

# Joint Parliamentary Committee on the National Broadband Network

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*Submission by OPENetworks*



## About OPENetworks

OPENetworks Pty Ltd ACN ("OPENetworks") is an Australian corporation that, since May 2007, has held a telecommunications carrier licence under the *Telecommunications Act 1997* (Cth) and is carrying on business as a "wholesale only", "open access" provider of fibre-to-the-premises (FTTP) network services in new (greenfield) residential developments. We are a member of the Greenfield Fibre Operator of Australia ("GFOA").

OPENetworks deliver high-speed Internet, Data, Voice, and Free to Air TV, Pay TV and many other digital services (including CCTV, security, power, water, traffic and other utility management services) via FTTP telecommunications networks in Greenfield developments.

Since the early days of NBN, OPENetworks personnel have participated as unpaid advisors to Government task forces, been voluntary submitters to Government enquiries on the NBN, and more recently, the Minister encouraged us and ultimately invited NBN Co OPENetworks to provide proposals to be the expert contractors to NBN Co to build, operate and transfer FTTP networks in Greenfields over the next few years, the period when NBN Co says it will not have capacity to do so.

Without explanation, NBN Co decided to discount the Minister's publicised view that an expert panel of experienced builders and operators of FTTP networks (such as OPENetworks) should be appointed to build, operate and transfer the NBN Co networks in Greenfields during that period of incapacity. Without comment by the Minister, but after substantial disclosure of intellectual property and pricing information by OPENetworks, NBN Co decided to toss out the notion of an expert panel of providers and has appointed our sub-contractors Fujitsu to operate the Greenfield networks that another sub-contractor, Servicestream will build. I pause to mention that the conduct of NBN Co in this matter is relevant when assessing the likelihood of future reasonable pricing constraints and potential to bring innovation in services if NBN Co were to be without competition in Greenfields.

Our FTTP networks already equal or exceed the functional performance standards of NBN Co and in most instances residents of communities serviced by our networks can get Internet, Voice and Data services (at symmetrical upload and download speeds of 100mbps or better) with 2 separate voice ports and 4 Ethernet ports whilst wholesale prices are far less than NBN Co.

OPENetworks believes and submits to the Joint Parliamentary Committee that:

- It appears to be the intent of Government and NBN Co, that NBN Co plans and needs to be the monopoly provider of FTTP in Greenfields developments;
- NBN Co is in fact promoting itself as the "Provider of first choice", not "last resort";
- If that is permitted then the Australian Government is ignoring its own Competitive Neutrality Policy for Government Owned Businesses, like NBN Co. That policy dictates that no competitive advantages should be given to Government Owned Business over private sector competitors by virtue of their public sector ownership, nor by using their fiscal or legislative powers;
- The Fibre Deployment Bill should not aid to prevent or inhibit private sector competition, impose unknown costs or time burdens on the development industry or impose NBN Co network design standards and specifications on the telco industry;



- The Government should fund deployment of FTTP that meet industry standards and specifications for performance and if operated by “Open Access” “Wholesale only” carriers not just NBN Co providing the fibre, pits and pipes are preferably vested in the USO Co or Local Authority or other public institution not to be sold off at some time in the future.

## The Evolution of the Greenfield Market Place

Until 1 January 2011, the cost of building all fibre networks in Greenfields was borne by the Developers.

Velocity, the FTTP business of Telstra, initially charged Developers several thousand dollars per lot for fibre connections, but through competition by 2010, was charging under \$3,500 per lot, but those networks are not “open access” nor “wholesale only” networks as proposed by the NBN and any retail service providers (**RSPs**) that want access must pay heavily for transmission or back haul (based on distance and capacity charges) and also for the local area connection. It is that same model which continues under NBN Co today.

Deployment of FTTP networks by OPENetworks and other GFOA carrier/operators are currently costing about \$1,500 per lot (excluding any back haul construction costs) for networks where the functional performance specifications and standards equal or exceed the current functional performance specifications and standards of NBN Co networks that cost more than double the price to build.

