

Senate Select Committee on the National Broadband Network
Answers to Questions on Notice

Question No: 1

Hansard Ref: NBN66

Topic: Aussie Infrastructure Bonds

Senator Fisher asked:

What is the Department doing to facilitate the issuance of Aussie Infrastructure Bonds to allow households and institutions to invest in the NBN?

Answer:

The development and issuance of Aussie Infrastructure Bonds falls within the responsibility of the Treasury portfolio. We understand that this matter is currently under consideration.

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Question No: 2

Hansard Ref: NBN 67-68

Topic: \$100 million equity injection for NBN Tasmania

Senator Fisher asked:

Is the \$100 million for the Tasmanian rollout part of the \$212 million equity injection to which Mr Quigley referred or is it in addition? Is it \$212 million plus \$100 million for Tasmania or is the \$100 million part of the \$212 million. Has that \$100 million gone directly to Tas NBN Co, and if not why not?

Answer:

The \$100 million equity injection for the Tasmanian rollout is in addition to the \$212 million to which Mr Quigley referred.

The payment of the \$100m equity injection to NBN Tasmania is in progress and will be paid to NBN Co shortly.

NBN Co will then provide an equity contribution of \$100 million to NBN Tasmania.

Once the company has received the equity injection and a share certificate has been issued, the company will lodge an appropriate notice with ASIC.

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Question No: 3

Hansard Ref: Additional question

Topic: Telstra negotiations: asset acquisition and customer migration

Senator Fisher asked:

- (a) How much of Telstra's assets are usable in the NBN?
- (b) What work has been done to assess the quality of individual assets (eg has anyone looked at the quality of the copper network pipes being discussed)?
- (c) What will be the impact of the negotiations with Telstra on other industry players' assets / customer networks? What will it cost?
- (d) What alternatives to acquisition (eg leasing of utility companies' assets / partnership with utilities) are being explored? How would such arrangements be serviced? What is the cost?
- (e) To the extent assets are not acquired, but are superseded or stranded and thus made redundant by NBN infrastructure or architecture, will compensation be payable?
- (f) Does it make a difference to compensation liability whether the assets are superseded (eg by better quality infrastructure) or stranded (eg because of network architecture decisions that force customers to use instead NBN Co owned assets)?

Answer:

- (a) The Department does not have access to sufficient details of Telstra's assets to answer this question. The Government has a Bill in the Parliament the *Network Information Bill 2009* which would enable collection of this information, but it has not been passed as yet.
- (b) Information concerning Telstra's assets is held by Telstra. In the absence of an appropriate authority of the kind described above, the Department has no ability to access this information. The extent of disclosure of this information in the negotiations between NBN Co and Telstra is a matter for commercial agreement.
- (c) Negotiations with Telstra in relation to the NBN are continuing. These negotiations are incomplete and confidential.
- (d) The Implementation Study provides analysis on the build/buy decisions NBN Co will need to make in undertaking the rollout. The costs, benefits and suitability of terms and conditions would influence the decision to build a new asset or buy or lease an existing asset. These decisions are a matter for the NBN Co Board.
- (e) The telecommunications industry is an open market and new entrants can build, buy or lease assets which may impact other current industry participants. Further, technology developments mean equipment and software upgrades often occur in a 3-5 year lifecycle. Industry participants need to adapt to changing circumstances and new competitors. It is not apparent that compensation liability arises in this situation.
- (f) The basis on which compensation could arise is not clear and the Department will not speculate on this issue.

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Question No: 4

Hansard Ref: Additional Question

Topic: Architecture and compensation

Senator Fisher asked:

The NBN Co is progressively announcing network architecture details. Recently NBN Co indicated more details about Points of Interconnect (POIs). The media reported that there “are still a significant number of premises for which NBN Co will aggregate fibre access net sites back to a POI in reach of contestable backhaul – stranding existing uncontested infrastructure along the aggregation route”.¹

- (a) What is the likely quantum of such compensation? How is it calculated? What work has been done to quantify it?
- (b) Who will be liable to pay compensation – Government or NBN Co? Will this affect the potential for NBN Co to subsequently be sold?
- (c) If the government will be liable for compensation owed because of NBN Co’s network architecture decisions, what oversight / assessment of NBN Co decisions is the Department undertaking to calculate and mitigate future liabilities?

