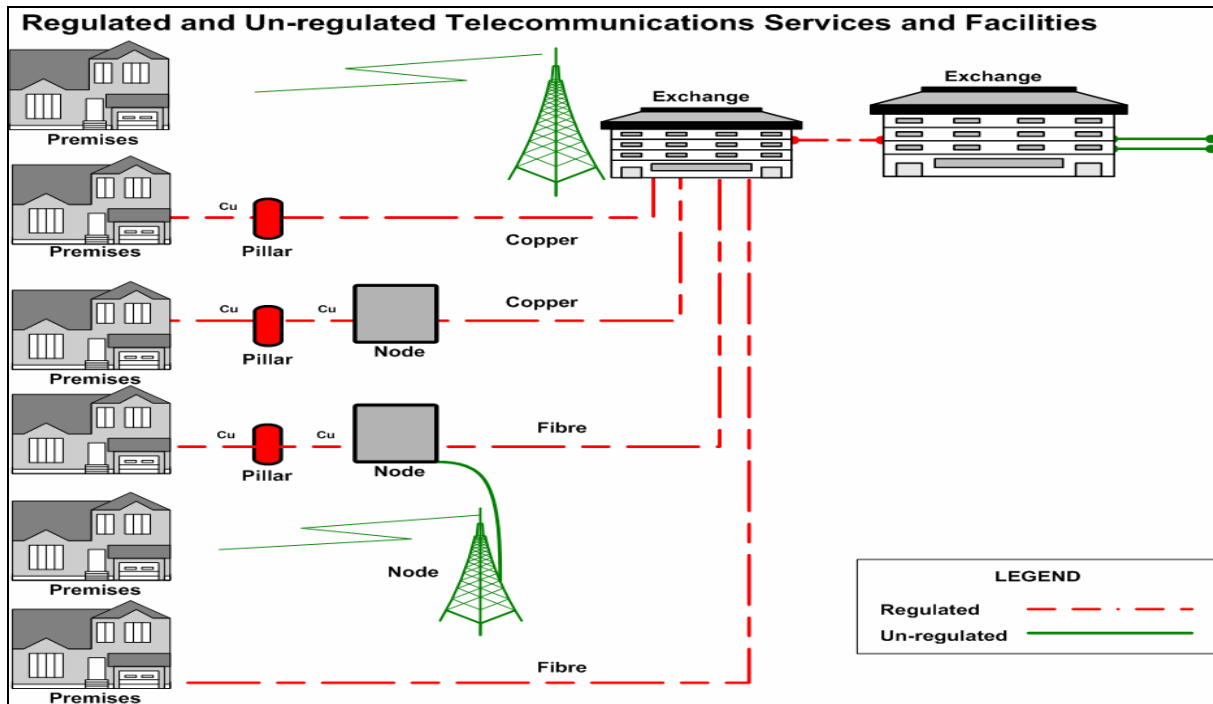
The node should be capable of supporting the provision of fibre to the home technologies without major redesign being required when it becomes possible to replace existing copper pairs.

Facilities established by the NBN provider(s) should have sufficient capacity and functionality to support competitive services.

The NBN provider(s) should not be able to limit the competitive provision of content and services to the premises by other providers, for example, a Telstra connection should not limit the customer to Foxtel.

Telstra as the dominant infrastructure owner must be required by its licence condition to remove outmoded equipment from infrastructure facilities, including duct, nodes and exchanges, to ensure adequate space for access seekers' equipment. This action seeks to ensure efficient investment of NBN funds.

The approach proposed by the Queensland Government is summarised in Figure 1 below.

Figure 1

2.10 Public Accountability and Transparency

The reporting arrangements established for the NBN provider should be completely transparent.

The Customer Service Guarantee and Network Reliability Framework should be extended to cover all services provided by the NBN provider.

Benchmarks for service levels should be determined in consultation with impacted parties. For example, the benchmark for Australia's definition of broadband adequacy should include:

- an ability for broadband services to carry a wide range of digital content, including interactive real time applications such as gaming and high quality videoconferencing
- symmetrical broadband
- maintaining, and improving on, parity with the best 25% of OECD countries in terms of performance and affordability.

It is suggested that reliance on carriers to report their own performance involves a high level of risk. Independent audits should be used to ensure service levels and promised NBN coverage are achieved. An example of this is the Australian Government's approach to the validation of Telstra's NextG service before CDMA could be closed.

Failure by NBN provider(s) to meet required levels of service should result in appropriate penalties and compensation. Failure to satisfy individual services over a broad geographic range should be subject to a larger range and scale of penalties.

Legislative, contractual or licence requirements could be used to establish the necessary mechanisms.

The Australian Communications and Media Authority (ACMA) should maintain responsibility for setting service levels and ensuring they are achieved.

The Australian Competition and Consumer Commission (ACCC) should maintain responsibility for monitoring and regulating prices and terms of access to the network. The ACCC's role should be strengthened to support an open access regime and improved market competition; particularly where there are only two competitive providers that are unregulated (refer to Figure 1).

2.11 Recognition of convergence

Traditionally, telecommunications services have been categorised into four key services⁶:

- fixed voice services (telephone)
- mobile voice and data services
- fixed data services (Internet, corporate networks)
- content services (radio, television, media and interactive games).

In many cases, these services are delivered via separate or overlay networks. As the information economy evolves, and the underlying networks converge, the distinction between these forms of communication is blurring. For example, mobile phones serve as Internet browsers and the Internet now provides fixed voice telephone services and delivers television and radio content.

Convergence means that all services can be integrated into a common telecommunications infrastructure platform (sometimes referred to as Next Generation Networks) to increase flexibility and reduce costs. Convergence of platform and content allows more efficient and effective communication.

