

# Coalition Senators Dissenting Report

Coalition Senators have serious concerns about the proposals contained in the Bill and the Government's claims about the urgency of the measures.

It is concerning that the majority report has almost entirely ignored the weight of the evidence presented to the Committee about this legislation. The vast majority of submissions to this inquiry are opposed to the provisions in the Bill that deny Telstra access to spectrum unless it enters a structural separation undertaking. The hostility to this legislation is evident throughout the submissions encapsulated by Synstrat Management who state that the "proposed legislation is morally abhorrent".<sup>1</sup>

## **National Broadband Network (NBN)**

There is no mistaking that this Bill is primarily about ensuring the Government's proposed National Broadband Network can work by forcing the participation of Telstra.

Labor's attack on Telstra and its shareholders via Part 1 of Schedule 1 of this Bill, is a form of legislative blackmail that we believe can only be seen as an admission that its new NBN policy cannot be implemented without effectively re-nationalising Telstra's fixed-line network.

Labor doesn't want its NBN to have to compete with Telstra; it wants its NBN to be a majority Government-owned monopoly. The Government recognises that Telstra's fixed line customers are its most valuable asset and requires their migration onto the NBN in order for it to have any chance of being viable.

The Second Reading Speech does not disguise this aim. In relaying the "options" open to the Company, Minister Albanese told the House that:

Alternatively, it may involve Telstra progressively migrating its fixed line traffic to the NBN over an agreed period of time and under set regulatory arrangements and for it to sell or cease to use its fixed line assets on an agreed basis. This approach will ultimately lead to a national outcome where there is a wholesale only network not controlled by any retail company—in other words, full structural separation in time. Such a negotiated outcome would be consistent with the wholesale only, open access market structure to be delivered through the National Broadband Network.<sup>2</sup>

The evidence presented to the Committee from those supportive of the legislation, left Coalition Senators in no doubt that these legislative proposals are inextricably related to the NBN.

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<sup>1</sup> Synstrat Management, Submission, p 1

<sup>2</sup> A. Albanese, House of Representatives Hansard, 15 September 2009

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The Competitive Carriers Coalition CEO, David Forman, confirmed this during the Senate Committee hearing when he said in response to a question from Senator Birmingham:

If you suggested to me that the NBN was likely to succeed in the absence of this legislation, then I would suggest that was a pretty big bet.<sup>3</sup>

Maple-Brown Abbott describe the bill as:

a high risk strategy to deliver the NBN and more competition in the telecommunications sector. It runs the risk of damaging Australia's sovereign risk rating as well as stifling investment and innovation in the telecommunications sector. It places too much power in the hands of the ACCC.<sup>4</sup>

### **Significance of the NBN Implementation Study**

Minister Albanese stated during the second reading speech that:

The establishment of the NBN will fundamentally transform the competitive dynamics of the communications sector in this country. NBN Co. will be a wholesale only telecommunications provider with open access arrangements.<sup>5</sup>

The NBN Implementation Study is due in February 2010. The Implementation Study is set to provide clarity on how the NBN roll-out will actually occur, how much it will cost taxpayers, how long it will take and how much consumers can expect to pay for the NBN's services.

Senator Conroy has previously outlined to the Committee the intent of the Government's Implementation Study. During Budget Estimates, he told the Committee that:

The government will shortly commence its implementation study, which will, among other things, work through the detailed network design and rollout schedule for the NBN. It will also investigate the extent of coverage that will be achieved by FTTP, next generation wireless broadband and satellite elements. That implementation study is due for completion in early 2010.<sup>6</sup>

The Coalition has asked a range of questions about the NBN roll-out and each time the Government has used the guise of the Implementation Study to avoid providing further information. Some examples include:

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<sup>3</sup> Hearing, 14 October 2009, ECA 10

