

13 April 2010

Committee Secretary
Senate Standing Committee on Environment, Communications and the Arts
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Via e-mail: eca.sen@aph.gov.au

Inquiry into The provisions of the Telecommunications Legislation Amendment (Fibre
Deployment) Bill 2010

Dear Committee Secretary

Thank you for the opportunity to provide comment on the provisions of the
Telecommunications Legislation Amendment (Fibre Deployment) Bill 2010.

The Urban Development Institute of Australia (UDIA) is the peak body representing the
development industry in Australia.

The UDIA represents more than 4,000 companies directly employing more than 400,000
Australians including developers and a range of professionals involved in the development
industry including lawyers, engineers, town planners and contractors.

The development industry is one of the major sectors in the Australian economy directly
accounting for 7.3% of GDP and, taking into account the indirect impacts of the industry on
the rest of the economy delivers an additional 6.2% of GDP.

The Australian development industry directly accounts for 975,700 (full time equivalents)
employees (9.1% of the workforce) and a further 749,600 employees (7% of the workforce)

in the broader economy. The industry directly contributes \$36 billion of Australian wages and salaries (6.7% of all wages and salaries).

The direct impact of \$1 million invested in the property development industry results in:

- 6.7 full-time equivalent jobs generated in the property development industry.
- State and federal taxes increasing by \$73,458.
- An addition of \$235,733 to wages and salaries.

Introduction

As the purpose of this legislation is to help implement the Government's policy that fibre-to-the-premises infrastructure should be installed in new developments that receive planning approval from 1 July 2010, the Bill is of vital interest to the development industry.

Consequently UDIA has been actively involved in discussions with the Government over this legislation, including as a member of the Government's Stakeholder Reference Group.

In general, the development industry is very supportive of the opportunity for improved telecommunications services to be made available in Greenfield sites offered by the NBN.

UDIA is also keen to see an accepted industry standard for the deployment of Fibre-To-The-Premises (FTTP) as soon as possible. Already, a number of developers across Australia have undertaken to implement FTTP in their residential developments.

In simple terms, the UDIA is of the view that the proposed FTTP be the modern replacement for copper and that its installation be treated in the same way as for the current installation of copper cables into the development areas, and onward to the premise. The UDIA is also of the view that the NBN project should align with the greenfields FTTP deployment requirements and share responsibility for deployment of FTTP in these locations.

The Telecommunications Legislation Amendment (Fibre Deployment) Bill 2010 is essentially enabling legislation for the introduction of the NBN on new developments, with the key details regarding the implementation to be included in subordinate legislation.

Because of this, the legislation that is currently before the Parliament does not include or address the many of the major issues that UDIA and the development industry have in relation to the introduction of the NBN on Greenfield sites.

In short, the key elements of this legislation are still unknown.

This current lack of information regarding the legislation raises concerns in the development industry about a range of issues such as:

- the commercial effects of the proposed legislation upon developers and new homebuyers;
- the impact that the cost of FTTP will have upon affordable housing product;
- the availability of NBN funding to support the cost of implementing FTTP;
- the need for equitable treatment of residential customers in Greenfield and Brownfield sites;
- the practical details of the NBN rollout related to Brownfield and neighbouring Greenfield sites; and
- the potential impact of NBN Co implementation model upon existing FTTP providers who may already be delivering services to a number of our developers.

Without this information, UDIA is not in a position to provide support for the legislation. UDIA also believes that the legislation should not be debated by the Parliament without the accompanying subordinate legislation.

Consequently the focus of this submission is on the key elements that need to be addressed through the subordinate legislation, as opposed to what is contained in the legislation currently before the Parliament.

UDIA would appreciate the opportunity to appear before the Committee to discuss the contents of this submission in greater detail.

Yours sincerely



RICHARD LINDSAY
Chief Executive Officer

Key Issues

Costs and Equity

There is currently a lack of information regarding how NBN funding will be applied to Greenfield sites. Whilst it has been inferred in recent weeks by the Government that developers will be required to fund FTTP in greenfields sites, this is a position that has never been publicly stated by the Government.

This has created an environment of financial uncertainty for many developers who would be required to pay the upfront costs of installing FTTP in Greenfield estates. In many cases developers are now only just being confronted with the reality of transitioning from paying nothing for telecommunications infrastructure to potentially paying millions of dollars in costs to provide FTTP.

