



Australian Government

**Department of Broadband,
Communications and the Digital Economy**

our reference: 2010/2240

28 April 2010

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

Dear Mr Palethorpe

Questions on Notice: Fibre Deployment Bill

Enclosed are answers to questions taken on notice by the Department of Broadband, Communications and the Digital Economy at the Committee's hearings in Sydney on 19 April.

Please contact Philip Mason on 6271 1579, philip.mason@dbcde.gov.au if you require further information or clarification.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Daryl Quinlivan', with a long, sweeping flourish extending to the right.

Daryl Quinlivan
Deputy Secretary

**SENATE ENVIRONMENT, COMMUNICATIONS AND THE ARTS
REFERENCES COMMITTEE HEARING**

Questions on Notice – Monday, 19 April 2010

Due date: 27 April 2010

Department of Broadband, Communications and the Digital Economy

QUESTION 1

Senator TROETH—To whom can he grant the delegation? Must it always be the minister or does he have power to delegate that?

ANSWER:

We assume the reference to ‘power’ in the question above relates to proposed subsections 372B(5), 372C(5), 372CA(5) and 372CB(5) of the Bill which allow the Minister to exempt conduct specified in, or ascertained in accordance with, a legislative instrument from the scope of subsections 372B(1), 372C(1), 372CA(1), 372CB(1) respectively.

The Bill has been drafted so that there is an express delegation by Parliament to the Minister to make legislative instrument(s) covering the matters under proposed sections 372B, 372C, 372CA and 372CB. As currently drafted, those powers cannot be delegated to another person.

However, the Bill does provide that certain legislative instruments made by the Minister can confer powers and functions on the Australian Communications and Media Authority (ACMA) in relation to the fibre-connection requirement under proposed subsections 372B(7) and 372C(7); and the fibre-ready requirement under proposed subsections 372CA(7) and 372CB(7).

There is a range of functions and powers that could potentially be specified in a ministerial instrument. For example, the Minister could, by way of an instrument, give the ACMA a decision-making role in determining whether or not a real estate development project is subject to the rule in proposed subsection 372B(2). Under such an instrument, the ACMA could also be empowered to make decisions about individual real estate development projects that are subject to the rule in proposed subsection 372B(2). For example, the ACMA may be given a role of ‘agreeing’ that a real estate development project is not subject to the fibre-connection requirement because it is above a per-unit or per-lot cost threshold for back haul.

This may be seen as a ‘delegation’ of sorts, in that ACMA makes the final call as to whether the rule applies, or whether an exemption applies, in a particular case or not – although it is not a delegation of power by the Minister of the Minister’s power to make the legislative instrument.

It should be remembered that the instrument(s) that the Minister would make would be legislative instruments, and subject to parliamentary scrutiny and disallowance.

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QUESTION 2

Senator IAN MACDONALD—It would be very helpful for the committee if you could go through Telstra's summary of changes recommended—I use Telstra's because they have sent theirs out in a nice little box—and just give us a comment. There is not lot there. It is only three pages. If you could go through and say, for example, 'That is dealt with at page 2 in Friday's paper,' or whatever.

ANSWER:

Please see separate document at Attachment A regarding Telstra's questions.

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QUESTION 3

Senator FISHER—Can I ask a further question on notice following that question just asked by Senator Macdonald. I would ask the department to do likewise (i.e. a table dealing with each question they have raised) in respect of each of the witnesses who has appeared before us today in terms of their key concerns.

ANSWER:

Please see separate document at Attachment B which responds to key issues raised in the submissions of parties who were witnesses at the hearing on 19 April 2010.

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QUESTION 4

Senator IAN MACDONALD—Regarding the complementary measures of the state, about which Miss Spence spoke, can you inform the committee on whether any of the states have indicated to you that they have a definite program in place to introduce either the legislation or the regulation?

ANSWER:

The Commonwealth is working with State and Territory officials through its Stakeholder Reference Group and on a one-to-one basis. All States and Territories are giving active consideration to appropriate changes in planning mechanisms for their jurisdiction. However, many have signalled that they would prefer to implement measures once the arrangements in the Commonwealth legislation are in place.

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QUESTION 5

Senator LUNDY—We have established a number of facts today, including the fact that a couple of weeks ago Telstra changed its position with respect to the installation of fibre and is now refusing to install any more copper. That has obviously led to some concern about the costs of it. Can I confirm with the department that, prior to Telstra making that decision of a couple of weeks ago, Telstra in fact were installing fibre into estates where they felt that there was a commercially good reason to do so, without the automatic transference of those costs on to the homeowners? I am happy for you to take that on notice, but I think you will find that that is what the evidence points to. The other thing that is of concern is Telstra refusing to provide a copper network and therefore assigning an additional cost and creating a problem about needing to cap the costs—that the market dynamic has changed because of this action by Telstra. Is that true? We will let you take that on notice as well.

ANSWER:

Telstra has historically provided copper infrastructure in new developments. Developers have provided the trenching and Telstra has provided the other infrastructure. We understand Telstra has generally recovered the cost of this infrastructure for connection and ongoing charge over the life of the infrastructure. This is reflected in its submission to the committee (p.4).

At the UDIA Annual Conference on 9 March 2010 we understand Telstra announced that it no longer intended to install copper infrastructure in new developments. This is reflected in its submission to the committee (p.10).

We understand Telstra also indicated it would offer to install fibre-ready pit and pipe infrastructure with a view to later facilitating the roll-out of fibre. In its submission to the Committee, Telstra has indicated it had intended to install this infrastructure free of charge to developers but it was reviewing this approach given regulations requiring them to provide access to such infrastructure had been proposed (p.7). (Although we note, however, that Telstra would already be under obligations to provide access to other carriers under Part 5 of Schedule 1 of the *Telecommunications Act 1997*.) In its submission to the Committee, the HIA has reported that Telstra has asked developers to pay \$1000 per lot for fibre-ready passive infrastructure (p.3).

Telstra Velocity is an established provider of fibre to the premises in new developments. In its submission, Telstra indicates that this is done on a commercial basis with developers providing an upfront contribution.

