

**Submission to House Standing Committee on Infrastructure and
Communications**

Inquiry into the role and potential of the National Broadband Network

Just as telecommunications has played a key role in the global economy,¹ high-speed broadband will have a significant role to play in the future of the digital economy. In particular high-speed broadband will have a role to play in the delivery of applications and services necessary for acquiring, and maintaining into the future Australia and Australians' appropriate education level; community; health services, information provision and support; government services and engagement and participation by the public in the political process.

This submission does not specifically address any one Term of Reference. Rather it makes observations as to high-level legislation and policy that will be necessary in order for all Australians to be active users of the NBN [or any other high-speed broadband network].

Appropriate legislation and policy is required to address issues such as up-skilling, educating, protecting, and informing the public about high-speed broadband and the services it will facilitate. The observations are based on the presumption that a high-speed broadband network is essential for the future of Australia's digital economy. In this respect the issues that require specific attention as part of the NBN's implementation are how to:

1. ensure all households are able to connect to the infrastructure of the NBN;
2. enable all households to acquire the necessary computer equipment and internal infrastructures; and
3. enable all Australians to have the necessary skills, digital literacy and user-awareness safety skills to engage proactively and safely with others and with the information and resources available via the NBN.

Appreciating that the federal government has many policy priorities, the policies specifically relevant for enabling and engaging individuals in the digital economy should be addressed as a priority. Ensuring coverage for service provision also is a worry, as is ensuring activation.² If the challenges presented by the *digital divide* are not addressed, individual end users may not have the desire or incentive to become active users.

The recommendations presented below are premised on the need for high-speed broadband itself and the need for users to actively and innovatively engage with it. Although Australia's policy may change regarding the method of delivery of high-speed broadband, that premise will still be relevant. The recommendations also are founded on the assumption that the most appropriate method of addressing the implementation of high-speed broadband is to take this opportunity to begin anew rather than trying to force existing laws to *fit* the digital economy.

¹ Economides, N, 'Public Policy in Network Industries', *NYU School of L, Year 2006, Paper 78* <http://lsr.nellco.org/nyu/lewp/papers/78> accessed 14 December 2007

² McKinsey Report, 19 – Differentiates between coverage and activation in that activation occurs when services are delivered via a retailer.

The recommendations to the federal government are that it:

1. legislates to ensure openness and neutrality of the NBN.

Openness and network neutrality are fundamental principles for the 21st Century because they are essential for the development, maintenance of, and participation in, the internet communities and the digital economy.³ The European Parliament now requires Member States to legislate for network neutrality⁴ with domestic laws to be introduced by July 2011. The desire for openness and neutrality, however, must be balanced with the need for some traffic management by ISPs to ensure the smooth flow of information;⁵

2. legislates to provide access to high-speed broadband is a right of all citizens.

Human rights will be fundamental in assisting to build the regulation that will underpin the digital economy. Finland leads the way with its universal service obligation being extended from 1 July, 2010, to high-speed broadband.⁶ Spanish citizens will have a similar right from 2011.⁷ Similarly the United States appears to recognise that internet access is a right,⁸ despite the fact that their proposed *Internet Freedoms Act 2009* is unlikely to become law.

It also would be prudent for the federal government to note the views of many Australians who see access to the internet and its services and content is “*a fundamental right of all people*”.⁹

³ Dods D, P Brisby, R Hubbard, K Ollerenshaw and B Ingram, ‘Reform of European electronic communications law: a special briefing on the radical changes of 2009’, (2010) 16(4) *Computer and Telecommunications Law Review*, 102, 106

⁴ European Commission, 25 November 2009, Directive 2009/140/EC of the European Parliament and of the Council, (2009) 337 *Official Journal of the European Union*, 37, 69 ‘Declaration on Net Neutrality’ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:337:0037:0069:EN:PDF> (viewed 26/10/2010)

⁵ Council of Europe, ‘Declaration of the Committee of Ministers on network neutrality’, *Committee of Ministers*, 29 September 2010, point 6 <https://wcd.coe.int/ViewDoc.jsp?id=1678287> (viewed 26/10/2010)

⁶ West D, *An International Look at High Speed Broadband*, (2010) Governance Studies at Brookings, 4 – “Finland made history ... its citizens have a ‘legal right’ to broadband. It passed a law requiring ... providers ... provide all Finnish residents with broadband lines that can run at speeds of at least 1 megabit per second by July 2010 ... the legislation affects the four percent who currently are unconnected ... plans to bring 100 Mbps Internet speed to all residents by 2016. France has not declared broadband access a legal right, but its courts have said it is a ‘basic human right’. In a 2009 ... officials ruled that people need broadband in order to participate in civic affairs and that the country should ensure that all its people had access” [references omitted]