<sup>4</sup> Maple-Brown Abbott, Submission, p 3

<sup>5</sup> A. Albanese, House of Representatives Hansard, 15 September 2009

<sup>6</sup> ECA Committee, Budget Estimates Hansard, 26 May 2009, ECA 126

- **Pricing**

Senator Conroy, Senate Question Time 14 May 2009:

The government recognises that affordability is an important factor that will drive take-up of services on the NBN. NBN prices cannot be structured without considering the prices people pay today for comparable services. Pricing levels on the National Broadband Network will be a key issue considered in the Implementation Study.<sup>7</sup>

Budget Estimates, 26 May 2009:

**Senator MINCHIN**— Can you guarantee that the wholesale fixed line prices will be no higher than they currently are?

**Senator Conroy**—That is why we are having an implementation study.<sup>8</sup>

- **Costs and Financing**

Budget Estimates, 26 May 2009:

**Senator MINCHIN** - Thank you. I turn to the costing. We did touch on this \$43 billion and the basis on which you came to that costing. Are you able to give the committee at least some breakdown of that \$43 billion in terms of wages, equipment, capital and expenditure?

**Senator Conroy**—The implementation study is examining most of those issues.<sup>9</sup>

In an answer to a Question on Notice asked by Senator Abetz, Senator Conroy provided the following answer on 17 August 2009<sup>10</sup>:

What is the total Federal Government contribution to its cost?	To be determined as part of the Government's consideration of the Implementation Study.
If applicable, what other funding sources are involved and what is their contribution to the project cost?	Private sector funding will be sought to invest in the company established to build and operate a new National Broadband Network. Strategies to maximise private sector investment will be investigated as part of the Implementation Study which will report in early 2010.
Is the project to be completed in stages/phases; if so, what is the timing	The rollout will be phased. The Tasmania element will commence first.

<sup>7</sup> Senate Hansard, 14 May 2009

<sup>8</sup> ECA Committee, Budget Estimates Hansard, 26 May 2009, ECA 143

<sup>9</sup> ECA Committee, Budget Estimates Hansard, 26 May 2009, ECA 116

<sup>10</sup> Senate Hansard, 14 August 2009

and cost of each stage/phase?	<p>Negotiations are currently in progress. Projects under the \$250 million Regional Backbone Blackspots Program are expected to commence in the first half of 2009-10.</p> <p>The phasing and associated costs for the full rollout will be developed as part of the Implementation Study.</p>
What cost benefit or other modelling was done before the project was approved?	<p>Costings were developed in consultation with and validated by the Department of Finance and Deregulation. The Government has commenced the process to undertake a detailed Implementation Study that will include business case modelling.</p>

- **Rural and Regional Australia**

ECA Committee, Budget Estimates, 26 May, 2009:

**Senator BIRMINGHAM**—Are you basically saying when you talk about the NBN process—which we have learnt in the past 18 months or so, of course, is a bit like the piece of string that never ends—that regional Australia could be waiting 10-plus years to see the remaining \$325 million spent anywhere?

**Senator Conroy**—The regional review recommended to government that responses relating to the NBN are held until the outcome is fully known.

**Senator BIRMINGHAM**—How do you define what the outcome being fully known of the NBN is?

**Senator Conroy**—At this stage, the final outcome is not known.

**Senator BIRMINGHAM**—That is plainly obvious for all to see.

**Senator Conroy**—It is a matter of ongoing discussions between ourselves and the Tasmanian government. It is a matter of an ongoing tender process to be commenced shortly for the Regional Backhaul Blackspots program. It is an ongoing process of the implementation study which will report in February next year. It is an ongoing discussion with satellite, wireless and fibre owners at the moment to meet the national broadband network proposal. All of those are ongoing. What we have said is that the project will take up to eight years. We have not tried to pretend that this is anything other than the largest infrastructure project in Australia's history.

**Senator BIRMINGHAM**—Will the outcome be known at the end of the scoping study in February next year or will it not be known for eight years when all your targets are met?