Answer:

NBN Co issued a discussion paper in December 2009 which amongst other things, sets out the company’s initial approach to providing POIs. There have been no decisions made as yet by the Government in relation to the proposed approaches. However, continued utilisation of existing backhaul infrastructure will be a matter for the owner of that infrastructure.

In view of the not yet settled arrangements in regard to proposed POIs, it is premature to conclude that the question of compensation will arise.

¹ *Communications Day*, 25 March 2010, p. 2.

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Question No: 5

Hansard Ref: Additional question

Topic: Selection of locations for Regional Backbone Blackspots Program

Senator Fisher asked:

Why were the specific regional backhaul locations selected from others for the Government's \$250 million regional backbone stimulus project? Where was the business case for this?

Answer:

Access to competitively priced backbone links was identified as an issue by the NBN Panel of Experts and the ACCC, through the Regional Telecommunications Independent Review Committee ('Glasson Review') and was reinforced during the stakeholder consultation process for the Program. The Government's objectives for the Regional Backbone Blackspots Program are:

- in the short to medium term, deliver an immediate economic stimulus,
- in the short to medium term, achieve better service outcomes for regional consumers, including reduced costs; and
- in the medium to long term, contribute to the rollout of the National Broadband Network.

A stakeholder consultation paper was released on 23 April 2009, seeking feedback on the Regional Backbone Blackspot Program including identification of potential locations for investment. In response to the consultation paper, the Government received over 60 written submissions and held over 40 meetings with stakeholders. Information gathered during this stakeholder consultation process assisted the Government in selecting the six priority locations for investment.

A shortlist of locations was developed by the Department having regard to the:

- extent to which the location was served by competitive optical fibre links;
- potential population that could benefit from the infrastructure;
- presence of social infrastructure, industry and the level of economic activity in the location;
- interest in the market to build in these locations; and
- the likelihood that fibre backbone would be deployed without Government assistance.

The Minister was the delegate for the RFT process and therefore made the decision on the six priority locations included in the RBBP RFT released on 1 July 2009.

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Question No: 6

Hansard Ref: Additional question

Topic: Inter-government co-ordination

Senator Fisher asked:

What communication and co-ordination is occurring between the different levels of government to facilitate and enhance the NBN roll-out and take-up by end users?

Answer:

Much of this activity is being undertaken by NBN Co, especially in relation to consultation with state/territory and local government around the first release sites announced on 2 March 2010.

At the Commonwealth level, an Interdepartmental Committee was established following an information session in December 2009. This committee has met twice since the initial meeting to consider how the policy objectives of each of the agencies could be advanced or enhanced through high speed broadband and the digital economy. Other meetings have also been conducted on a sector basis - such as for the Education sector.

The Online Communications Council, through its Standing Committee of Officials is also regularly briefed on progress of the NBN. The Standing Committee comprises senior officials representing ministers from each state and territory and also includes representation from the Australian Local Government Association (ALGA). This forum provides structured opportunities for inter-government engagement on NBN matters.

The National Broadband Development Group (NBDG) was established in 2007 as a working group of the Online and Communications Council. Its primary objectives are to develop national policy settings and to support cooperative arrangements and a strategic approach to stimulating sustainable industry investment in scalable next generation broadband infrastructure for the economic, social and environmental benefit of Australia. Its membership includes senior executives from the Australian Government Department of Infrastructure, Transport, Regional Development and Local Government, the Department of Health and Ageing, the Department of Education, Employment and Workplace Relations, the Australian Government Information Management Office, all state and territory governments, a representative from the Cross-Jurisdictional Chief Information Officers Committee, representatives from the communications industry, and the ALGA.

As part of the Implementation Study, state/territory governments and ALGA participated in discussions with the Lead Adviser. Many state utilities also attended discussions that focused largely on identifying existing assets that may contribute to the NBN.