Due to the high costs associated with fully funding FTTP it is anticipated that certain development sites may now be rendered unviable for urban development or will need to claim exemption from immediate FTTP provision and be limited to provision of a 'fibre ready' telecommunications infrastructure.

UDIA strongly believes that should be no difference in relation to the treatment of new estates and the retrofitting of existing housing. It is highly inequitable for there to be an upfront capital charge for Greenfield estates but a cost-recovery approach for elsewhere.

This framework proposed by the Government will adversely impact on the cost of new homes, and would also result in the situation where new home owners would be required to pay for the provision of FTTP, whilst owners of existing homes would not.

The actual cost of providing FTTP to new houses in Greenfield estates varies depending on the nature of the development (eg. Single dwelling lots vs. Multi-unit dwellings), and other factors such as geographic location and the significant variance in the cost of associated backhaul.

However, current market evidence from our members indicates that cost can range from \$2,500 to \$5,000 per new dwelling as a development cost. The cost excludes the additional associated on costs incurred by the developer for activities associated with civil works, project management, contract management etc. whereby these numbers can almost double as a real cost that has to be passed on to the customer.

UDIA further notes that if FTTP infrastructure is to be provided by a developer in Greenfields estates, then under the NBN model, Internet Service Providers (ISPs) will be able to use this infrastructure to obtain a commercial benefit whilst making no financial contribution to the provision of the infrastructure.

The funding model for the NBN is still largely unknown.

The Government has costed the NBN roll-out at \$43 billion; however it is not known how this figure was derived and whether this figure includes Greenfields developments. It is also not known what impact the transition from copper to fibre will have on the operation and funding of the Universal Service Obligation (USO) fund.

UDIA is of the view that any revision of the USO to take into account the establishment of the NBN, may be a potential source of funding for the rolling out of FTTP in new developments.

Fibre-Ready Requirements

The legislation provides that new developments be fibre ready by 1 July 2010.

The development industry cannot agree to the 'fibre ready' compliance date of 1 July 2010 until the 'fibre ready' requirements of the NBN co network architecture have been published. It is imperative that the NBN co. spatial requirements for the 'fibre ready' passive network infrastructure are known in order to be properly accounted for in planning and cost analysis by the developer.

This is essential to avoid any future costs associated with incompatibilities and associated reworks. The NBN co. 'fibre ready' design requirements need to be known well before the commencement of any civil development works. This is because the commercial impact of these requirements has to be considered by the developer and incorporated into their overall commercial assessment of the project.

Currently there is a lack of knowledge regarding:

- NBN co's deployment plans ie. When will they be deploying to certain areas;
- NBN co's technical solution design. (This affects spatial and planning requirements of a site to be 'fibre ready');
- availability of the NBN implementation study (currently pending release); and
- an industry agreement upon compliance thresholds.

All of the matters raised by this legislation are relatively complex and require consideration based upon known variables. Currently there are more unknown variables than known variables. For example, NBN Co are unable to define deployment plans or final technical solutions until further studies and trials are completed.

Once these solutions have been finalised, the design and cost impact of the NBN Co. requirements for passive network infrastructure have yet to be assessed to determine whether they are higher or lower than typical passive network infrastructures deployed by developers. Therefore, it is difficult for the Development Industry to achieve an informed consensus view that would fully support the legislation in the proposed timeframe.

Telstra Response to Legislation

In response to this legislation, Telstra recently announced that it has changed its policy in regard to the installation of telecommunications network infrastructure in Greenfields developments.

According to the statement on the Telstra website:

“For developments where the developer has not made arrangements to have FTTP infrastructure installed, Telstra will no longer deploy copper cable. Additionally, Telstra may require a developer to pay a contribution towards the cost of the installation of any telecommunications infrastructure in Greenfields developments, including fibre.”

This announcement has the potential to render the ‘fibre-ready’ requirement in the legislation essentially meaningless, and has created a situation whereby commercial realities are likely to over-ride the intent of the legislation.

Even though developers can provide a “fibre ready” pit & pipe infrastructure, it appears they can no longer rely upon Telstra to provide a traditional copper network-based telephone service under the USO and at no cost to the developer. Telstra have indicated that they will potentially supply a mobile wireless handset to meet their USO obligations.