We are aware that Telstra is replacing its copper network at Point Cook, Victoria, with fibre, as a trial. We understand that this may be done at no up-front cost to residents. Details are at http://www.telstra.com.au/abouttelstra/media/announcements_article.cfm?ObjectID=46262.

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QUESTION 6

Question 1

Assuming developers will pass the cost onto the premise owners (not assuming just home owners) it has been suggested that there will be a corresponding increase in property value.

- a. What evidence or analysis have you seen, commissioned or conducted that supports this?
- b. The Minister's second reading speech stated 'available evidence suggests that the extra costs of installing fibre instead of copper are relatively low, comparable or even lower than those for the installation of other utilities and fibre is expected to add value to new properties.'
What evidence was he referring to?
- c. The speech also says "the available evidence also indicates that it is easier and cheaper to put fibre or fibre-ready technology in when homes are first built". What does 'the evidence' show in this respect? What is the cost differential?
- d. Wouldn't the statement that 'there will be a corresponding increase in property value' be based on the assumption that NBN will enjoy ubiquity?
 - i. What evidence is there that take up of NBN will be ubiquitous?

Answer 1

- a). Sources for the suggestion that a fibre connection improves property values include
 - Fibre to the Home Council, *2009 Fibre Primer*, p.18, available at www.ftthcouncil.org (accessed 25 February 2010)
 - A survey in Canberra in August 2006 asked respondents to indicate how they would react if a developer who had planned FTTH rang up prospective buyers to say he had decided not to proceed with FTTH, but was willing to offer a discount on the house and land package. Over 60 per cent indicated no offer would be satisfactory; instead they would buy elsewhere. Of the remainder, 80 per cent indicated they would not proceed without compensation of at least \$5,000. (Cited in Eckermann R 2009 *Aurora Fibre to the Home Case Study* Department of Infrastructure Victoria).
 - The fact that developers have increasingly been installing fibre in new developments, and according to developer representatives, more upmarket developments, for which a price premium can be commanded, suggests that FTTP adds value.
- b). The Department has derived cost estimates from a number of industry sources, including providers of both copper and fibre. These estimates, including the comparison to the cost of other utilities, are discussed in some detail in the Regulation Impact Statement.

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The estimated total cost of \$2,500 per premise is considered low compared with other utilities, based on evidence including:

- the Urban Task Force in its submission to this Committee points to infrastructure charges of more than \$15,000 a residential lot; and
 - a submission to the Public Works Committee by the Land Management Corporation (South Australia) estimated the per lot costs for one development to be \$2,500 for water, \$3,200 for stormwater, \$4,800 for power and \$4,800 for sewerage.¹
- c). That it is 'easier and cheaper to put fibre or fibre-ready technology in when homes are first built' was a view repeatedly put to DBCDE in its consultations on implementation of the fibre in new developments policy. It is also a conclusion based on our analysis of the relative costs, and discussed in some detail in the RIS.

There are a number of costs associated with connecting new developments which are common, irrespective of whether copper or FTTP is installed. These include civil engineering costs, such as design, trenching and ducting. They also include the cost of providing backhaul from the new development to an appropriate point of interconnection in the existing network.

There are also costs which are more variable, these include the cost of the line to be installed (e.g. copper versus fibre) and the electronics required. For example, both copper and fibre-based broadband require electronics in the exchange or the node and in the customer's premises. However, the costs of these differ, as can the incidence of those costs.

Estimates of the total cost per premises of each way of installing fibre are:

- providing copper connections, with broadband capability, at around \$1000;
- connecting FTTP to new premises, at around \$2500 per lot;
- retrofitting premises that are connected with copper with FTTP where fibre-ready infrastructure is installed, at around \$3000 per lot (i.e. \$1000 for copper and fibre ready infrastructure plus \$2000 for retrofitting FTTP); and
- retrofitting premises that are connected with copper with FTTP where no fibre-ready infrastructure has been installed, at around \$4000 per lot (\$1000 for initial copper installation plus \$3000 for retrofitting FTTP).

The extra cost of retrofitting where the infrastructure is not fibre-ready is largely due to the cost of digging up footpaths, driveways and gardens to replace conduit and pits. It is an order of magnitude estimate based on information provided by carriers who have installed fibre, and on OECD studies in other countries.

- d). The sources referred to in (a) above are not dependent on the ubiquitous take-up of the NBN. The expected increase in property value is due to the amenity of having broadband available.

¹ See: <http://www.parliament.sa.gov.au/NR/rdonlyres/55EB406A-CD9D-466B-AAB2-978338DF8025/13672/AgencySubmissionPlayfordAlive.pdf>

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Question 2

P21 of the Explanatory Memorandum states that the estimated average total cost of the Bill given a 50/50 share of 'fibre ready' and actual fibre connections would be \$520m based upon 189,000 new homes, schools and businesses per year which equates to \$2751.32/premise.

- a. What is the estimated average cost for non-metropolitan homes?
- b. What about schools? Do they require just one connection?
- c. What about business/industrial developments?

Answer 2

By way of clarification, amongst other things, the RIS looks at the costs of providing a mix of fibre and non-fibre solutions. Each solution has an estimated cost. It is not appropriate to divide the total cost of a mixed solution by the number of premises concerned to claim it is an average cost to service premises with fibre under that scenario.

- a. We did not calculate a separate average cost for non-metropolitan homes. Information from stakeholders suggested that the costs of installing fibre within the fibre footprint would be roughly similar: some of the costs are fixed costs of inputs; labour tends to be cheaper in non-metropolitan areas, but there may be transport costs that offset this.
- b. Schools would be classed as non-residential and would be caught by the higher performance standards set out in the position paper on the subordinate legislation released by the Minister on 16 April.
- c. Businesses and industrial developments would be classed as non-residential and would be caught by the higher performance standards set out in the position paper.

Question 3

In regard to fibre providers the 2nd reading speech stated; "the bill envisages there will be a competitive market for the installation of fibre and fibre-ready facilities..."

- a. What is the current situation?
- b. What is the current level of competition in the marketplace?
- c. Won't the mandating of fibre in new developments increase demand to the detriment of competitive pricing, if no increase in capacity to supply is observed?