A Fibre in Greenfields Stakeholder Reference Group was also established in August 2009. Members include relevant state/territory agencies, developers, builders, the telecommunications industry and consumers. This Group provides a conduit for issues of interest in relation to new developments to be considered as part of the Department's broader work.

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Question No: 7

Hansard Ref: Additional Question

Topic: Regional Telecommunications Independent Review Committee (RTIRC)

Senator Fisher asked:

The Regional Telecommunications Independent Review Committee (RTIRC) made a submission to this inquiry (sub 120). Could you provide an update on how the Department is adopting and incorporating into the NBN roll-out applicable recommendations in the RTIRC's report ('the Glasson Report') as to co-ordination, planning and delivery of regional and remote telecommunications and broadband services?

Answer:

The 2008 Regional Telecommunications review made a number of recommendations relevant to the NBN. Broadly these recommendations can be categorised into four groups:

1. Coordination of infrastructure rollout;
2. Interim solutions for rural, regional and remote Australia;
3. Ensuring competitive backhaul availability; and
4. Industry structure.

1. Coordination of infrastructure rollout

The Regional Telecommunications Independent Review Committee (RTIRC) made one recommendation in this area:

Recommendation 1.8.1 - The Australian Government work with state, territory and local governments to better incorporate the roll-out of telecommunications infrastructure, such as the roll-out of optical fibre during railway extensions, and upgrades to services and the planning of other major infrastructure developments in regional areas.

In line with the Government response, this recommendation was referred to the Online and Communications Council which proposed it be considered as part of the NBN Implementation Study. The Implementation Study engaged in extensive consultation with relevant stakeholders. NBN Co is building on this consultation process by engaging with parties to explore opportunities for integrating its own activities with other infrastructure development.

2. Interim solutions for regional Australia

The RTIRC made one recommendation in this area:

Recommendation 2.2.1(a) - In accordance with the arrangements and criteria set out in Chapter 3.1 – A New Framework, the Australian Government:

- (a) introduce measures to provide enhanced broadband services to premises that will not be served by the National Broadband Network (NBN) and these be delivered in an equitable timeframe, and certainly prior to the completion of the NBN.
- (b) in accordance with the arrangements and criteria set out in Chapter 3.1 – A New Framework, the Australian Government: provide interim solutions until the NBN is accessible in regional areas. The solutions provided should maintain, and improve on, the contemporary comparisons with urban areas.

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This recommendation was made prior to the Government's NBN announcement of 7 April 2009 which included extending the reach of the NBN to cover all Australian premises. As there will no longer be any premises which will not have access to the NBN at the completion of the roll-out recommendation 2.2.1(a) has been superseded by Government policy.

In accordance with the Government's response to recommendation 2.2.1(b), the Australian Broadband Guarantee continues to provide subsidies to ensure eligible households and small businesses in regional Australia can access metro-comparable broadband services.

3. Backhaul

The RTIRC made a number of recommendations in relation to the availability of competitive backhaul and access to existing backhaul in regional Australia:

Recommendation 2.5.1 - The Australian Government should ensure effective open access arrangements to backhaul services, including to backhaul services rolled out as part of Australian Government funding programs.

Recommendation 2.5.2 - In ensuring open access to backhaul services funded through Australian Government programs, the Australian Government require the provision of undertakings on the terms and conditions for third party access to backhaul, rather than solely relying upon commercial negotiation and dispute resolution.

Recommendation 2.5.6 - In accordance with the arrangements proposed in Chapter 3.1, the Australian Government identify locations without sufficient backhaul infrastructure to meet the needs of communities. Following the principles proposed by the Committee in Chapter 3.1 the Australian Government, where necessary, develop suitable policies or programs to facilitate investment in new or enhanced open access backhaul infrastructure.

As part of its investment in the National Broadband Network, the Government has fast-tracked the investment of up to \$250 million through the Regional Backbone Blackspots Program. This Program will improve the supply of backbone transmission links to a number of regional centres where there is a lack of competitive backbone infrastructure

In identifying the six priority locations under the Regional Backbone Blackspots Program stakeholders were consulted on a range of matters including views on priority backbone blackspot locations. Suggested locations for funding were assessed against a number of factors including:

- the extent to which the location is served by competitive optical fibre links;
- the potential population that can benefit from the infrastructure;
- the presence of social infrastructure, industry and the level of economic activity in the location;
- the interest in the market to engage in the competitive assessment process; and
- the likelihood of the deployment in the absence of Government funding.