In addition to this, most residential customers have also become accustomed to the availability of broadband in areas where a copper based telephone service is available either via ADSL or ADSL 2+. Telstra’s proposed plans also complicate this issue as customers would be restricted to the availability of mobile broadband providers in the location where there is the absence of a copper line back to a Telstra exchange.

The cost of mobile broadband plans are typically at a much higher cost than fixed line broadband and the number of available providers are typically lower. Based upon feedback from many developments where there has been acknowledged issues with the availability of broadband, there can be significant adverse community reaction ranging from affected land and property sales to, in some cases, claims for compensation from the developer (especially from home-based businesses).

Ownership and Provision of Assets

As outlined above there is currently a lack of technical resolution and information available on the NBN model and the ownership of assets.

For example, it is still uncertain how far the NBN network will extend into Greenfield sites, and also who is responsible for the provision of back-haul into Greenfield sites.

UDIA contends that developers should only be responsible for providing the trench for the fibre infrastructure (pit and pipe), and the NBN project should assist with financial support

for the installation of the pits and pipes, the backhaul, the head-end and all of the cabling into homes. UDIA considers that the way in which FTTN is delivered should not differ at all from the way in which telecommunications infrastructure is delivered into new estates (residential and commercial) and new apartments now.

The cost of providing backhaul for most Greenfield sites is a significant portion of the costs associated with providing a complete FTTN solution. While distribution costs of a FTTN solution within a given development are fairly consistent, within a given range, backhaul costs can vary significantly based upon a range of factors, namely:

- distance from the nearest backhaul interconnect point to the site;
- commercial pricing of the backhaul provider;
- commercial terms offered by the backhaul provider to the FTTN provider;
- number of obstructions encountered on the backhaul route (e.g. roads, rivers, rail, other utilities);
- ownership of existing infrastructure that the backhaul may be required to use e.g. Pipes owned by other carriers or utilities;
- cost of access to existing infrastructure e.g. lease costs to other asset owners;
- initial connection costs to the backhaul provider; and
- service type availability of the backhaul provider;

The variability of backhaul costs makes it difficult for developers to effectively anticipate and plan for the cost of FTTN in a commercial assessment. The scope of backhaul provision can introduce a significant and unacceptable level of risk for a development.

As outlined in the MBA submission to this inquiry, backhaul for some developments has cost \$400,000 - \$700,000 or more depending on circumstances. This cost would also need to be recovered on a lot by lot basis and have a serious impact on building and housing affordability.

Therefore UDIA strongly contends that the cost of backhaul should be treated separately from the cost of fibre deployment.

The UDIA considers that backhaul is part of a National Broadband infrastructure backbone that can potentially service multiple sites in both greenfield and brownfield developments and therefore should be considered an essential component of the National Broadband Network. Backhaul costs should definitely not be a cost that requires developer contribution and should be addressed by the NBN project

Timing

The legislation is scheduled to come into effect on 1 July 2010; however UDIA believes that this deadline is unachievable.

As outlined above, there is still a significant lack of knowledge in relation to NBN co's Network deployment plans and technical specifications, as well as the ownership and cost implications of the FTTP provision in Greenfield developments.

Also, under the current available legislation, it is uncertain which developments will be required to adhere to the FTTP provision and which are exempt.

Until all this detail is known, it is extremely difficult for the development industry to undertake the necessary planning requirements for the provision of FTTP under the NBN model.

Decisions in relation to the provision of FTTP are usually made a number of years in advance of subdivision work and are based upon cost calculations that are made as a part of a commercial assessment for the development. The current commencement date will not allow adequate time for the planning to be undertaken and may also result in an unfavorable commercial assessment with the addition of the FTTP costs.

The recent Telstra announcement has also created further confusion for the development industry in regard to FTTP provision.

Evidence from a number of our members has indicated that Telstra have advised that they will no longer deploy copper in a Greenfield site and the alternatives are either a contribution per lot towards the cost of a FTTP solution or a minimal Wireless phone handset solution under the requirements of the USO.

Therefore unless a developer has already made planning allowances for the provision of FTTP into a Greenfield estate, it would be extremely difficult to comply with the 1 July 2010 start-date.

Consequently, UDIA strongly recommends that a moratorium on the start date for this initiative be implemented until such time as there is significantly greater certainty and detail regarding the technical and financial aspects of this legislation.