Answer 3

- a). Known providers of FTTP in new estates in Australia include Arise, BES/E-Wire, Clubcom, OPENetworks, Opticomm, Pivit, Service Elements, Telstra and TransACT. NBN Co has also been established and is a potential provider. Fibre has been installed in estates in all States and Territories. There are plans for further developments in all States and Territories.

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- b). Information from FTTP providers and others suggests that there is a good deal of price competition in the market to install FTTP in new developments: we hear many reports of bids won and lost.
- c). It is true that there will be increased demand but the market is expected to adjust in light of the Government's policy and the certainty provided by passage of the Bill.

Question 4

Page 5 of the Explanatory Memorandum suggests retrofitting fibre to premises via 'fibre ready ducts' will cost just \$500 more than if fibre is connected from the start (\$3000 vs \$2500).

- a. Wouldn't it be better to mandate 'fibre ready' infrastructure at a lesser upfront cost to developers and permit homeowners to choose when and if they want fibre connected?
- b. It has been suggested that the bill may create "an unwarranted cost burden in what is an already punishing home buying market for something they (homebuyers) can live without)". Has the department considered this view?

Answer 4

- a). The position paper on the subordinate legislation released on 16 April sets out thresholds within which fibre will not be required as it is not immediately practicable, but fibre-ready infrastructure will be required.
- b). There is strong demand for fixed telecommunications connections and broadband services. Our consultation with stakeholders has indicated that property owners want the option of access to high-speed broadband and readily take-up the service. The Minister receives a large number of representations from the public complaining about the lack of high-speed broadband in an area. Submissions from stakeholders, including representatives from the development and construction industries, generally support the availability of high-speed broadband in new developments. Even if a property owner/occupier does not immediately want a service, a subsequent owner/occupier is likely to require the service. A large part of the infrastructure must be installed for the whole of a development (e.g. network electronics, pit, pipe and in-street cabling). Other infrastructure can be supplied on a premises by premises basis in response to demand (eg. trenching and ducting within the property boundary, an ONT, in-remises wiring).

We are aware that the policy will result in added costs. However, the cost is capped and considered small in the context of the price of a house and land package, and will result in considerable benefits.

Question 5

The HIA has suggested this Bill amounts to 'two levels of service' where most homes receive Commonwealth funded broadband infrastructure, while new home buyers must pay for it themselves.

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- a. Doesn't this run contrary to the Government's stated objective of increasing the accessibility of housing by increasing housing supply?

Answer 5

- a). We are aware that the policy will result in added costs. However, the cost is capped and considered small in the context of the price of a house and land package, and will result in considerable benefits.

Question 6

In respect of the ability for ACMA to exempt a development from the fibre-ready requirement on application, how would this provision operate?

- a. On what grounds would ACMA potentially see fit to exempt a development?

Answer 6

Please see our answer to Senator Troeth's question (1) above. As per the Position Paper our objective is to set out clear rules in the subordinate legislation which will determine what requirements apply in what types of developments. It is not envisaged that the Government will consider developments on a case-by-case basis and consider whether they are captured by the requirements or not. If necessary, such discretion could be conferred on the ACMA if this is warranted in light of feedback on the position paper. Where a person claims it is not subject to requirements but there is doubt about this, the ACMA may have a role in examining this situation as it would have a role in considering other cases of possible non-compliance with telecommunications law.

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QUESTION 7

The explanatory memorandum on p10 and elsewhere trumpets the benefits of this Bill, such as accessibility to video conferencing and calling, e-health and other technologies.

- a. What analysis is there that these benefits will outweigh the costs of;
 - i. the installation of fibre in the development?
 - ii. the average ongoing cost of connection to NBN?

ANSWER:

A recent report by the OECD titled Network Developments in Support of Innovation and End User Needs (9 December 2009) made the long-term case for investment in a competitive, open-access national FTTP network roll-out based on potential spillovers in four key sectors of the economy: electricity, health, transportation and education.

The report concluded (p.4) that, on average, cost savings of between 0.5% and 1.5% in each of the four sectors over ten years could justify the cost of building a national point-to-point, fibre-to-the-home network.

The report went on to note that

‘High-speed communication networks are a platform supporting innovation throughout the economy today in much the same way electricity and transportation networks spurred innovation in the past. Future innovations in many sectors will be linked to the availability of high-speed, competitive data networks and new applications they support.’ (p.5)

A range of studies both in Australia and from overseas – including from Access Economics, the Centre for International Economics and the European Commission – have converged on the conclusion that investment in high speed broadband will lead to billions of dollars of economic benefits across the economy into the future.

The benefits permeate the economy. A 2007 Telstra study found broadband could reduce Australia’s annual emissions of greenhouse gases by 5 per cent and save \$6.6 billion a year in energy and travel costs for both businesses and households.

Some of the benefits are difficult to quantify. For example, the Chief Executive of the Council of Small Business of Australia, Jaye Radisich has identified a range of potential benefits for small business: ‘Broadband will level the playing field for small businesses to be able to effectively compete on a national and global scale.’

Ms Radisich goes on to say that the NBN presents small business with ‘a once in a lifetime opportunity to grasp a global long-term advantage’.

Infrastructure Australia, in its National Infrastructure Priorities Report in May last year, stated that ‘The importance of an accessible and fast broadband network to Australia’s international competitiveness is almost impossible to overstate.’

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QUESTION 8

The explanatory memorandum states the “enforcement regime will apply to both carriers and non-carriers, consistent with the application of the Act.”

- a. Does this mean developers will be subject to penalties, as well the as the carrier or other supplier of the fibre?
- b. What are those penalties?

ANSWER:

- a). The Bill sets out rules that apply to persons who install fixed line facilities (like pit and pipe) and fibre. The penalties would apply to the person who install these facilities in breach of the legislation. Penalties also apply to a person who aids or abets in contravention of the provisions of the legislation. To the extent developers install infrastructure in contravention of the legislation they would be subject to penalties.
- b). These are the civil penalties in the Act: fines of up to \$250,000 for non-carriers and up to \$10 million for carriers for each contravention.

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QUESTION 9

Question 1

Minister's second reading speech refers to the "targeting of those estates where it is practicable to have fibre now, while ensuring others are ready to have fibre installed as soon as it is possible and cost-effective in the future":

- a. Doesn't this imply there will be a need to review each individual development to decide whether it is appropriate to have fibre installed on a case by case basis?
- b. How will such decisions be made? By what criteria? By who?

