

**Submission to Senate Select Committee on NBN**

**NBN Companies Bill 2010**

**Access Arrangements Bill 2010**

**Submission by  
Communications Experts Group Pty Ltd**



## INTRODUCTION

This submission has been prepared by Communications Experts Group Pty Ltd who are Telecommunications consultants and who have consulted a group of West Australian persons who have a knowledge of the Telecommunications industry in Western Australia.

The case studies cited in the submission are drawn from research and experiences overseas and in Western Australia and especially the recent Broadband Stakeholders Group [BSG] report released on the 23rd March 2010:

“Broadband Infrastructure:  
The Service and Application Providers View”

This Report gives a good view of the Issues and Expectations of UK Service Providers operating in an environment similar to that proposed by the Draft Legislation for the NBN Co.

Prof Green is a Director of ATUG and has been a member of a number of committees providing Telecommunications Policy advice to the WA State Government.

As a Director of ATUG, Prof. Green receives a number of enquiries and requests for advice on telecommunication services from a wide range of persons and is familiar with the telecommunication issues affecting Western Australian organisations and the community.

CEG Supports the 2010 - ATUG NBN Business User Policy Principles and in particular:

The Long-term Interests of End Users must remain the focus of NBN policy and regulatory decisions, whether they are made by Government Regulators or by Industry in Self - Regulatory processes.

The Long-term interests of end users means:

- Promoting competition
- Ensuring any-to-any connectivity
- Encouraging economically efficient use of, and efficient investment in infrastructure.

Business needs for speed, service levels, service security and rapid restoration must be factored into NBN planning. Consumer grade service levels are not good enough for business. The best endeavours Internet grade will not support acceptable quality services in many organizations, especially in the Health, and Education Sectors.

NBN must be a wholesale only operator BUT if higher level wholesale network services, to support application and content services innovation, are not developed by market players, NBN should be required to supply them.

CEG supports the current Draft Legislation but has concerns in the following areas:

- Enabling the NBN to enter the Retail market.
- Unintended outcomes of allowing volume discounts for services. [ Potential for introducing inefficiencies and anti competitive conduct]
- The range of services offered by the NBN. To achieve the governments stated objectives there are a minimum set of services that need to be offered.

CEG supports the wholesale-only status of NBN Co to eliminate the market failure which arises where there are wholesale and retail divisions within one company.

The NBN should be required to provide services that can be delivered over a common platform such as the Layer 2 [L2] which will enable service providers to use the higher level protocols of their choice.

In previous submissions CEG have already described the potential for anti-competitive conduct that can occur in a market for higher level (Layer3) services, where the provider controls or limits access to higher layer protocols.

In the event that no carrier or carriage service provider does not develop a suitable range of higher level [L3] wholesale services then the Minister for Communications must be able to direct the NBN to provide such services. [This issue is described in more detail in the BSG March 2010 Report. see Page 10 Section b) “Application Providers”].

Carriers and Carriage service Providers must be able to build networks that satisfy the needs of their customers such as e-Service and Application Providers. These networks will vary according to the legislative and commercial requirements for:

- Security
- Performance (Bandwidth, delay, etc)
- Reliability

Equivalent access is an essential feature of NBN Co services. The scale of economies achieved through the Government’s investment in the NBN infrastructure must be available to all retail players. Any price discrimination should be based on objectively identified efficiencies that improve or encourage innovation and competition. Volume discounts should be clearly excluded. Volume discounts will enable the current dominance problem to be carried forward into an NBN environment.

## TELECOMMUNICATIONS LEGISLATION – NETWORK COMPANIES BILL

### ENABLING THE NBN TO ENTER THE RETAIL MARKET

Part 2, Section 9 provides that the Communications Minister may exempt a specified eligible service, so that the NBN can provide a service to certain end users. CEG have supported the exemptions for Government Agencies in previous submissions. However, all end-users should comply with the equal access regime even if it means that the NBN establishes a subsidiary to perform this service.

The Communications Minister should not be allowed to permit the NBN Co to sell to end-users, but only to permit the NBN Co to establish a subsidiary to service specified end-users as described in Section 5.