Regulations and funding programs should be adjusted overtime to support convergence. The merger of the Australian Broadcasting Authority and the Australian Communications Authority into the Australian Communications and Media Authority is a move in the right direction. More work needs to be undertaken to integrate ACMA and other Australian Government programs.

2.12 Coexistence with pre-existing investments

The NBN solution should be compatible with all government funded networks, including the Clever Networks Integrated Service Delivery Program.

The implementation of the NBN-funded solution should not strand, overbuild, or undermine existing investments in infrastructure or committed projects by other telecommunication providers where those providers provide equivalence to the broad NBN principles outlined in section 2.

2.13 Infrastructure collaboration

The NBN provider(s) should facilitate the interconnection of the NBN with other network providers. This would allow customers to develop end-to-end networks consisting of multiple carrier services.

The telecommunications services and new infrastructure should be provided through cooperation and collaboration between major telecommunications carriers, Government Owned Corporations and other providers on a commercial basis. Given the timeframe for the rollout of the NBN, the NBN provider should also take advantage of infrastructure projects that are committed for implementation during the rollout period.

⁶http://www.gccio.qld.gov.au/01_strategies/qtsf.htm

The Queensland Government supports changes to the *Telecommunications Act 1997* and other relevant acts and regulations necessary to achieve the NBN outcomes outlined in this submission.

Should NBN bidders not be able to meet the goals of the NBN, then consideration must be given to appointing a federal authority with appropriate powers to facilitate the objectives of the NBN. This could be achieved in concert with the private sector.

2.14 Portability

The principles applicable to the transfer of fixed line phone services need to be extended to cover NBN Internet Protocol (IP) addresses, VoIP services, email addresses and other forms of customer identification. This would ensure customers are not tied to their provider after they would prefer to change.

3 A new Universal Service Obligation (USO)

From a consumer perspective, telecommunications rights, roles and responsibilities are very complicated. Under the NBN program, the Australian Government has an opportunity to simplify arrangements by taking advantage of convergence and by documenting consumers' rights in a consistent way through a new USO. The Queensland Government suggests that the new USO needs to combine voice, data and television.

The existing regulatory uncertainty associated with the current USO needs to be resolved, particularly the provision of the Standard Telephone Service.

The subsidy to provide a broadband service to non-NBN consumers should not be funded through a levy on the telecommunications industry. The Australian Government should fund the subsidy in the same manner in which it has funded the NBN, that is, through an Australian Government budget allocation.

3.1 Performance criteria need to motivate the right outcome

The absence of appropriate performance criteria can result in less than optimal outcomes. A specific example of this is where achievement of the Standard Telephone Service performance measures resulted in the timely implementation of telephone services through the use of pair-gain technologies, which continue to isolate households from access to ADSL services. This is still an issue in Queensland.

The Australian Government, in consultation with service recipients, should define the quality of services measures the NBN Provider will be required to uphold.

3.2 Open Access in Greenfield sites

Under ideal circumstances, new industrial and residential estates should be cabled as fibre to the premises.

The roles of the primary USO provider and the NBN provider(s) should be resolved to determine the responsibility for providing Customer Access Network services to the premises. It is now accepted that basic telecommunications now include broadband, as well as telephone services.

The Australian Government will need to establish a regulatory framework to define who will build and own the infrastructure in new estates. Open Access principles should govern any ownership arrangements.

Attachment 1 - The Objects of the *Telecommunications Act 1997*⁷

The main object of the *Telecommunications Act 1997* (the Act), when read together with Parts XIB and XIC of the *Trade Practices Act 1974*, is to provide a regulatory framework that promotes:

- (a) the long-term interests of end-users of carriage services or of services provided by means of carriage services
- (b) the efficiency and international competitiveness of the Australian telecommunications industry.

The other objects of the Act, when read together with Parts XIB and XIC of the *Trade Practices Act 1974*, are as follows:

- (a) to ensure that standard telephone services, payphones and other carriage services of social importance are:
 - (i) reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business
 - (ii) are supplied as efficiently and economically as practicable
 - (iii) are supplied at performance standards that reasonably meet the social, industrial and commercial needs of the Australian community
- (b) to provide a framework under which a carriage service, that provides digital data capability comparable to an ISDN channel, is available to all people in Australia:
 - (i) by 1 January 2000, or
 - (ii) by another date having regard to the findings of the review into the timing of the availability of that service
- (c) to promote the supply of diverse and innovative carriage services and content services
- (d) to promote the development of an Australian telecommunications industry that is efficient, competitive and responsive to the needs of the Australian community
- (e) to promote the effective participation by all sectors of the Australian telecommunications industry in markets (whether in Australia or elsewhere)
- (f) to promote:
 - (i) the development of the technical capabilities and skills of the Australian telecommunications industry
 - (ii) the development of the value-adding and export-oriented activities of the Australian telecommunications industry
 - (iii) research and development that contributes to the growth of the Australian telecommunications industry
- (g) to promote the equitable distribution of benefits from improvements in the efficiency and effectiveness of:
 - (i) the provision of telecommunications networks and facilities
 - (ii) the supply of carriage services
- (h) to provide appropriate community safeguards in relation to telecommunications activities and to regulate, adequately, participants in sections of the Australian telecommunications industry
- (i) to promote the placement of lines underground, taking into account economic and technical issues, where placing such lines underground is supported by the affected community
- (j) to promote responsible practices in relation to the sending of commercial electronic messages.

⁷ <http://scaleplus.law.gov.au/html/pasteact/2/3021/0/PA000070.htm>