Answer 1

- a. The status of developments will be determined by rules. They will not need to be reviewed on a case-by-case basis.
- b. The proposed criteria are set out in the position paper on the subordinate legislation released by the Minister on 16 April. They relate to geographical location, size of the development, cost of installing fibre, and date of planning approval. Developers will judge what category they fall into, and may be required to produce evidence in support of their judgement (for example, quotations for installing fibre to illustrate that they are outside the cost threshold) if required to do so.

Question 2

The application of Part 20A of the new Act is subject to the provisions of a legislative instrument.

In the Department's view, what is likely to be included in the Instrument?
When is it anticipated that this would be issued?

Answer 2

The proposed content of the instrument is set out in the position paper released on 16 April 2010.

Question 3

The second reading speech stated, "the bill also enables the minister to set conditions in subordinate legislation to be met by both fibre and fibre-ready facilities.... Such conditions would be directed at achieving NBN-consistent experiences in new developments across Australia."

- c. How could NBN-consistent experiences be achieved in developments across Australia if not all will be provided with fibre?
- d. Some remote, regional or difficult developments would perhaps be serviced by wireless or satellite, for which the stated objective is speeds of 12mbps. How is this a "NBN consistent experience" compared to those who get 100mbps?

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Answer 3

- a). The Fibre Deployment Bill relates to areas served, or later to be served, by fibre. The conditions mentioned above will be directed at achieving NBN-consistent experiences on fibre networks for those developments within the proposed geographic coverage of the Bill.
- b). The Government's objective is that the NBN will deliver up to 100 Mbps over fibre to 90 per cent of premises, and at least 12 Mbps over wireless or satellite platforms to the rest of the country. It is therefore expected that those developments outside the geographic coverage would be expected to be serviced by next generation wireless or satellite technology.

Question 4

Will the instrument be subject to further consultation?

Answer 4

The content of the subordinate legislation has already been the subject of discussion in the Stakeholder Reference Group in December 2009 and March 2010. Further consultations are continuing by means of the position paper released on 16 April. Responses to the position paper have been requested by 3 May. Further consultation will be undertaken on the actual instrument if this appears warranted from the feedback received on the position paper.

Question 5

What interaction will there be with industry and local government?

Answer 5

There is continuing interaction with industry and local government, including but not limited to the Fibre in Greenfields Stakeholder Reference Group, on which they are represented. The membership of the Stakeholder Reference Group is set out on page 24 of the Explanatory Memorandum to the Bill.

Question 6

Part 20A of the Act sets out that "where fixed telecommunications lines are installed within a specified development... the lines must be optical fibre lines".

Is it proposed to mandate a method of rollout (i.e. aerial or underground)?

Answer 6

No, it is not proposed to mandate a method of roll-out of fibre.

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QUESTION 10

Question 1

What 'complementary measures' are being sought?

Answer 1

The Commonwealth is working with the States and Territories to have them put in place complementary planning arrangements that support the Commonwealth's national legislative framework. This is because the Commonwealth Bill does not create a positive requirement to install fibre, and because developers are more likely to look to State planning regulations to see what they are required to do.

The particular measures will vary because State and Territory planning arrangements vary in their structure, but it is envisaged that there would be a requirement that fixed telecommunications facilities be provided in new developments, and that those facilities meet relevant Commonwealth requirements, thereby interlinking State, Territory and Commonwealth arrangements.

Question 2

How would these be implemented?

Answer 2

State and Territory planning laws differ from jurisdiction to jurisdiction so the implementation approaches are also expected to vary. In general, however, it appears that the approach most States and Territories would take is to add fixed telecommunications to the list of utilities which have to be provided for before a planning application is approved. Ultimately, however, this is a matter for State and Territory governments. As explained in the preceding answer to question 10.1, it is envisaged State and Territory measures could refer to Commonwealth requirements, thus interlinking arrangements at the different tiers of government.

Question 3

Would any of these 'complementary measures' work to the exclusion of local governments from the planning process?

Answer 3

This is not envisaged but this is a matter for State and Territory governments.

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QUESTION 11

Question 1

1. Who will own:

- (a) any fibre deployed to (including backhaul); and
- (b) any fibre installed in; and
- (c) the fibre-ready infrastructure constructed as part of a greenfield / brownfield development?

Answer 1

A range of ownership and management arrangements already exist when it comes to the operation of telecommunications infrastructure in new developments. The Government has not seen any reasons why these arrangements cannot be left to the market. The Government is concerned to ensure, however, that quality facilities are installed in new developments and are operated to provide quality services. To a large extent this will be achieved through the setting of appropriate technical specifications and competitive forces. As a further safeguard, DBCDE is working with stakeholders on the development of a process for accrediting fibre providers and certifying the infrastructure they install.

While legislation is not prescriptive as to who can own, manage or operate infrastructure in new developments, under section 47 of the *Telecommunications Act 1997*, a network unit (which would include fibre lines of the type mentioned in (a) and (b) of the question) must not be used without the owner having a carrier licence or a nominated carrier declaration.

Question 2

2. Who will receive any access charges for access to the fibre or fibre-ready infrastructure deployed to a greenfield / brownfield development?

Answer 2

Access charges are typically paid to the person who owns the infrastructure concerned. An owner could transfer the right to provide access to another party (eg. leasing) who in turn might provide access for a return.