### ENABLING THE NBN CO TO ACQUIRE RETAIL SERVICES AND CUSTOMERS

The NBN must not be allowed to provide retail services, except for short periods when buying an integrated carrier and selling the Retail section and customers. There should be a mandatory maximum period allowed, and if an extension is required then the Communications Minister must consult with the ACCC prior to granting an extension. The NBN Co must establish a subsidiary to contain the retail section and enable the continued delivery of services to its customers.

## TELECOM LEGISLATION AMENDMENT – ACCESS CONTROL

Section 152 AXC, and Proposed Sections 152BEBA, 152BEBB and 152 BEBC

Section 152 AXC has the potential to create significant problems for the NBN Co in complying with the mandate to provide equivalent access, and also creates a significant loophole for “game playing, delaying tactics, etc”.

The problem occurs because there are many choices of protocols, however only one can be used at any one time.

An access seeker can negotiate for varied conditions with one type of protocol, which can then block other access seekers, who apply for a similar variation but using a different protocol. The NBN Co will now be required to discriminate against one of the access seekers. Alternatively the NBN Co may be required to withdraw the variation and cancel the services.

It is also undesirable for either the NBN Co, or the ACCC, or the Courts, to be required to make a decision on “which service is best”.

The legislation in its current form needs to be substantially amended as any benefit arising from innovation is far outweighed by the opportunity for gaming and delaying tactics, to the detriment of the entire industry.

Section 152 BEA compounds the situation, by allowing the first access seeker to block the disclosure of information to cause other access seekers to waste money and time in developing a variation that cannot be implemented.

It is recommended that the ACCC be required to publish all variations and allow other carriers or carriage service providers to determine if they will be disadvantaged.

## Proposed Section 152 AXC – Services to be supplied on Non-discriminatory Basis

### Background – Volume Discounts

Recently NERA have published a paper “Too Big To Fail” which outlines some of the unintended outcomes by giving large financial corporations exemptions or special benefits (eg. volume discounts or privileged access). The paper outlines how these special benefits can lead to inefficiencies and anticompetitive outcomes. While the document is based on financial products, the reasoning and methodology can also apply to one or more large carriers receiving volume discounts or other access benefits. Telstra has been able to offer discounts to selected customers to disadvantage other carriers, and the same outcomes will continue if volume discounts are allowed.

In the event that volume discounts are permitted then the legislation should mandate that “50% or more of the eligible Carriers and Carriage Service Providers shall be able to access the maximum discount available” with their existing traffic volumes and access points.

### RANGE OF SERVICES OFFERED BY NBN CO

The problems outlined in the previous section can be partly mitigated by expanding the range of services. At present, the focus on 100 Mbit/sec internet is too restrictive, and does not allow for the different types of networks that are required by end users.

End user networks have three main characteristics:-

- Security
- Performance (Bandwidth, delay, etc)
- Reliability

(See CEG Supplementary Submission 7 November 2008)

The wide variety of protocols is to enable users to build networks with differing levels of security, performance and reliability.

At the launch of the BSG – Broadband Infrastructure:

The Service and Application Provider’s View, all three speakers discussed the difficulty in delivering their respective services and emphasized the problem of “multiple pinch points” or bottlenecks [Refer Page 8, *ibid*] which degraded or inhibited service delivery.

They explained how they modified their quality of service delivery to match the capability of the network. This is an expensive option and only a few of the largest providers have this capability.

In the Backhaul (Middle mile Connectivity) “insufficient bandwidth” and “IP Stream” were two key bottlenecks. The phrase “IP Stream” refers to the undesirable interaction between two “streams” or Services that result in a degraded performance or user experience. The “IP Stream” problem will have a negative impact on the ability of the NBN Co network to support Health and Education services.

These comments clearly show that the NBN Co should provide a wider range of services than is currently being deployed, especially backhaul services.

The NBN should also provide a service which is completely protocol independent and allow carriers to build networks using new protocols and services. This will eliminate the need for many variations to the SAO’s, SFAA’s, and SUA’s.