**Senator Conroy**—It is an implementation study.

**Senator BIRMINGHAM**—That is right, you are not doing a scoping study.

**Senator MINCHIN**—No, they are not bothering with that.

**Senator BIRMINGHAM**—Sorry about that.

**Senator Conroy**—It is an implementation study which will recommend to the then board how to implement our proposal to round out all of those issues, which have been legitimately raised by not only yourselves but also many in the sector. We are not going to rush simply because you are demanding we have an outcome before we actually have it, just because you are demanding it.<sup>11</sup>

**Senator BIRMINGHAM**—No, at what point in all of these different processes will the

Glasson requirement for an outcome to the NBN be met? What do you define to be the outcome?

**Senator Conroy**—We will see what the implementation study provides to us and then we might be in a better position to make an assessment along the lines that you are calling for. At that point we will be able to make an assessment of the question you are asking.<sup>12</sup>

**Senator FISHER**—Will the study have a map of who will be covered, where and why?

**Senator Conroy**—The implementation study is designed to generate the configuration of the network.<sup>13</sup>

- **Cabling, aerial deployment, shareholdings**

Senate Question Time, 16 June 2009:

**Senator Minchin:** I ask the minister what assumption was made regarding the degree to which aerial cabling would be used in relation to the government's cost estimate of \$43 billion for its NBN mark 2. Does the minister agree with Optus that the estimated cost of the project—that is, \$43 billion—will mean at least 70 per cent aerial deployment nationwide?

**Senator Conroy:** but let me be clear: we have said we are having an Implementation Study to go through all of these issues. We have said that from day one, and we do not resile from that. We are in negotiations which will allow us to be definitive on that. Depending on whether one

<sup>11</sup> ECA Committee, Budget Estimates Hansard, 26 May 2009, ECA 34-35

<sup>12</sup> ECA Committee, Budget Estimates Hansard, 26 May 2009, ECA 35

<sup>13</sup> ECA Committee, Budget Estimates Hansard, 26 May 2009, ECA 126

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company or another company is involved, we will change this equation.<sup>14</sup>

ECA Committee, Budget Estimates, 26 May, 2009:

**Senator MINCHIN**—The government has indicated a minimum shareholding of 51 per cent. Has the government indicated a maximum shareholding in this company? Currently it owns all the shares.

**Mr Lyons**—The government has indicated that there will be retail ownership caps yet to be determined. Other issues relating to the structure of the company will be finally determined after the implementation study.<sup>15</sup>

ECA Committee, Supplementary Budget Estimates, 19 October 2009

**Senator MINCHIN**—So, up to \$2 billion. At this stage, the maximum equity that the government will put into NBN Co. is \$2 billion?

**Senator Conroy**—Under that mechanism, yes.

**Senator MINCHIN**—There has been no other decision to make any other moneys available, has there? I am not saying there might not be in the future, but to this point this is the only mechanism?

**Senator Conroy**—We have indicated that we will issue bonds.

**Senator MINCHIN**—No, I am talking about equity.

**Senator Conroy**—NBN Co. will, potentially, issue bonds. What was the time profile of the other equity?

**Mr Heazlett**—It is over a number of years.

**Senator Conroy**—Over a number of years.

**Mr Heazlett**—It is an issue that will also be dealt with as part of the implementation study as the appropriate mechanisms to utilise.<sup>16</sup>

All this evidence points to a Government that announced a massive spending proposal without any detail to support it.

And despite the fact they have been unable, or unwilling to answer a single question about the NBN roll-out, they expect the Parliament to tick-off on significant changes to the telecommunications sector in a truncated period of time.

The Minister's Second Reading speech indicated that the measures are "*designed to position the telecommunications industry to make a smooth transition to the NBN environment as the new network is rolled out.*"<sup>17</sup>

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<sup>14</sup> Senate Hansard, 16 June 2009

<sup>15</sup> ECA Committee, Budget Estimates Hansard, 26 May 2009, ECA 112

<sup>16</sup> ECA Committee, Budget Estimates Hansard, 19 October 2009, ECA 66

<sup>17</sup> Albanese, House of Representatives Hansard, 15 September 2009

Yet, until we know how this network will be rolled out, it is the view of Coalition that it is premature for the Parliament to consider the reforms that affect the structure and operation of Telstra.