SUMMARY OF TELSTRA CONCERNS ABOUT THE FIBRE DEPLOYMENT BILL AND DBCDE'S RESPONSES, 27 APRIL 2010

Section	Summary	Issue	DBCDE Response
General	Lack of compulsion to install fibre	<p>The EM to the Bill now states that State and Territory laws are complementary but not strictly necessary. Telstra disagrees. Without a clear mandate to install fibre infrastructure, developers retain the option to proceed with developments without the installation of any fixed line infrastructure at all. To prevent this, the Commonwealth should utilise its full range of Constitutional powers. Telstra considers that the power over telecommunications is sufficiently broad to support a direct requirement on developers to install fibre or a requirement on State and Territory planning authorities not to approve developments which will not have fibre infrastructure. If there are any doubts about the extent of the telecommunications power, the Commonwealth could rely on its corporations power: although not all developers are incorporated, the fibre mandate would capture the most significant developments and may prompt the States and Territories to themselves enact legislation.</p> <p>Upon end user requests for services in such developments, Telstra would need to deploy infrastructure to supply voice</p>	<p>Commonwealth law at present does not mandate the installation of telecommunications infrastructure. (The USO requires the provision of service upon request but does not specify the platform on which it must be provided.)</p> <p>The Bill works by requiring in specified developments that where fixed line facilities like pit and pipe are installed they need to be fibre-ready and where fixed lines are installed they need to be fibre. That is, the Bill conditions what is to be done rather than directly requiring the installation of such facilities</p> <p>DBCDE canvassed the possibility of legislating directly to require developers to ensure pit, pipe and FTTP infrastructure and services are available to consumers in its Discussion Paper in May 2009. It found that this could be done using the Commonwealth's corporations power under the Constitution but would be limited to corporations and would have to be enforced by</p>

		<p>telephony, but it is unclear how a longer term fixed infrastructure solution would be delivered.</p>	<p>prohibiting the trading of land where the requirement was breached. This was strongly opposed by developers and was considered to be intrusive and disproportionate. Developers also put the view their developments would need to include fixed line infrastructure to be marketable</p> <p>Given the way planning laws work and developers interact with them, the Government considers the preferable approach is for State and Territory governments to include complementary measures in their planning regimes requiring the provision of fixed telecommunications services. DBCDE is continuing to discuss this approach with State and Territory officials.</p>
s372D	<p>No clarity around which development areas are captured by the legislation</p>	<p>The classes of developments to which this Bill might apply is very broad and has the potential to cover most construction (including the construction of a "granny flat" on an existing property if the granny flat was to be leased).</p> <p>The Government should provide clarity on the classes of developments that the Bill is to apply. If this is not to be done in the legislation itself, the Government should release draft regulations which can be</p>	<p>The Position Paper released on 16 April 2010 indicates the classes of developments where fibre and fibre-ready infrastructure would be required.</p> <p>It makes clear that exceptions will be made for urban infills where the passive infrastructure in the street is not to be replaced.</p>

	<p>considered together with the draft legislation as a complete package setting out the Government's new developments fibre policy.</p>	
<p>The fibre-ready rule will ensure that in instances where passive infrastructure like pit and pipe is installed, it is 'fibre-ready', so that fibre can be easily installed from the start or later on. The objective of the legislation is, in part, to avoid the costs of retrofitting fibre. Fibre-ready infrastructure goes a long way towards this, as the greatest costs and disruption would be incurred in the replacement of pit and pipe.</p> <p>For some new developments, distance from backhaul, the absence of economies of scale, and the fact that the NBN may be installed in the area fairly soon mean it may not be practicable to require the installation of fibre in those areas in the short term. However, in practically all cases it makes sense to install fibre-ready infrastructure.</p> <p>The exceptions are areas where the NBN will be provided by other means than fibre. The Position Paper released on 16 April 2010 provides that fibre-ready infrastructure will not</p>	<p>The Bill proposes that, as an alternative to the non-fibre line prohibition, the Minister may instead apply a prohibition on the installation of passive infrastructure, such as ducts, which is not "fibre-ready". In other words, it is enough to install empty ducts capable of accommodating fibre in the future. As such, the fibre-ready requirement does not meet the Government's stated intention of ensuring fibre is installed in new developments. This suffers from the same defect as fibre lines. It is framed as a prohibition and so it does not actually achieve the installation of fibre-ready infrastructure.</p> <p>The fibre-ready rule should be limited in application to only those areas where there is uncertainty as to whether they will be part of NBN Co's mandate to deliver FTTH to 90 per cent of the population or whether they will be served by a wireless/satellite solution. These areas are likely to be those where the developer contribution is over the cap.</p>	

	<p>s372B & CA</p> <p>Additional clarity is required around the application of the Bill to sites underway before 1 July 2010</p>	<p>While the Department has been consulting with stakeholders on how to deal with transitional development sites (i.e. those where some form of construction or planning has commenced prior to July 2010), the Bill does not provide any clarity on whether sites where construction has started as at 1 July 2010 will be excluded.</p>	<p>be required where no other urban utilities are provided.</p> <p>The Position Paper released on 16 April 2010 indicates that the requirements will apply to developments for which a Stage 3 development application is lodged on or after 1 July 2010. This point has been chosen so that there will be no element of retrospectivity. It would be undesirable to impose requirements and costs where economic decisions had already been made.</p>
<p>s372B & CA</p>	<p>Minister's discretion</p>	<p>The Minister has broad discretion to:</p> <ul style="list-style-type: none"> <input type="checkbox"/> decide the requirements for fibre ready passive infrastructure; and <input type="checkbox"/> define and then change over time the areas that are subject to the non-fibre line prohibition and those subject to a prohibition of passive infrastructure that is not fibre ready, and those that have no fibre-related requirements at all. <p>The Government should immediately provide clarity on which developments will be subject to which prohibition, if any. The Government also should as a matter of urgency settle the technical requirements for fibre ready passive infrastructure.</p>	<p>As indicated in the Second Reading Speech, the Bill makes extensive use of subordinate legislation due to the need to deal with many complex issues, the need for detailed rules and the need for flexibility to allow targeting, phasing-in and adjustment of rules over time.</p> <p>The Position Paper released on 16 April 2010 sets out the classes of developments in which fibre and fibre-ready infrastructure will be required from 1 July 2010. Work is progressing with Communications Alliance, NBN Co and others on detailed technical specifications. The Position Paper sets out minimal 'default' specifications in the unlikely</p>