RSPs that access OPENetworks FTTP Greenfield FTTP networks do so at Points of Presence (**PoPs**) in metro areas of Australia and therefore their costs for back haul that OPENetworks provides is shared across all RSP users of that back haul and the local area connection price is dictated by cost conscious, tough and well informed RSPs.

OPENetworks has been competing with other GFOA companies, Telstra Velocity, Opticomm, VicUrban, Multinet Broadband and other carrier/operators in Greenfields since 2007.

In short there is already a very healthy competitive market between experienced wholesale network carriers in the Greenfields, including the OPENETWORKS companies, that is not acknowledged by Government when it decided to extend the NBN into Greenfields in 2010.

Approximately 150,000 new residential lots are developed and require connection each year.

Before the NBN, Developers could choose:

- Telstra copper networks for which Telstra could claim under USO Funding Scheme (up to \$145M in 2010); or
- FTTP or high speed broadband networks from OPENetworks, other GFOA companies, Telstra Velocity or some other commercial carrier/operators, but all of those networks were funded only by the Developers.

The major obstacles to FTTP networks in new developments have always been and remain:



- Affordable Back Haul connection between any Greenfield development and a central point of presence for the major carriers (PoP);
- The cost of deployment of FTTP equipment to small or infill developments; and
- The lack of funding either via the USO Funding or government for FTTP networks.

NBN Co does not intend to address any of those issues. NBN Co plans to create at least 120 Points of Interconnection (**POIs**) and therefore 120 separate networks to which RSPs are expected to pay Telstra or other back haul network providers for transmission based or distance and capacity charges and subject only to competition. In most non-metro areas there is no real competition or alternatives in back haul transmission. This will result in much high prices for RSPs to connect to non-metro areas and disclaim any chance that the NBN will deliver a national flat rate for broadband to all Australian locations as often misrepresented by some sources.

The \$250M Regional Back Haul Black Spot Program (which was awarded to Nextgen Networks) started to address the deficiency of affordable back haul in Australia, but no new similar funding programs have been advanced since that was announced in 2009. This remains the major issue for delivering advanced broadband networks to non-metro regions and Greenfields.

The failure to subsidize or aggregate by proper planning and funding advanced broadband solutions to small and infill developments remains unanswered by Government with responsibility falling on Telstra to deliver copper line services if there are less than 100 lots in new developments or if development started before 1 January 2011.

Telstra continues to offer mobile phones to residents in new estates especially Greenfields and for which Telstra has certified to the relevant Local Council that a FTTP network will be deployed at some time in the future. Those residents are expected to wait for the NBN Co footprint to expand over their community, even though the Fibre Deployment Bill will enable NBN Co to choose to exclude any new development from that footprint.

## **Is NBN co to be the Sole Provider or Provider of Last Resort in Greenfields?**

Minister Conroy and DBCDE describe NBN Co as the “provider of last resort”. NBN Co should be the “provider of last resort”. As minimum the Bill, which does not mention this concept, should be amended to reflect the intent of the Explanatory Memorandum. The concept of “provider of last resort” is well understood. We submit requires that steps be taken by Government and drafting of the Bill must reflect that it means:

*Where no other organisation has:*

- *the interest and capability and*
- *the financial means (which Government will otherwise provide by subsidy or rebate to the funding extent required to supply and install FTTP network Facilities in such Greenfields and to the performance specification of the NBN only);*  
*to provide such FTTP telecommunications infrastructure then NBN Co shall be that provider.*



This will also allow developers that want to provide FTTP networks in their estates to contribute to the cost of doing so, but recognising that the passive network (pits, pipes, and fibre cables would be vested in the USO Co, Council or other public utility (in preference to NBN Co unless that is the only way this can be achieved).

