

4 January 2010

Mr Brian Kelleher
Assistant Secretary
Department of Broadband, Communications and the Digital Economy
GPO Box 2154
CANBERRA ACT 2601

By e-mail: benjamin.skok@dbcde.gov.au

Dear Mr Kelleher

Re: Exposure draft of the Telecommunications Legislation Amendment (Fibre Deployment) Bill 2010

The Urban Taskforce is a non-profit organisation representing Australia's most prominent property developers and equity financiers. We provide a forum for people involved in the development and planning of the urban environment, to engage in constructive dialogue with government and the community.

We have previously reviewed the *National Broadband Network: Fibre-to-the-premises in Greenfield estates Consultation paper, May 2009* ("the paper") and provided comments via correspondence dated 12 June 2009 and 18 September 2009 for your consideration.

We have also participated as a member of your national consultative group and look forward to ongoing discussions under the auspices of that group. We have reviewed the above-mentioned exposure draft, and provide you with this submission setting out our views.

Before we get into details, there is a central matter of concern that is yet to be addressed and unless dealt with, will frustrate further progress. We continue to be of the view that it will be very difficult to gain industry wide support for a legislative framework until all industry stakeholders can demonstrate a shared understanding of what exactly "fibre-to-premises in greenfield estates" will actually mean in practice.

That is, **the development industry must be proved with an absolutely clear outline of the infrastructure that must legally be provided at the cost of the developer and that which is to be funded by the service provider.**

A developer should be responsible for pit and pipe and fibre reticulation on the developer's site – provided there is an assurance by a network operator that the fibre will be connected to an operating fibre network operating to the standard of 100 megabits per second, prior to the planned occupation of the developed sites.

However, for greenfield development, there should be no requirement to do anything more than provide fibre reticulation past a lot. (In such sites, the final position of a building on a serviced lot, and the work necessary to connect the building to the infrastructure located adjacent to the lot, is often undertaken by a builder commissioned by the purchaser of the lot.)

A developer should not be obliged to fund the construction and maintenance of back-haul and head-end facility/equipment – the legal obligations of a developer should be limited to the provision of easements and the like on land which such infrastructure must be located.

At the current time the law does not compel developers to take any steps in relation to fibre-to-the-premises. The fact that many developers are equipping their projects with this technology is a sign that the current flexibility is working, rather than an indication that the transition to a regulated environment will be easy.

The status-quo allows significant scope for negotiation between the developer and service provider. When the Government mandates the provision of optic fibre technology this flexibility to respond to

market demand and negotiate cost will be severely curtailed. It is for this reason that the development industry must be provided with clear assurances of who is legally responsible for the cost and provision of what infrastructure, as onerous regulatory obligations may seriously affect development decisions more heavily than any voluntary commercial agreement.

In relation to the specifics of the bill, our comments are set out below.

1. **Legislation must make allowance for copper line**

The bill seems to suggest that “line” servicing a development site or building lot must not be installed unless it is optic fibre line.¹ If this interpretation of the legislation is correct, no allowance seems to have been made for circumstances where connection to an optic fibre network is not available at the time of development. **The legislation should permit the continued installation of copper line where optic fibre networks do not exist at the time of development and are unlikely to exist prior to the planned occupation of newly developed properties.**

It could be that clauses referring to “exemptions by legislative instrument” may have been included to deal with situations as detailed above; however, the information provided with the Bill does not enable this determination to be made.

2. **Legislation should focus on making development projects fibre ready/capable**

To date, the Government’s approach to “future proofing” development has been to specify and require that optic fibre line be installed. No real consideration seems to have been made where optic fibre networks/infrastructure are not available and/or is unlikely to be available for sometime.

It seems that the simplest solution would be for draft legislation that would ensure new urban developments are made “fibre-ready”. Being “fibre-ready” would mean that pit and pipe infrastructure would be provided at the time of development (possibly with copper as an interim measure). This would ensure that when there is connecting infrastructure available and a service provider is able to enter the market, the development site has the required pit and pipe infrastructure in place to enable easy cabling and servicing with optic fibre.