s372CA(4)	Access regime	<p>The Bill includes a bare power for regulations to be made setting up an access regime for fibre-ready passive infrastructure in development areas but does not set out principles or guidance as to the kind of regime that would apply. Unlike other statutory access regimes (Part IIIA or Part XIC of the <i>Trade Practices Act 1974</i>), the Bill fails to set out access pricing principles, reasonable limits on the obligation to provide access, such as technical or operational limits on access, procedures for the resolution of disputes and appeal rights. Telstra and other carriers are subject to facilities access requirements (which includes passive infrastructure such as ducts) under Schedule 1 of the <i>Telecommunications Act</i>. This existing regime requires carriers to provide access to ducts – whether in new development or other areas. If carriers are to continue to be subject to such access requirements, Telstra welcomes their extension to other owners of underground facilities, such as electricity suppliers. This will ensure a more symmetrical and efficient use of all underground facilities in new developments.</p> <p>However, Telstra is concerned that the approach taken in the Bill:</p>	<p>event that the detailed specifications are not completed in time.</p> <p>As Telstra notes, there are currently no effective arrangements to ensure that carriers wanting to install cabling can have ready access to passive infrastructure such as pit and pipe owned by non-carriers. In recognition of this, the Bill includes a power under which regulations can be made to set out a regime for accessing such infrastructure. The regulations will provide all the appropriate guidance and will be developed with regard to existing and proposed telecommunications access arrangements and in consultation with stakeholders. The Explanatory Memorandum to the Bill notes that one possible model for the regulations is Part 5 of Schedule 1 to the Telecommunications Act</p> <p>The Department recognises that the regulations will need to have due regard to carriers' obligations under Part 5 of Schedule 1 so as not to create conflicting obligations on carriers.</p>
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		<p><input type="checkbox"/> is unclear whether access to carrier owned ducts would be addressed under the access regime proposed by the Bill or under the existing access regime in Part 5 of Schedule 1;</p> <p><input type="checkbox"/> provides no pricing principles or processes for this new access regime – again, all the details are to be left to the Minister through regulation powers; and</p> <p><input type="checkbox"/> there is a risk of inconsistency when the Schedule 1 access regime applies to a carrier’s ducts –either within new developments (which itself is unclear) or in other areas - while this new, undefined access regime applies to ducts within new developments.</p> <p>In Telstra’s view, the better course is to utilise the existing underground access regime by applying it to all owners of passive infrastructure in new developments. This could be done through some simple amendments to Schedule 1.</p>	
	<p>Clarification on whether the nonfibre prohibition applies only to the “first-in” network</p>	<p>It is unclear whether the non-fibre prohibition will apply only to the “first-in” network or to all networks deployed in a new development. The Government’s fibre objectives would appear to be met if there is at least one fibre network, while permitting other technologies so end users can have choice between competing networks. Examples of where an “all fibre” requirement could prevent service delivery</p>	<p>The Position Paper released on 16 April 2010 provides for exemptions to allow the installation of non-fibre lines and facilities on a one-off basis, where required, (1) to support older types of customer premises equipment (e.g. some PABX equipment) providing fibre is also available; (2) to support certain ‘special services’ such as metering,</p>

		<p>include:</p> <ul style="list-style-type: none"> <input type="checkbox"/> the extension of the Telstra, Optus or Transact HFC networks into new developments to deliver pay TV; <input type="checkbox"/> the use of copper for certain "special services" such as metering, security, traffic lights; and <input type="checkbox"/> the use of copper for interconnection with legacy end user technology such as PABX's. 	<p>security, traffic lights providing fibre is also available; and (3) to enable a temporary building on the site of the new development to have a non-fibre fixed line service that will be removed when building is closed. It also notes that the Government is considering further whether hybrid fibre-coaxial (HFC) networks should also be permitted providing optical fibre is also in place.</p> <p>Due to the flexibility provided by the use of subordinate legislation, further exemptions could be made if the need for them is demonstrated.</p>
s113(3)	Codes and Standards	<p>The Bill gives Communication Alliance (CA) and the ACMA the ability to make codes and standards about the:</p> <ul style="list-style-type: none"> <input type="checkbox"/> design and performance of fibre lines and passive infrastructure in new estates; <input type="checkbox"/> performance requirements of fibre lines or facilities used in connection with fibre lines in real estate developments; <input type="checkbox"/> characteristic of carriage service using fibre lines; and <input type="checkbox"/> design and performance of carriage service providers over any fibre lines (not just new development sites) but also the NBN or Telstra business fibre networks. <p>These categories are very broad and in particular would allow CA and the ACMA to</p>	<p>Stakeholders have shown a strong interest in ensuring nationally consistent outcomes in new developments, consistent with the customer experience on the fibre component of the NBN. This is true of residential and non-residential developments. The development of codes and standards is the means by which this will be achieved.</p> <p>The range of matters in relation to which it is proposed codes and standards should be able to be made are those that may need to be covered to achieve nationally consistent outcomes. The need for measures, however, in these areas</p>

		<p>determine the characteristics and quality of service of any services provided over Telstra and competitor business fibre networks. Direct fibre for businesses is already a highly competitive and dynamic market. There is no case for Government intervention to prescribe specifications in this market, and the prospect of Ministerial proclamation could discourage investment and innovation in this already competitive market</p>	<p>will depend on the circumstances.</p> <p>The Part 6 code and standards making process is highly consultative and there is considerable scope for carriers' input</p> <p>This said, the Government acknowledges that different considerations apply to the non-residential sector. In the Position Paper of 16 April 2010 only the broadest objectives are suggested for consideration in relation to non-residential services and stakeholder feedback is specifically requested on this issue.</p>
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ATTACHMENT B

WITNESS COMMENTS ON THE FIBRE DEPLOYMENT BILL AND DBCDE RESPONSES, 28 APRIL 2010

Note: This is a best endeavours attempt by DBCDE to summarise how issues raised in submissions to the committee made by the witnesses that gave evidence on 19 April 2010 have been addressed in the Position Paper released on 16 April 2010 as requested by the Committee. Ultimately it is a matter for stakeholders to ensure the Committee is fully apprised of their concerns. DBCDE notes that many stakeholder comments relate to the policy of having fibre installed in next developments rather than the proposed operation of the Bill.