### **Urgency before Christmas**

In answer to Questions from Senator Ian Macdonald at Estimates on 19 October 2009, the following exchanges took place:<sup>18</sup>

**Senator IAN MACDONALD**—Telstra told us the other day that they are hopeful of coming to some negotiated settlement with you shortly, and I am wondering if you can update us—without, of course, giving away anything that is commercial-in-confidence—on what is the necessity for the bill that is currently before the parliament being passed before Christmas, and how are the negotiations going?

**Senator Conroy**—As I have said many times publicly, I am not going to be giving a day-by-day description of how negotiations are going other than to generally say—

**Senator IAN MACDONALD**—We do not want it every day, just this one day.

**Senator Conroy**—Today is part of every day.

**Senator IAN MACDONALD**—All right.

**Senator Conroy**—I would say what I have said consistently, which is that discussions are constructive and positive. In terms of wanting to resolve it before Christmas and pass the legislation, it is very simple; there is a great deal of regulatory overhang on the Telstra share at the moment and Telstra shareholders are very concerned about that. We are seeking to end the regulatory uncertainty around Telstra and the sooner that that can be done the better. We believe that dragging it into next year will not be to the benefit of the market as a whole or, importantly, Telstra shareholders.

**Senator IAN MACDONALD**—Of course, that is not Telstra's view. I thought they were more into you—

**Senator Conroy**—You asked me my view. I am giving you my view.

**Senator MINCHIN**—Are you telling Telstra what is good for Telstra?

**Senator IAN MACDONALD**—Telstra shareholders—that is the point. Wouldn't Telstra know what is best for Telstra shareholders?

**Senator IAN MACDONALD**—Could you answer the question?

**Senator Conroy**—the Telstra share price dropped nearly 40 per cent.

**Senator IAN MACDONALD**—So you know what is better for Telstra shareholders?

**Senator Conroy**—No, I am simply making the point that at the moment the market would say to you, if you go and read any analyst's report, that there is

<sup>18</sup> ECA Committee, Budget Estimates Hansard, 19 October 2009, ECA 68-69

an enormous amount of regulatory overhang and if that were cleared up by Christmas I am sure every Telstra shareholder would be relieved.

**Senator IAN MACDONALD**—That is not what the shareholder associations all told us.

**Senator Conroy**—So they are now speaking on behalf of Telstra shareholders!

**Senator IAN MACDONALD**—Well, that is what they are; they are Telstra shareholders.

**Senator BIRMINGHAM**—That is not what Telstra told us; they would expect to be speaking on behalf of their shareholders.

This exchange shows there is no real argument for passage this year and in fact, a delayed passage may well resolve many of the issues for both the Government and Telstra.

### **Structural Separation of Telstra**

As recently as May 2009 the Minister told the Committee that he had never advocated structural separation of the Telstra:

**Senator Minchin:** I am asking you whether you would rule out forced structural separation?

**Senator Conroy:** I am not advocating it. I have never advocated it. I think I can say that but –

**Senator Minchin:** Interestingly you have never actually advocated separation, as far as I can tell.

**Senator Conroy:** I have certainly never advocated structural separation, I do not believe. I think that is a true statement. What I have said, though, is that the existing regime is not satisfactory.<sup>19</sup>

Coalition Senators are concerned that the Minister's position changed so rapidly.

Coalition Senators note that Labor did not propose structural separation in its 2007 election policy, nor has it ever before proposed breaking-up Telstra.

Coalition Senators believe that the proposals in the Bill to either impose functional separation and potentially prevent Telstra accessing advanced spectrum, or to structurally separate and still risk forced divestment in its HFC cable network and its Foxtel interests, are an extreme and unacceptable way of forcing a publicly listed company to the negotiating table.