This approach would not only ensure that allowance has been made early in the development phase for fibre technology, but also does not impose an unreasonable cost burden on development.

3. **Legislation must make allowance for alternative technology and innovation**

Improvements to information technology are rapid and it may not be wise to specify a particular technology as the only way to deliver improved information, telecommunication and entertainment services to the community. We should be considering the outcomes that we need to achieve and ensure that our regulation/legislation is drafted in such a way to ensure that it does not limit us to fibre technology. It could be that at this point in time, the only way to deliver the desired outcome is via optic fibre, but who knows what the future will bring. **We need to ensure that our laws are sufficiently flexible to meet advances in technology.**

4. **More detail on costs and benefits**

The May 2009 discussion paper makes a very general assertion that “an estimate cost of \$2,500 per premises is expected for the installation of [fibre-to-the-premises (FTTP)]” and that this represents a cost differential of \$1,500 per premises. While this additional cost may not seem excessive, it is not clear how this estimate has been calculated. There is no detail on what has been considered when coming to this estimate.

It is essential that evidence be provided to support the assertions made in the paper, particularly when costs are concerned. This deserves a robust assessment of costs and such

¹ s 372B(2)(f), s 372C(2)(f).

assessment must clearly state assumptions made when calculating additional costs above the norm. The Urban Taskforce considers this essential detail.

5. It needs to be clearly stated that “linkage” infrastructure will be funded by all network users; not property developers

It remains unclear who will be responsible for linkage infrastructure/backhaul. A development project should not be obliged by law to fund the offsite costs of bringing optical fibre to the development site boundary, nor the costs of the head-end. A clear policy statement confirming this is important. The developer should only be required to provide works that are “internal” to the master planned site.

In relation to infrastructure such as roads and water, these off-site costs have added up to tens of thousands of dollars per home lot, and sterilised development (the slow-moving “growth centres” of Western Sydney is only one example). We trust that the Department of Broadband, Communications and the Digital Economy does not wish its regulatory requirements to be the reason that major housing and commercial development does not proceed, in any given region.

The Government must confirm that developers will not be levied for linkage infrastructure/backhaul – such works are a network cost, that are more appropriately recovered by users of the network as a whole.

6. The requirement to install FTTP should be linked to the presence of linkage optic fibre infrastructure; not to the size of an urban development

To achieve maximum take up of new technology, areas where the greatest proportion of new development is planned or occurring should be the priority locations for the provision of new infrastructure. These locations should become high priority locations for the provision of new infrastructure, including fibre optic facilities.

However, we understand that the Government is of the view that FTTP should be installed in all greenfield estates and to all major in-fill projects. We believe that a requirement to install FTTP should only apply when such infrastructure is present, or there are concrete plans to guarantee its presence in the immediate future.

For example, in the case of new residential subdivisions in urban release areas, FTTP should be required past individual residential lots only where optic fibre infrastructure is available at the subdivision boundary. In the case of a new townhouse or residential flat development within established suburban areas, FTTP should only be required when optic fibre infrastructure is available in the road reserve adjacent to the development site. The size of the development (number of lots) is not the primary concern; it is the accessibility to the required infrastructure that is the defining issue.

As articulated in the Urban Taskforce’s policy statement, we are supportive of providing the required pit and pipe infrastructure to ensure that development sites can be easily serviced by optic fibre when available.

7. The 1 July 2010 commencement date is no longer practicable

The requirement to install FTTP from 1 July 2010 is no longer practicable, given that the detail of requirements has not been decided.

Government must be realistic with its time frames when considering the start date for implementation.

The Urban Taskforce has already expressed its concern with the overly ambitious timeframe suggested by the Government. There is not sufficient time to work through the many development and market uncertainties prior to implementation.

I look forward to your considered reply to this correspondence and to continuing our dialogue.

Yours sincerely

Urban Taskforce Australia

A handwritten signature in black ink that reads "Aaron Gadiel". The signature is written in a cursive style with a long, sweeping horizontal line extending from the end of the name.

Aaron Gadiel
Chief Executive Officer