NBN Co's business plans depend on NBN Co being a monopoly provider of the national broadband network. NBN Co's CEO publicly asserts that NBN Co intends to be the "First Choice Provider" (le even where other existing, experienced providers are ready, willing and able to provide advanced fibre networks, NBN Co will chase the business), but he concedes that the Bill will allow Developers to choose other private network providers if the Developers wish to do so.

Australian Government Competitive Neutrality Policy for Government Owned Businesses, like NBN Co, dictates that no competitive advantages should be given to NBN Co over private sector competitors by virtue of their public sector ownership. Yet the Government has established NBN Co as the only FTTP provider with \$Billions able to capitalise the cost of building FTTP networks based on some expectation of a small return on investment if and when NBN Co is ever sold.

Government funding even to the extent of the USO contribution for each new connections (about \$1000/connection) has not been available to OPENETWORKS carriers.

Legislation already prevents cherry-picking and this Bill will dictate fibre or fibre readiness in all new Greenfields.

It is the perception of OPENetworks and generally by commercial carriers and operators in GFOA that the Government does not intend for NBN Co to have any competitors in new developments, especially in Greenfields.

## **Fibre Deployment Bill 2011**

The Parliamentary Joint Committee Media Statement published on 13 May calling for submissions by 20 May 2011, says the Bill "enables NBN Co to be the fibre provider of last resort" in new developments. Whilst it is reasonable to legislate for all new developments to be "fibre ready" or fibre networks installed, NBN Co is already able to deploy fibre networks in new development and does not need this Bill to do so.

NBN Co is the obvious first choice for Developers because NBN Co is the only provider that can fund the network build costs (that may otherwise have been paid by Developers to OPENETWORKS or other GFOA members) and that funding is then able to be recovered by NBN Co charging RSPs higher operational prices. The residents ultimately pay for that cost when RSPs pass the NBN Co charges on to them. That commercial luxury afforded to NBN Co is a breach of the Competitive Neutrality Policy as it is not available to any other commercial operator.

Without competition maintained and enshrined in the Bill, NBN Co will have no real constraint on charges or incentive to be innovative or provide community and utility services without charge.



The Bill will enable the Minister to determine the standards and specifications for fibre network deployment and interconnection and that will eliminate all competition by private fibre network operators.

Instead of adopting standards and specifications in a code developed by the telecommunications industry body (namely Comms Alliance ) over a period of 2 years, that code has been stalled before being ratification by the ACMA.

NBN Co plans to be a monopoly and that vision is shared by the DBCDE and the Minister. The Bill should be amended to prevent the Minister from setting standards and specifications that only suit NBN Co network design and business and must permit the industry standards and specifications for FTTP networks to be determined as the default standards and specifications. This will also overcome the uncertainty currently in the property development industry created by Ministerial and DBCDE silence on the matter since they announced the extension of the NBN into Greenfields.

If by Ministerial determination or silence, NBN Co standards and specifications for network design, deployment and interconnection are the default settings that will eliminate all competition to NBN Co by others interested in investing, building and operating fibre networks on any basis.

NBN Co standards and specifications are not suitable for other innovative FTTP networks in Greenfields or networks which permit the affordable deployment of FTA TV, PayTV, utility management and other community services.

The Explanatory Memorandum to the Bill does not explain how or why NBN Co should be at liberty to use the superior financial backing of Government Owned Business to eliminate the commercial alternative FTTP providers in Greenfields and it fails to address what will happen if NBN Co is the sole provider.

### **If NBN Co is to be the Sole Provide, what will be the consequences?**

The digital divide will remain and broadband prices will escalate! Smaller retail service providers of Internet, Carriage and Content Services cannot afford the back haul, distance and capacity based charges to get to NBN Co's 120 POIs and will without commercially affordable aggregation, they'll be limited to the metro areas as they are today.

Regional and remote Australia will not have anywhere near the range or the competitively priced retail services as will the residents in metro areas.