These choices offered in the Bill appear to have been structured by the Government to offer little more than a 'Clayton's choice'. The Government is on the record as saying that it is their 'clear desire that structural separation occur voluntarily'. During this inquiry it became clear from the way the Department responded to questions about legal advice and compensatory risks faced by the Commonwealth that this choice has only been structured to reduce the legal risk to the Commonwealth. The Government

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<sup>19</sup> ECA Budget Estimates, 26 May 2009, ECA 162



will clearly use the full force of this Bill to force structural separation, ideally through the transfer of assets into its NBN, however possible.

Foxtel also raised their concern about the discretion given to the ACCC stating that the *“Bill does not set any limits on the Commission’s power to accept or reject an undertaking for Telstra to divest its interest in its HFC Cable or Foxtel.”*<sup>20</sup>

In relation to divestiture of assets, we believe that this is a matter for shareholders and the Minister should not be given the discretion to require such divestiture, or not, in connection with a structural separation undertaking.

In its submission to the NBN Regulatory Reform discussion paper, even the ACCC was not convinced of the merits of divestiture of Telstra’s HFC network in advance of the completion of the Implementation Study. The ACCC said in their submission:

Therefore, the ACCC considers that the size of the benefits that would flow from the divestiture would, in the longer term, depend on the way in which the NBN is implemented, including the nature of any involvement by Telstra in the NBN Co.<sup>21</sup>

### **Spectrum Threat**

Of particular concern to Coalition Senators is the Bill’s proposal to legislatively prevent Telstra from acquiring specified bands of spectrum which could be used for advanced wireless broadband services.

This can be seen as nothing more than attempted legislative blackmail given that the mobile and wireless market is highly competitive in Australia with Telstra’s network competitors actually having the majority of the market share.<sup>22</sup>

As many submissions to the Senate inquiry have pointed out, and as was explained by Telstra in its evidence to the Committee, denying Telstra future advanced spectrum will mean there is no upgrade path to a higher speed and capacity next generation network.

Given Telstra has the largest network in the country, in terms of geographical coverage, this is likely to have greatest impact on rural and regional customers. In its submission responding to the Government’s regulatory reform discussion paper, the ACCC advised that *“no specific legislative changes are required to address competition concerns in relation to the allocation of spectrum.”*<sup>23</sup>

As Telstra highlighted in their submission to the inquiry:

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<sup>20</sup> Foxtel Submission, p 6

<sup>21</sup> ACCC Submission, NBN Regulatory Reform Discussion Paper, p 9

<sup>22</sup> ACCC *telecommunications reports 2007–08 Report 1*, 2009, p 33

<sup>23</sup> ACCC Submission ‘National Broadband Network: Regulatory Reform for 21<sup>st</sup> Century Broadband’ June 2009, p 84

Taking Telstra out of the market for next generation spectrum will make the mobile market less competitive and punish the telecommunications company that has not only led innovation but invested in the world's fastest mobile wireless network covering 2.1 million square kilometres.

Denying Telstra access to spectrum will undoubtedly hurt consumers, particularly those in rural and remote Australia, by depriving them of an upgrade path with reduced competition and innovation. It will put at risk Australia's place as a global leader in the mobiles market.<sup>24</sup>

Former ACCC chair Allan Fels is reported as saying that if the Government was fully covered under the Trade Practices Act the spectrum threat would likely amount to an abuse of market power.<sup>25</sup>

The Government itself in the Explanatory Memorandum of this Bill acknowledges that there could be a loss to taxpayers if Telstra is not allowed to participate in spectrum auctions through reduced competitive tension.<sup>26</sup>

And if Telstra is unable to further upgrade its mobile network, this could reduce the incentive for its competitors to also invest in next generation upgrades of their mobile networks.