The Australian Government has entered into an agreement with Nextgen Networks to construct new backbone infrastructure. Nextgen was selected through a competitive tender process.

Tenders were evaluated amongst other things, on the extent to which the proposed access arrangements facilitated competition, noting the Government's position that services be provided on open and equivalent terms and conditions. The agreement with Nextgen provides measures in line with Recommendation 2.5.1.

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The agreement with Nextgen sets terms and conditions (including pricing) under which services will be supplied to access seekers in line with Recommendation 2.5.2.

4. Industry structure

One of the key themes of the Review was the level of competition amongst telecommunications service providers in regional Australia. As a means of improving the level of services competition the RTIRC recommended that:

Recommendation 2.6.3 - The Australian Government consider industry structure, including the costs and benefits to regional consumers of requiring a greater degree of separation between network and retail operations of telecommunications providers.

Consistent with this recommendation, the Government has established a new company, NBN Co Limited, to build and operate the National Broadband Network. NBN Co Limited will operate the NBN as a wholesale-only, open and equivalent access broadband network that will support genuine competition and consumer choice for all Australians, including those in regional areas.

The *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009* will promote more effective competition and stronger consumer safeguards in the telecommunications sector. The Bill requires the separation of Telstra along functional lines, unless Telstra submits an acceptable enforceable undertaking to the ACCC to structurally separate. In the event that Telstra does not pursue voluntary structural separation, the Bill proposes principles that would deliver a strong functional separation regime that will reduce Telstra's incentive and ability to discriminate against its competitors.

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Question No: 8

Hansard Ref: Additional question

Topic: Trained and Accredited NBN Workforce

Senator Fisher asked:

What is the Department (and/or other areas of Government) doing to ensure there is a sufficiently trained and accredited workforce to rollout the NBN network? Will there be a skills shortage that hampers the rollout?

Answer:

This is largely a task for NBN Co to manage.

NBN Co is taking measures to ensure its own staff, contractors and subcontractors will undergo appropriate rigorous induction and training and be fully qualified in the required skills to do their specific tasks.

NBN Co has established an internal Training Group, which in addition to the normal training requirements for any organisation, is designed to provide the industry, generally, with a forum that specifically and continually addresses the needs of organisations such as “Communications and Information Technology Training”.

Mr Quigley also stated NBN Co is encouraging engagement of local contractors in regions and towns through the Industry Capability Network. NBN Co is beginning to look at labour force needs.

The issue of skills is on the work plan for the Fibre in Greenfields Stakeholder Reference Group, where it is of particular interest to a number of members. This Group provides a conduit for particular issues in relation to new developments to be considered as part of the broader work in this area being progressed by the Department,

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April 2010

Department of Broadband, Communications and the Digital Economy

Question No: 9

Hansard Ref: Additional question

Topic: NBN Co Bill

Senator Fisher asked:

QUESTION 9(a)

Why was the decision made to insert a Ministerial discretion in s 9(2) to exempt NBN from wholesale-only service restrictions?

ANSWER:

The objectives of the NBN Co Bill make it clear that NBN Co will operate on a wholesale-only basis (proposed section 3(2)(a)). NBN Co has clearly stated that it will offer Layer 2 bitstream services. These are, by their nature, wholesale services, not retail services.

The draft bill proposes that the Minister may make a disallowable instrument to exempt certain services, to allow them to be supplied directly to certain end-users. An exemption would only apply in limited circumstances, subject to consultation with the ACCC and allowance by the Parliament.

This provision was included because some sophisticated end-users, such as some government agencies and corporate users, may want to buy wholesale services directly for their own internal use. It was considered appropriate that the option should exist for such end-users to be able to seek services directly from NBN Co for their use, rather than having to force them to use intermediary providers that could simply add unnecessarily to their cost structures. The Australian Telecommunications Users Group (ATUG) has supported this provision. Clearly if NBN Co were to supply such end-users it would need to be on the basis that they were not favoured over other customers of wholesale services.