⁷ Reuters, ‘Spain Codifies ‘The Right to Broadband’’, PCMAG.COM, 17 November 2009 – “Spanish citizens will have a legal right from 2011 to be able to buy broadband internet of at least one megabyte per second at a regulated price wherever they live ... The telecoms operator holding the so-called ‘universal service’ contract would have to guarantee it could offer ‘reasonably’ priced broadband throughout Spain ... Until now, the ‘universal service’ has only guaranteed internet via telephone line, fixed telephone, directory service and telephone booths.” <http://www.pcmag.com/article2/0,2817,2356014,00.asp> (viewed 10/10/2010)

⁸ Proposed Section 12(a)(1) of the Communications Act of 1934 (47 22 U.S.C. 151 et seq) introduced by H.R. 3458 *Internet Freedom Preservation Act of 2009* – “(1) to protect the right of consumers to access lawful content, run lawful applications, and use lawful services of their choice on the Internet”.

⁹ Internet access is ‘a fundamental right’, 8 March 2010, *BBC News*, referring to GlobeScan, ‘Four in Five Regard internet Access as a Fundamental Right: Global Poll’, Survey for the BBC, 10 http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/08_03_10_BBC_internet_poll.pdf (accessed 09/03/2010)

In Australia the right to internet access would be reinforced by extending the USO to the provision of high-speed broadband services rather than just extending it merely in relation to voice- or telephony-related services;¹⁰ and

3. develops an NBN transition assistance policy for eligible persons.

Having access to, and learning how to use, the internet is vital for ensuring ongoing involvement in the digital economy and everyday life. A lack of access capacity – both of physical access and skills – can restrict innovation and thus can be detrimental to the development of the digital economy. However, enabling access by end users will require more than simply working to “*facilitate the migration of ... telephony and data services*”¹¹ or merely teaching generic ICT skills.¹²

In addition to holding that access to the internet is a right, it also is the view of many Australians that public funds should be allocated to ensure access to the internet is easily available to all citizens.¹³ This will involve developing and implementing assistance packages targeted to those with limited capacity (financial or technical) to ensure that they can acquire the necessary hardware and software; that they know how to use it; and can afford to connect to the NBN and remain connected.

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¹⁰ This would be consistent with previous statements by the Labor Party as to the importance of broadband for Australia. See – Curtin J, ‘A Digital Divide in Rural and Regional Australia?’, Economics, Commerce and Industrial Relations Group, 7 August 2001 – referring to the ALP’s ‘An Agenda For The Knowledge Nation’, where the author states “*In its Knowledge Nation recommendations, the Opposition views universal access for households and businesses to digital broadband as an urgent national priority. It outlines a range of strategies to achieve this including improving the current regulatory arrangements and maintaining majority government ownership of Telstra, providing incentives, including investing in broadband networks, for the take up of broadband technology and ensuring that all Australians, particularly those in regional areas, have the opportunity to access fixed price untime calls nationwide, for both voice telephony and data services.*” [references omitted] <http://www.aph.gov.au/library/pubs/cib/2001-02/02cib01.htm> (viewed 10/11/2010)

¹¹ Communications Alliance, ‘National Broadband Network End User Migration Reference Model’, Draft for comment, June 2010, 3
http://www.commsalliance.com.au/data/assets/pdf_file/0017/23822/Draft_NBN_End_User_Migration_Reference_Model_Jun2010.pdf (accessed 10/10/10)

¹² Shapiro H, ‘Final Report: topic report 4 – Conclusions and recommendations based on reviews and findings’, Danish technological Institute, April 2009, 6
http://ec.europa.eu/information_society/eeurope/i2010/docs/benchmarking/dl_topic_report_4.pdf (accessed 29/10/2010)

¹³ Ewing S and J Thomas, *CCI Digital Futures 2010: The Internet in Australia*, CCI, May 2010, 42
<http://cci.edu.au/sites/default/files/sewing/CCI%20Digital%20Futures%202010.pdf> (viewed 08/07/2010)

¹⁴ Supervisors – Prof. Anne Fitzgerald and Prof. Brian Fitzgerald. Thesis entitled - *The future of the Internet Economy: Addressing challenges facing the implementation of the Australian National Broadband Network*