

**Communications Law Centre**  
**UTS**

**A submission to Australian NBN Regulatory  
Framework**

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This is a submission made by Communications Law Centre, University of Technology, Sydney (UTS).

We respectfully submit the following key suggestions:

- 1 Clear regulatory responsibilities and powers of the industry regulator – ACMA.
  - a. Firstly, this submission suggests that government should consider setting up a special NBN Working Group to facilitate government consideration of relevant NBN regulatory issues such as deciding the winning bidder, setting the terms and conditions of NBN license, protecting the consumer's interests, as well as monitoring the operation of the infrastructure roll out by the NBN operator/s. The current functions, powers and responsibilities of ACMA are not sufficient to enable ACMA to take a role as such a regulator in the NBN roll out. The Communications Law Centre suggests that government give consideration to empowering ACMA to take such a role.
  - b. Secondly, as a general practical issue in respect of ACMA's code review process, this submission proposes that ACMA, when conducting its code review, should consider a complete auditing process of compliance with the various codes –in addition to responding to complaints received. ACMA should also aim to establish a more systemic analysis of complaints, which could be used to more comprehensively address the common underlying characteristics of these complaints.
  - c. Thirdly, in respect of the enforcement power of ACMA, this submission suggests that various enforcement methods could be considered to deal with unresolved breaches of the codes, which include imposing additional license conditions or penalties if the conditions are not met. If this suggestion is accepted, it would be necessary to redefine the boundary of the regulatory powers between the current two industry regulators – ACMA and ACCC.
  - d. Fourth, although we saw the 2005 merger of the former ABA and ACA into ACMA, the path leading towards a convergent regulatory environment in Australia is not yet achieved with separate two pieces of legislation regulating broadcasting and telecommunications (BSA & TA) . With the roll out of the NBN and the emergence of new services such as MobileTV, MobileRadio and ubiquitous computing devices such as Smart phone and Smart office, this situation calls for a unified regulatory regime. In particular, problems such as limited application of various definitions in law as well as investigation and litigation constraints would be difficult to solve with separate substantive laws regulating broadcast and telecommunications. For example, is MobileRadio a broadcast service or a telecommunication service?

This submission suggests that, in order to facilitate the nation's next general telecommunications deployment including the NBN roll out, government consider consolidating regulation of broadcast and telecommunications into one Act or under one umbrella.

- e. Lastly, regarding ACMA's reporting structure – the Communications Law Centre proposes that creating and achieving the right balance between the regulator, minister, department and the parliament is a key strategic issue for the effectiveness of industry regulation. Currently, ACMA reports through the Minister to the parliament for the tabling of its Annual Report, while the Minister is responsible for the development of national regulatory policy. However, we see a different practice in the UK with its industry regulator – Ofcom, where the Ofcom Board reports directly to the Parliament. The Communications Law Centre believes that reporting directly to the Parliament is good practice for achieving maximum accountability.

## 2 Universal access

The Communications Law Centre believes that universal access to telecommunications services is in the national interests. All Australians should be able to connect to the NBN at an affordable price regardless of the region in which they live. Regional areas are a big challenge to the NBN operator – whoever it might be. To ensure the operator achieves ubiquity of its infrastructure, this submission proposes that a special license provision includes universal access conditions for the NBN operator. For example, the license could require that 3 years from the commencement of the NBN roll out, the operator shall enable the infrastructure to reach 98% of the population.

## 3 Promoting industry competition

Although we see a fairly competitive downstream telecommunications market in Australia with a number of companies/competitors, the upstream market (or the wholesale service market) is still very concentrated due to the bottleneck of the last mile monopoly by the incumbent. This brings some major challenges to the productivity and effectiveness of the industry when the NBN is fully deployed in a few years time. This submission suggests that a clear separation between wholesale and retail units needs to be addressed. Various measures could be considered such as setting up an independent body or even an independent working group within the current regulatory regime (e.g. in ACMA or ACCC) to oversee and monitor the open access regime and last mile monopoly issue.

## 4 Pricing and affordability

This submission suggests that the price paid by regional users not be greater than a certain percentage above the price paid by users in the cities. This should be

achieved by cross subsidy in the price by city to regional user. This requirement could form part of NBN license.

## 5 Cyber city

To promote the major Australian cities becoming more multicultural, metropolitan and contemporary, this submission suggests that in cities such as Sydney and Melbourne the NBN operator should provide free broadband services to the general public within a certain geographical area (such as in the CBD). The Communications Law Centre recommends a 'Cyber City' policy. The Cyber Cities will not only lift the international profile of these cities, it will also benefit creativity and innovation among the public, education, entertainment, business and the nation as a whole. More importantly, in the coming ubiquitous and pervasive computing environment, these Cyber Cities can be used for pilots to roll out innovative communications, information and technical developments.

In conclusion, the Communications Law Centre recognises that the NBN will provide an important opportunity to address the structure of the telecommunications market in Australia, which is not only in the interest of the telecommunications industry, it is also in the long-term interests of the general public and the national interest in developing a knowledge economy.

The Communications Law Centre would welcome an opportunity to make further comment in this review and on any legislative or regulatory proposals to facilitate the roll out of the NBN.

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