

Submission to Senate Select Committee on the National Broadband Network

Just as telecommunications has played a key role in the global economy to date,¹ broadband will have a significant role to play in the future of the digital economy. In particular broadband will have a great 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; and government services and engagement and participation by the public in the political process.

This submission focuses on two specific terms of reference only.

2d. - regulations or legislation pertaining to the NBN

The development of the NBN comes at an important time in the Australian digital landscape. Never before has there been such a volume of information being created by Australian government, businesses and consumers; and never before have there been such wide possibilities of the dissemination to, and use by, the end user/consumer of the information created. Two broad issues are raised in respect of the proposed legislation.

Firstly, appreciating that the federal government is not able to start with a 'clean slate', in that it must as part of the development of the NBN work to ensure the successful transition of end users from the existing systems, it is suggested that the government must seize this unique opportunity to define [see comments below] and create a new regulatory system from scratch. That is, although it will be necessary for many years to have in place a transitional system as Australia moves from the old to the NBN, it is suggested that the government should maximise the opportunity now available to work to create an NBN specific regulatory system. It should do this not just with reference to industry participants.

Secondly, and of particular importance is the need to ensure that the system created is indeed national. It is with regret that it is noted that the proposed legislation provides a restrictive definition of what is the NBN. That is the *National Broadband Network Companies Bill 2010* defines the NBN by reference to involvement of an NBN corporation in its creation or development.² As previous statements have been made that there may be a need to look to engage with and encourage private investment in the NBN; and where the exact nature of such investment is not yet clear, such a proscriptive definition may be unduly narrow and thus restrictive.

It is recommended that a better definition of what is the 'NBN' for proposed and future regulatory regimes would be one that identifies the NBN by reference purely 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. Additionally, to capture future as yet unthought-of possibilities for how networks may be constructed, the legislation should include the ability to extend the definition to include networks specified by Ministerial designation.

¹ N Economides, '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 Definitions - "**national broadband network** means a national telecommunications network for the high-speed carriage of communications, where an NBN corporation has been, is, or is to be, involved in the creation or development of the network."

2i. - the appropriate public policy goals for communications in Australia and the nature of any necessary regulatory setting to continue to develop competitive market conditions, improved services, lower prices and innovation

The internet has an ongoing and vital role to play in Australia's future as a means of nurturing and ensuring the continuity of community; of providing access to information and education services; of educating; and providing a means of access to government services irrespective of time or place. In the future the NBN clearly will be the primary means of accessing the content, information and services of the internet. As stated above, the government should use this opportunity to create specific NBN policy and legislation.

This is particularly important as the NBN also will be able to be used for a variety of purposes, which include ease of access to other digital content and data services; improved delivery of education and health services; increased research capacity and information sharing; and improved business efficiency and productivity. It is acknowledged that an open market operating on an equivalency basis can provide freedom of choice to the end users. It is suggested however that the appropriate starting point for policy makers is to appreciate that the end user benefits not only when competition in a market is open and protected but also when information is openly and freely accessible; and innovation is promoted.

From this basis a primary goal of a NBN specific policy, separate from any competition concerns that other submitters may raise, should be towards ensuring *open NBN access*. That is ensuring that all Australians have unrestricted access to the infrastructure of; unrestricted access to the services and content available over; and unrestricted access to the skills necessary to access, the NBN. The NBN's ability to fulfil its destiny is dependant upon all Australians have the means and ability to access it whenever and wherever they chose; and to do so in a cost effective and efficient manner.

In order to achieve the policy goal of *open NBN access*, it will be necessary to have several sub-policies in place. Firstly, a policy to ensure that there is in place a means of assisting those end users with limited financial capacity to acquire the necessary hardware. Secondly, a policy to ensure that there is in place a process to enable all Australians to gain the skills necessary to be *digitally literate*. Thirdly, a policy to ensure that there is a process to enable the free exchange of information between researchers with each other and with end users. In this regard both the further development of a copyright commons is recommended as well as the adoption of a *TPA* compliant complementary standardised licensing model for use by both government agencies and the private sector.

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