For any end-user to be able to benefit from such an exemption, it would need to be able to invest in equipment to transform the bitstream service into useable services such as telephony or broadband. This is not a simple undertaking and would require the end-user to invest in necessary equipment and staff as opposed to simply purchasing higher level service from other providers. NBN Co would not be competing directly with retail providers to provide services to customers simply seeking a broadband or telephony service in the everyday retail marketplace.

While this is the reason the provision has been included in the Bill, the Bill is an exposure draft designed to elicit feedback. The legislation will be finalised in light of that feedback.

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Department of Broadband, Communications and the Digital Economy

QUESTION 9(b)

Is a revenue cap model appropriate for the NBN Co? Should this be part of the legislation?

ANSWER:

Revenue capping is an approach to setting the prices charged by regulated firms. Revenue cap regulation has been widely used in the Australian electricity industry.

The NBN Access Bill builds on the existing arrangements in Part XIC of the Trade Practices Act, which is the regime that applies to the setting of access prices generally in the telecommunications industry. Under this regime the ACCC plays a key role, in assessing access prices but has flexibility in how it approaches the matter. In the case of NBN Co, rather than prescribing a particular upfront approach to access price regulation, like revenue capping, it is proposed that its access prices also be subject to ACCC oversight. This will enable NBN Co to take the approach to pricing most appropriate to its circumstances, subject to the scrutiny of the ACCC, as the expert competition regulator. Equally, the provisions of the Bill provide the ACCC with flexibility as to the regulatory approach it takes, having regard to NBN Co's and wider industry circumstances.

QUESTION 9(c)

Why does the legislation not restrict/prevent future ownership that would create a conflict between NBN Co's wholesale only charter and the interests of a shareholder who is also a retail service provider? Should it?

ANSWER:

Proposed section 41 of the NBN Co Bill provides for regulations to be made to define an unacceptable control situation. This is the means by which ownership or control of NBN Co would be regulated to prevent any conflict emerging between investment in NBN Co by a retail provider and NBN Co's wholesale-only charter. The draft bill requires the Minister to consult the ACCC before making these regulations. These regulations would be a disallowable instrument and therefore subject to full parliamentary scrutiny.

The Government is now considering its approach to this matter further in light of the submissions on the exposure drafts and the Implementation Study.

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Department of Broadband, Communications and the Digital Economy

QUESTION 9(d)

Should minority shareholders in NBN Co have access to the same information as ministers? Should this be included, as the Business Council of Australia submits, in Part 4 of the draft Bill?

ANSWER:

NBN Co is subject to the continuous disclosure obligations under the Corporations Act and to the reporting obligations in the Commonwealth Authorities and Companies Act. It should receive the same legal treatment as other Commonwealth companies.

QUESTION 9(e)[i]

How will future private ownership arrangements impact on service delivery to remote and regional areas? How will the government ensure the “ongoing provision of quality, subsidised or affordable broadband to sparsely populate regions?”

ANSWER:

NBN Co itself and the framework that will regulate its operations are both being developed with a view to ensuring key policy outcomes such as national access to affordable high-speed broadband services will continue to be delivered once NBN Co is privatised. An important part of this is ensuring NBN Co is structured, invests and operates in a manner that enables it to deliver these outcomes. This is dealt with in detail in the Implementation Study.

By providing high quality wholesale broadband services on an open and equivalent access basis at efficient prices overseen by the ACCC, NBN Co will provide a sound platform for robust retail level competition. Mechanisms to underpin this outcome, such as the wholesale-only obligation, non-discrimination obligation and ACCC oversight, are written into the draft bills.

As necessary, further requirements can be placed on NBN Co by licence conditions. For example, proposed section 15 of the NBN Co Bill makes it clear a licence condition can require NBN Co to provide a specified eligible service. Similarly, as the Explanatory Notes make clear (p.5), licence conditions can be used to establish coverage obligations, as has been the historical approach to this matter.

