

6th April 2010

Mr Stephen Palethorpe,
Secretary,
Finance and Public Administration Legislation Committee,
Parliament House.
Canberra, ACT 2600

Re: Telecommunications Legislation Amendment (Fibre Deployment) Bill 2010

Dear Mr. Palethorpe,

Thank you for your email dated 24th march 2010 inviting Universal Communications Group (UCG) to make a submission to the Senate Committee in reference to the above mentioned bill in relation to fibre deployments in green field developments. In UCG's opinion the bill is a very welcome step in creating the necessary framework to ensure all new green field development communication needs are future proofed.

Previously UCG has submitted a response to the NBN Green fields Consultation Paper in May 2009. There are two threads from this submission UCG would like to highlight again in respect of the submitted bill, and the yet to be developed subordinate legislation, specifically:

- The ownership and management of the resulting green field fibre deployments
- The impact of small sub-divisions and the potential role of local councils to facilitate aggregation as part of local development plans

Green Field FTTH Network Ownership and Management

The specific concern here is that while a new green field development may be served by a new FTTH network, and is mandated to ensure the network is open, the operational management of the network and ownership may still lead to poor service and potentially additional cost to residents and tax payers if not structured correctly. UCG has assisted in the development of one model, and observed the development of another similar model as outlined below:

Sanctuary Cove Principle Body Corporate (SC PBC)(effectively acting as a local council);

SC PBC own their FTTH network and created an entity called Sanctuary Cove Communications Services (SCCS). They have contracted out the construction AND the management of the network to a qualified supplier (the Network Manager). SCCS have no billing, or technical capability, but through its contracted Network Manager (NM) has out sourced this capability. SCCS acts as the wholesale operator. SCCS outsource the carrier licence to the Network Manager, so the site is covered by a nominated carrier declaration to meet the regulatory requirements (including interception). Retail Service Providers all access wholesale services at the same rate. SCCS retains control and can change the Network Manager due to poor performance, and periodically can review in the market as the contract term expires. SCCS uses the NM to investigate new technologies and services available externally, and for the site campus (e.g. intranet, Wi-Fi access, security cameras, environmental monitoring, etc). SCCS is NOT constrained by the commercial

limitations of a network owner, and subject to body corporate funding, can determine how to use this asset in its own best interests.

VicUrban Model:

The VicUrban model is more generic, but does not address the specific needs of a gated or closed community (as maybe required in a retirement village, or other form of campus environment). This applies especially to campus based security, intranet and environmental management which is not specifically addressed in this model, but IS addressed in the Sanctuary Cove model.

Sanctuary Cove has chosen the path outlined to avoid their community being locked into an arrangement with a poor performing network supplier, wholesale or otherwise. The original developer brought in a FTTH operator, but the performance has not been to a standard accepted by the SC PBC, and the network has not been accepted by the SC PBC, and has been a major problem for the developer, SC PBC and residents. The only way to remove the problem has been to replace the network at significant cost, and put in place the operational model as outlined, that removes this potential outcome in the future.

Transition in the proposed model would also be easy into the NBN as a transaction between asset owner and the NBN. The NM could continue to run the network to contracted SLA and KPI's under the NBN.

The VicUrban model has many similarities, but for different motivations. The motivation it would seem for VicUrban is to ensure the most likely outcome of being adopted by the NBN Co when it comes. However in doing so it has ensured that the Network Manager role (the FTTH Supplier) is a contracted service so avoiding a locked in FTTH Network Operator/Manager, just as Sanctuary Cove has done.

Sub-division aggregation and local development planning

The most likely claim for a development to be exempt under the proposed bill would be due to too small a development size to cover the common development cost, so pushing up the cost per lot to an unacceptable level. To avoid a developer side stepping the legislation consideration should be given to requiring local councils (maybe under direction of NBN Co) to aggregate FTTH green field developments under a local development plan. The aggregation of multiple developments in the same geographic area/town/suburb would allow much smaller developments to be added to existing or proposed green field FTTH development plans.

Example: Fernvale – Somerset Regional Council, QLD

A developer in Fernvale has three separate development sites consisting of 45, 46, and 180 lots respectively. In addition to that there are 3 other developers with in excess of 1000 further homes, and the potential to develop a total of 3000 new homes in Fernvale over the next 10 to 15 years. The striking part of this is that NONE of the individual developments currently proposed are over 350 homes.

Setting the threshold to 350 would mean over 3000 homes to be built in Fernvale with none of them being connected to fibre, leaving the NBN to costly task of adding fibre at a later date.

Alternatively if the threshold was set so that all developments are to be FTTP, but the decision on the FTTP constructor and operator is selected by the developer, then Fernvale could end up with 4 Head Ends and an increase of the overall network development costs. Also if these networks become the asset of the network operator, suburbs with poorly performing operators would have very little leverage to address this adequately.

UCG contends that with appropriate powers the council should allocate a FTTH constructor and operator (via the appropriate means), with the asset managed by the council until the NBN Co is able/willing to take over. The network operator (operating the network on behalf of the council, and facilitating open access) provides services under contract and poor service may be penalised, or the contract terminated if required.

This would mean a consistent FTTP delivery to all of Fernvale, at a much reduced cost, plus provide a commercial means for transfer to the NBN Co at a later date.

Recommendations

The bill and the subordinate legislation should ensure:

- a) green field FTTH networks avoid poor performing network operators that own or inherit network asset by defining acceptable contractual terms (as part of the bill or subordinate legislation) between developers and network owner.
- b) inappropriate decisions by developers in respect of network construction and operator selection are not permitted by defining a panel of approved FTTH network constructors, and operators.
- c) efficient aggregation of developments as part of local council planning.
- d) efficient use of common facilities – e.g. Head end or point of interconnect and back haul, potentially through the use of local government development plans.

Yours sincerely,

Ralf Luna
Chief Executive Officer
Universal Communications Group