FTA TV and Pay TV will not pay for sub-ducted or parallel networks to new developments and unless prevented by local planning laws or contracts with Developers, then satellite dishes and TV antennae on new roof tops will dominate the urban landscape or those services will simply not be connected whilst IP TV awaits the arrival of both IP TV providers, set top boxes and acceptance by average Australians.

Outside NBN Co's footprint which was to cover 93% of Australian homes, schools and businesses (before NBN Co's Brownfield Tender process collapsed on the issue of the construction cost), rural



and regional areas and towns or areas where the exchange has less than 1000 connections (ie most small towns) will not have fixed line services after Telstra's copper reaches the end of life or Telstra decides to stop service. It is assumed that NBN Co will replace those fixed line services with Satellite or Wireless services.

As demonstrated by mobile telephone technology over the past decade, non-fixed services are adversely affected by terrain, climate, solar activity and other operational limitations, that are often made more obvious during floods, bushfires, cyclones and other natural disasters that cost far more than money.

NBN Co Agreements with Developers, who have already applied for 133,000 new lot connections in Greenfield developments since 1 January 2011, evidences that the cost of each connection is currently averaging over \$3000 per lot (excluding any back haul construction costs).

Current prices for OPENETWORKS networks that equal or exceed the current functional performance of NBN Co networks are up to \$1500 per lot (excluding any back haul construction costs). FTA TV and Pay TV may add \$300 per lot.

Without competition there is no realistic prospect that NBN Co will not increase its prices.

Prices charged by NBN Co to RSPs for local area connections currently exceed \$24 per month for ADSL level (12mbps X 1mbps) connections. The comparable cost per service charged by OPENETWORKS carriers to ISPs is currently about \$15 for a (symmetrical 25mbps X 25mbps) service and no charge for FTA TV or Pay TV, but that is without recovery of the capital costs for building the networks (as NBN Co must do). With the variable bandwidth charges for virtual circuits and backhaul transmission costs, NBN Co charges to RSPs are likely to be over \$50 per month per connection.

Competitive Neutrality Policy and the competition reforms of the past 20 years are at risk if the Bill is not amended to provide for protections and encourage competition in the deployment and operation of fibre networks in Greenfields.

NBN Co should be directed by this Bill to focus only on new development areas where commercial development does not have a choice of available and experienced commercial operators ready, willing and able to provide FTTP connections. Developers should have the choice of either NBN Co or a private provider of FTTP networks for Voice, Internet and Data services to the standards required by the NBN, but without the pain of self-funding the build cost above the cost of Pits, Pipes and Trenching and any additional services.

## **Alternatives to the elimination of competition in Greenfields**

Foster competition in network pricing and services and innovation by allowing and encouraging existing and future carrier operators in Greenfields.

Fix industry (not NBN Co) standards and specification for FTTP networks by mandating Comms Alliance standards and specifications as ratified by ACMA.



Adhere to the Australian Policy for Competitive Neutrality in relation to GOBs

Direct NBN Co to focus on Brownfields and, in Greenfields, to be the provider of last resort and only where commercial carrier/ operators are unable or unwilling to deploy FTTP networks that:

- Meet industry standards and specifications developed by Comms Alliance and ratified by ACMA and which meet or exceed the performance targets of the NBN (at least 100mbps) at operational prices that are less than NBN Co's published prices for comparable products;
- Are operated by licensed carriers on an "open access" wholesale only basis";
- Are funded by either Government, the USO Fund or NBN Co to the same extent of \$1500 per lot in the new development; and
- Where ownership of the Pits, pipes and fibre is transferred to USO Co or Local Councils (in preference to NBN co) to allow for future access subject to a license to those carriers to use the network pit, pipes and fibre only for the provision of services to RSPs at prices capped by ACCC regulation and to Public Utilities or Local Councils and Authorities for the benefit of the public or the communities under development.

Release more back haul black spot contracts to fix the major impediment to providing advanced broadband in non-metro areas of Australia.