Key to witnesses: HIA – Housing Industry Association; MBA – Master Builders’ Association; UDIA – Urban Development Institute of Australia; UTA- Urban Taskforce Australia; UCG – Universal Communications Group

	Issue	Who raised	DBCDE Response
1.	<i>Equity between greenfields and brownfields:</i> It is inequitable for property owners in greenfields to have to meet the cost of having fibre installed while those in brownfields will have it installed by NBN Co ‘for free’.	HIA, UDIA Optus, MBA, UTA	It was noted in the Second Reading Speech (SRS) that the cost recovery arrangements that may ultimately apply in greenfields will depend on the commercial arrangements that emerge between all relevant parties as fibre-to-the premises is deployed more widely. How roll-out costs will be recovered in both brownfields and greenfields will depend on a range of factors and it cannot simply be assumed that stakeholders in greenfields will have to meet costs in one way while those in brownfields are expected to meet them in another. In all instances, NBN Co is expected to operate on a commercial basis and to recover its costs.
2.	<i>Housing affordability:</i> Requiring fibre in new developments without assistance with the cost will impact adversely on housing affordability. This cost surcharge could be up to \$5000.	MBA, HIA, UDIA	The Position Paper states that where the price of provision exceeds \$3,000 per lot or unit, fibre would be optional and fibre-ready would be the default. The cost recovery arrangements that may ultimately apply in greenfields will depend on the commercial arrangements that emerge between all relevant parties as fibre-to-the premises is deployed more widely.

3.	<p><i>Meeting the cost:</i> The contribution of developers should at most be limited to the cost of passive infrastructure. Other costs, particularly off-site costs, should be met by NBN Co or the Government or other carriers.</p>	HIA, UTA UDIA MBA	<p>The Position Paper states that where the price of provision exceeds \$3,000 per lot or unit, fibre would be optional and fibre-ready would be the default. The cost recovery arrangements that may ultimately apply in greenfields will depend on the commercial arrangements that emerge between all relevant parties as fibre-to-the premises is deployed more widely.</p>
4.	<p><i>Provision of backhaul and head-ends:</i> Developers should not have to meet the cost of providing backhaul or headends. These costs should be met by NBN Co, the Government or another carrier. A cost threshold is not effective. First movers will bear a disproportionate cost of backhaul.</p>	UDIA, UTA, HIA	<p>The Position Paper states that where the price of provision exceeds \$3,000 per lot or unit, fibre would be optional and fibre ready would be the default. This price threshold includes a component for backhaul to take into account concerns about the availability of backhaul (i.e. if backhaul is available the threshold will not be crossed; if it is not readily available, the threshold will come into play).</p>
5.	<p><i>Starting date:</i> 1 July 2010 is no longer a realistic starting date and the starting date should be delayed. Requirements should be delayed until NBN Co is ready to fulfil them. Requirements should not apply to developments which have already received development approval.</p>	Optus HIA, UDIA, UTA, MBA	<p>The Position Paper states that requirements will only apply in relation to developments for which a Stage 3 planning application is lodged on or after 1 July 2010. A Stage 3 applications is made very early in the development process. This means that the requirements under the Bill will only have practical effect sometime, perhaps years, after 1 July 2010 and can be factored into the business case of the development.</p>
6.	<p><i>Clarity as to which developments are covered:</i> The Government needs to provide greater clarity as to what requirements will apply in what types of developments.</p>	UDIA	<p>The Position Paper states that fibre-ready infrastructure would be required in new developments where an urban utility such as reticulated water, sewerage or mains electricity was otherwise being installed. As an exception to this general rule, a development would be exempted from the fibre-ready requirement if, at the time the party concerned was to install the fixed line facilities, the development was in an area specified in a plan published by NBN Co for this purpose as being a non-fibre area, or where NBN Co otherwise gave an explicit exemption in writing prior to the installation of relevant infrastructure.</p> <p>The Position Paper states that in those developments captured by the fibre-ready requirement as explained above, the installation of fibre would also be required where:</p> <ul style="list-style-type: none"> • the development over its life was to be equal to or greater than 200 building lots and/or units (the size threshold), and • fibre could be installed at a price of \$3000 (including GST) or

			less, which includes the price of backhaul (the price threshold). The number of lots or units refers to the whole of the development throughout its life.
7.	<i>Service provision in fibre-ready developments: How will services be provided in fibre-ready developments, particularly now that Telstra has said it will no longer install copper infrastructure?</i>	HIA, UDIA	The Position Paper states that in areas where fibre-ready facilities are deployed but fibre is not required, developers could choose to install fibre or seek a non-fibre solution from a carrier. As the primary universal service provider, Telstra has the obligation to provide a person with a standard telephone service upon request. As now, Telstra could do this using its own infrastructure or that of another carrier. As now, Telstra would be able to choose what technology it uses.
8.	<i>Open and equivalent access in new developments: fibre infrastructure in new development should be subject to the same open and equivalent access obligations applying to NBN Co.</i>	Optus, HIA, UDIA	As indicated in the SRS, the Government envisages that fibre networks in new developments will operate on an open access basis, just like the NBN, and that wholesale services will be offered on an equivalent basis. There is scope for the ACCC under part XIC of the Trade Practices Act to declare access and regulate access pricing. The Government is also prepared to look at more direct regulation in the future if required.
9.	<i>Integration with the NBN: How will new developments be integrated into NBN?</i>	Optus	As indicated in the Position Paper released on 16 April 2010, the Government is proposing to make reference to appropriate technical specifications to deliver nationally consistent outcomes and facilitate the integration of networks in new developments with the wider NBN. The Position Paper proposes a hierarchy of specifications, namely NBN Co specifications, codes developed by the Communications Alliance and standards made by the ACMA. In the absence of such documents, the Position Paper proposes the instrument contain broad outcome-orientated conditions. Comment has been sought on these proposals.
10	<i>National consistency of requirements and outcomes: How will the Commonwealth ensure requirements are outcomes are consistent across State, Territories and local government areas, particular if they are relying on complementary State and Territory measures?</i>	MBA	See previous answer to item 9.

