



Primus Telecom

**Comments in Response to Senate Inquiry into
NBN Companies Bill 2010 and the
*Telecommunications Legislation Amendment
(NBN Measures – Access Arrangements) Bill
2010***

February 2011

Senate Environment and Communications Legislation Committee
PO Box 6100 Parliament House
Canberra ACT 2600

Submission to the Senate Environment and Communications Legislation Committee Inquiry into the National Broadband Network Companies Bill 2010 and the Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Bill 2010

February 2011

Introduction

Primus welcomes the opportunity to provide comments to the Senate Environment and Communications Legislation Committee (**Senate Committee**) on the National Broadband Companies Bill 2010 (**NBN Co Bill**) and the Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Bill 2010 (**NBN Access Bill**).

Primus has been a strong advocate for reform in the Australian Telecommunications Industry over many years and continues to support the establishment of a wholesale-only, open-access, broadband service provider. Primus believes that it is only through the construction of the proposed National Broadband Network (NBN) and the implementation of the associated regulatory reforms that Australian consumers across Australia will have access to superfast broadband, at efficient and competitive pricing.

By way of background, Primus is one of Australia's larger telecommunications carriers and service providers offering a comprehensive range of high speed broadband, data, Internet, web hosting and voice products. Primus services both business and residential sectors.

The Primus network provides nationwide coverage through its own backbone network with facilities in 66 cities and DSLAM facilities installed in most of the competitive exchanges across Australia. Primus operates its own fibre network in the five major capital cities, delivering a range of business direct-connect services including ISDN, frame relay, ATM, telephone line and broadband DSL, as well as telephone line and broadband DSL services direct to residential customers.

Primus operates as part of an international facilities-based communications services provider, with associated subsidiaries operating primarily in Australia, Canada, the United States, the United Kingdom and Western Europe.

Unlike most other large service providers in the Australian industry, Primus has retained 100% of its call centre positions within Australia. Primus also operates leading data centre facilities in Australia, with that area of business becoming an increasingly significant part of the Primus commercial portfolio.

Primus and NBN Co

Primus supports the national broadband network and considers it is well positioned to benefit from the structural separation of Telstra and the deployment of a wholesale-only network service provider. These moves are expected to expand the addressable market and, combined with other regulatory improvements, should lead to improved competitive conditions for Primus.

Primus is presently assisting NBN Tasmania Limited, a subsidiary of NBN Co, with its trial of fibre to the premise services in Tasmania. Primus has a significant number of retail customers successfully connected and operating on the Tasmanian FTTP network. Primus looks forward to further engagement with NBN Co in respect to the mainland sites already announced.

Primus supports the passage of the bills, but notes the following matters should be further considered:

- Discounts and Discrimination
- Level Playing Field and Competition Restriction

Discounts and Discrimination

Primus submits that the terms, conditions and prices for supply from NBN Co should be offered on a non-discriminatory basis and be cost reflective. Currently, exemptions for allowable discrimination may result in some access seekers being granted large discounts which would undermine the legislations' key objective to create an *'open platform for the development of robust retail level competition'*.¹

Primus does not support NBN Co having discretion to offer more favourable terms to one or more access seekers. The kinds of discounting and discrimination described in the exemptions can lead to an undesirable level of discretion being held by NBN Co.

In this way the legislation would not foster competition but rather enable a continuation of market trends already identified as unsatisfactory. Primus supports a level playing field, and the ability of NBN Co to provide significant discounts to certain access seekers could create an uneven playing field.

Level Playing Field and Competition Restriction

Primus notes the proposed provisions designed to address the risk of "cherry-picking". These provisions seek to impose obligations on owners of network units that come into existence or are upgraded after 25 November 2010 to provide superfast carriage services to customers.

Primus supports the principle that network owners who deploy networks capable of supplying superfast carriage services should be subject to open access obligations. Primus is, however, concerned to ensure these provisions do not operate to inadvertently prevent existing network owners from extending or upgrading fibre networks in currently competitive CBD areas.

It would be perverse if a network operator was prevented from deploying fibre into a multi-tenanted commercial premise that was already supplied with fibre by a number of carriers. Care should be taken to ensure the NBN legislation does not unnecessarily disturb the operation of that already competitive market.

That said, Primus would note that where there exists only one or two fibre tails to a multi-tenanted commercial premise it could not be classified as competitive and those operators should, as a matter of sound policy, be explicitly subject to "open access" obligations. This would deliver significant benefits to business customers.

¹ Explanatory Memorandum, National Broadband Network Companies Bill 2010, Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Bill 2010, p9

Conclusion

Since deregulation of the industry more than a decade ago, the flawed industry structure and regulatory regime have meant the industry has failed to deliver on its competition objectives. It is critical that NBN Co not permitted to depart from the principles that will deliver a level playing field for the Australian broadband and telecommunications industry.

Accordingly, at this time it is crucial the Australian Government, and where appropriate the ACCC, remain vigilant in protecting competition and delivering the conditions necessary for the competitive industry to thrive. In considering the passage of these Bills the Government must remain mindful that the NBN will only deliver on its potential in the event the Government is focused on competition outcomes, and does not compromise the competition and equivalence objectives.

Kind regards,

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