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Department of Broadband, Communications and the Digital Economy

QUESTION 9(e)[ii]

The Business Council of Australia has argued that NBN Co should be required to comply with the Commonwealth's competitive neutrality guidance policy. Is this appropriate?

ANSWER:

The Government is taking Commonwealth competition policy principles, including principles relating to competitive neutrality, into account in developing the regulatory and governance framework for NBN Co.

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Questions on Notice

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Department of Broadband, Communications and the Digital Economy

Question No: 10

Hansard Ref: Additional question

Topic: Access Bill

Senator Fisher asked:

QUESTION 10(a)

Why does the access regime only apply to NBN-owned infrastructure and not more broadly to any asset forming part of the NBN network?

ANSWER:

The proposed regime operates on the premises that the infrastructure comprising the NBN is owned by NBN Co, NBN Tasmania or a wholly owned subsidiary of NBN Co. As such the wholesale-only rules only apply to services provided over this infrastructure. Other assets would not constitute part of the NBN and as such it would not be appropriate to subject these to the special access rules applying the NBN. Services provided over such infrastructure would be subject to regulation under the general provision of Part XIC of the Trade Practices Act.

QUESTION 10(b)

Would a better model be to apply the regime “to the network as constructed, or acquired, or subsumed irrespective of where the creative or economic input came from, or who built it in the first place”?

ANSWER:

The definition of ‘national broadband network’ in proposed section 5 of the NBN Co Bill is to be read broadly in line with the objects of the Bill and would allow for future acquisitions of infrastructure by an NBN corporation to subsequently form part of the National Broadband Network. This would include infrastructure that is constructed, or acquired, or subsumed by an NBN corporation.

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Department of Broadband, Communications and the Digital Economy

QUESTION 10(c)

If this approach were taken, would it be desirable to extend the definition of captured services to include networks specified by Ministerial designation?

ANSWER:

As indicated in the answer to question 10(b), we consider the definition of ‘national broadband network’ is broad enough to capture infrastructure brought into the network in all ways. As such it is not clear why there would be a need to include networks in the definition by Ministerial designation. We would also note that any process involving Ministerial designation would be resource intensive.

QUESTION 10(d)

What types of efficiencies would justify discrimination of a kind envisaged by s 152AX?

ANSWER:

Price discrimination that reflects customer behaviours is part of the efficient operation of any market. NBN Co will be able to negotiate with access seekers to vary the terms only if this aids efficiency and if all access seekers with like circumstances have an equal opportunity to benefit from similar varied terms and conditions.

Access seekers may want to receive different terms to promote their own investment and service differentiation. It is well accepted that in certain circumstances differentiation on price and/or non-price aspects can aid efficiency, innovation and investment.

The concept of ‘efficiency’ is intended to be read broadly and to facilitate normal business options such as offering volume-based discounts, passing on savings arising from capital investments, discrimination based on risk sharing, discounts in response to competitive circumstances, migration incentives and other efficiencies.

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Question No: 11

Hansard Ref: Additional question

Topic: Broadband Investment and Innovation

Senator Fisher asked:

The NBN rollout has at least an 8 year implementation horizon. What measures are being put in place to ensure the broadband market remains vibrant until the NBN arrives? For example, how is the Government encouraging continued investment in fibre and innovation?

Answer:

The roll-out of the NBN has already commenced and is providing a range of opportunities for investment in fibre based innovative products. Tasmanian fibre infrastructure is currently being put in place and services are expected to be available by July this year to the Stage 1 communities of Scottsdale, Smithton and Midway Point. Three Internet Service Providers, iiNet, Internode and iPrimus have committed to providing services over the NBN in Tasmania.

The Regional Backbone Blackspots Program that will see around 6,000 kilometres of fibre cable laid is underway and will provide additional scope for new investment by market participants. Over 500 kilometres of fibre cable having been already laid as at the end of March 2010. The fibre in new developments initiative will also provide further opportunities for on-going investment and product development.

The progressive roll-out of NBN infrastructure is already providing, and will continue to provide on-going and expanding scope for the industry to deliver innovative fibre-based services.