11.	<p><i>Inability for customers to access existing high-speed infrastructure:</i> As drafted proposed section 372B could prevent existing high-speed broadband infrastructure that may exist in an area being used to service a new development in area pending the arrival of the NBN.</p>	Optus	<p>The Position Paper indicates the Government is considering further whether hybrid fibre-coaxial (HFC), in areas where it is deployed, should be able to service new developments along side of fibre .In the Position Paper an exemption is proposed for small urban infill/renewal projects (e.g. knockdown-rebuilds) whereby they would only need to have fibre-ready infrastructure installed within the property boundary if street facilities were not otherwise being replaced. Such developments would also be exempt from the fibre requirement if they were smaller than 200 lots/units or the cost of providing fibre, including backhaul, was more than \$3000 per lot/unit. Where fibre is not required non-fibre technologies can be deployed.</p>
12.	<p><i>Ownership and management of infrastructure:</i> The Commonwealth should specify clear rules about the ownership and management of infrastructure in new developments to ensure quality infrastructure is installed and service quality is maintained.</p>	UCG	<p>A range of ownership and management arrangements already exist when it comes to the operation of telecommunications infrastructure in new developments. The Government has not seen any reasons why these arrangements cannot be left to the market. The Government is concerned to ensure, however, that quality facilities are installed in new developments and are operated to provide quality services. To a large extent this will be achieved through the setting of appropriate technical specifications and competitive forces. As a further safeguard, DBCDE is working with stakeholders on the development of a process for accrediting fibre providers and certifying the infrastructure they install.</p>
13.	<p><i>Council aggregation of demand:</i> Local councils should actively aggregate developments to create more attractive opportunity for infrastructure providers.</p>	UCG	<p>This is a matter for councils to consider in planning developments.</p>
14.	<p><i>Regulation Impact Statement (RIS):</i> The RIS is flawed because it ascribes a cost to copper (whereas Telstra provides it 'for free'), underestimates the cost of providing fibre and does not consider the impact on housing affordability.</p>	HIA, MBA	<p>The RIS was reviewed by the Office of Best Practice Regulation as providing an adequate level of analysis.</p>
15.	<p><i>Exemptions:</i> Who will grant exemptions?</p>	HIA	<p>As explained to the Committee on 19 April 2010, the intention is that the subordinate legislation set out very clear and robust rules along the lines proposed in the Position Paper which can largely be self-administering. It is not envisaged that there be a process by which individual estates are exempted on a case-by-case basis. When a</p>

			<p>developer lodges a development application with a council, it is envisaged it will indicate whether or not it considers it is captured by the rules in the subordinate legislation. In the event that a developer claims it is exempt under the rules, it is envisaged the matter could be reported to the industry regulator, the ACMA, for monitoring purposes and review and investigation if appropriate.</p>
16.	<p><i>Fibre thresholds:</i> Some consider there should only be a price threshold. Some consider there should be no thresholds as NBN Co should provide all facilities. Some consider the key threshold should be the availability of backhaul.</p>	HIA UTA	<p>The Position Paper sets out that the installation of fibre would also be required where:</p> <ul style="list-style-type: none"> the development over its life was to be equal to or greater than 200 building lots and/or units (the size threshold), and fibre could be installed at a price of \$3000 (including GST) or less, which includes the price of backhaul (the price threshold). <p>The number of lots or units refers to the whole of the development throughout its life.</p> <p>The price threshold includes a component for backhaul to take into account concerns about the availability of backhaul (i.e. if backhaul is available the threshold will not be crossed; if it is not readily available, the threshold will come into play).</p> <p>At present developers typically organise the provision of infrastructure to the property boundary and the property owner or their builder organises the infrastructure within the property boundary. We envisage this will continue to be the case.</p>
17.	<p><i>Facilities within the property boundary:</i> Developers should only have to pass a lot with fibre. They can't provide facilities to building sites as the locations of premises are unknown.</p>	UTA	<p>While fibre infrastructure has been increasingly installed in new developments and the Government's policy is seeking to build on this trend, the provision of fibre is not yet widespread. A key issue is that the benefits of installing fibre are long term and therefore developers, do not necessarily have the incentive to accept the higher cost of fibre in the short term (RIS, pp 6-7). Requiring the installation of fibre (or fibre-ready facilities) by law will ensure fibre is more widely deployed to the long term benefit of property owners and the wider community.</p>
18.	<p><i>Regulation is not required:</i> FTTP will happen anyway, don't need a law.</p>	UTA	

19.	<p><i>Not an essential service:</i> Fibre is not an essential service; it is not appropriate to mandate its provision and prevent a development if it is not provided.</p>	UTA, MBA	<p>As indicated in the Second Reading Speech on 18 March 2010 the Government considers high-speed broadband is becoming a critical utility service, almost as important as water, electricity and gas. The Government wants to see people in new estates getting access to superfast broadband as soon as possible.</p> <p>The Bill and subordinate instrument implement this policy through requiring the installation of fibre-ready facilities and fibre in new developments that meet the criteria set out in the Position Paper. The installation of fibre ready infrastructure within the geographic coverage set out in the Position Paper will minimise the costs of retrofitting fibre at a later date.</p>
20.	<p><i>Fibre may be superseded:</i> Legislation may entrench outmoded technology.</p>	UTA	<p>As indicated in the document ‘21st century Broadband’¹, released on 7 April 2009, the Government considers fibre-to-the-premises (FTTP) is the state of the art, ‘future proof’ fixed broadband technology and is capable of providing customer with download speeds of 100 Mbps and upload speeds of 50 Mbps. Broadband speeds available over fibre are expected to reach 1 Gbps and beyond in coming years.</p> <p>Fibre is widely accepted as being the most future-proofed technology for the provision of broadband. There is extensive published literature to this effect. For example, the Senate Select Committee on the NBN has expressed this view in its third report (p10-11, para.2.20, 22) where it states: ‘The committee believes that the decision by the government to nominate FTTP architecture over the previous, optional FTTN architecture, reflects the general consensus expressed by key industry stakeholders that investing in FTTN would result in a network based on out-dated architecture that would not be future-proofed.... There is general consensus throughout the telecommunications industry that FTTP architecture is the only option that will support future technology upgrades, given the rapid changes in telecommunications technology, even over the last five years.’</p>

¹ Accessible at: http://www.dbcde.gov.au/_data/assets/pdf_file/0005/110012/National_Broadband_Network_policy_brochure.pdf

21.	<p><i>People paying for something they might not use:</i> Property owners will have no choice about paying for a infrastructure. The property owner will need to contribute to backhaul even if they never connect.</p>	MBA	The Government's policy is that new developments should have fibre.
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