Synstrat Management view this legislative proposal as:

Legal trickery in attempting to coerce Telstra to divest its assets under threat of being forbidden from bidding for 4G frequency spectrum, and therefore curtailing the long-term competitiveness of its mobile telephone network is an unethical way for the government to conduct its business.<sup>27</sup>

### **Sovereign Risk**

The Government cannot ignore the overwhelming concerns expressed by Telstra shareholders through this inquiry, nor can they ignore the concerns expressed by well-respected investment and management firms about this heavy-handed legislation. Coalition Senators believe the evidence presented to the Committee raises serious concerns that the Government must address.

In its submission, the Australian Foundation Investment Company (AFIC) stated:

If the Parliament passes this legislation we think Australia's investment standing could be significantly diminished. Investors, particularly international investors, will perceive substantially heightened sovereign risk if the Australian Government can act arbitrarily in this way.<sup>28</sup>

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<sup>24</sup> Telstra Submission, p 3

<sup>25</sup> 'New Telco 'Monopoly' faulted', *The Australian*, 17/09/09, p 2

<sup>26</sup> Explanatory Memorandum, 44

<sup>27</sup> Synstrat Management, Submission, p 1

<sup>28</sup> Australian Foundation Investment Company, p 3

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AFIC are not alone in their concern about this Bill. BT Investment Management Ltd expressed similar concerns about investment certainty in stating that:

We consider that the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009 (the Bill) goes beyond well established regulatory practice and undermines independent regulation of the telecommunications sector by the Australian Competition and Consumer Commission. Our concerns are that the proposed legislation creates additional and unnecessary regulatory risk and so complicates risk assessment for investment purposes and potentially raises sovereign risk for our Telstra share holding.<sup>29</sup>

The Australian Shareholders Association also highlighted their concerns in their submission:

The ASA is concerned not just about the value destroying nature of the proposal for Telstra shareholders, but also about the implications for investment generally. International investors in particular will consider Australia to have a much higher level of sovereign risk if this Bill is passed and the Government allowed to impose its will on a private company. Investors, both small and large will consider that the level of risk of Government or regulator intervention when investing in highly regulated industries is increased by this decision. In addition the decision is likely to impact the confidence the market will have in future privatisations.<sup>30</sup>

Further, Maple-Brown Abbott strongly expressed their concern about the precedent established by this Bill:

The effects of the Bill are unprecedented in this country. If investors become concerned about exposure to acts of Government such as legislative and regulatory impositions, it could have a detrimental impact on the valuation of many financial assets, not only Telstra and the wealth of its 1.4 million shareholders. Of major concern is that the Bill may damage Australia's sovereign risk rating.<sup>31</sup>

And Packer and Co Ltd stated:

As international investors, we spend a great deal of time thinking about sovereign risk in our capital allocation decisions. We can assure you that the Government's actions will be closely monitored by the global investment management community.<sup>32</sup>

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<sup>29</sup> BT Investment Management Ltd Submission, p 2

<sup>30</sup> Australian Shareholders Association Submission, p 3

<sup>31</sup> Maple-Brown Abbott, Submission, p 2

<sup>32</sup> William Packer, Packer & Co Ltd, Submission, p 2

### **Access arrangements**

Coalition Senators support sensible reform to improve existing competition provisions in the telecommunications sector.

However, given the evidence presented to the Committee, we are concerned about some of the proposed amendments to the *Trade Practices Act* and the level of discretion that is handed to the regulator, the Australian Competition and Consumer Commission (ACCC).

Particularly, Coalition Senators note that the powers given to the ACCC seem unjustified in relation to even the suggestions put forward by the ACCC to the NBN Regulatory Reform Discussion Paper.

Coalition Senators have concerns about the total removal of merits review in relation to regulatory decisions under part XIC. We are also significantly concerned about the Government's proposal to waive procedural fairness.

Again, concerns were raised about these amendments during the Senate inquiry.

Vodafone Hutchinson indicated that the Bill should include provisions for a merits review of the ACCC declaration and/or determination.<sup>33</sup>

Foxtel's submission has focussed on the amendments to the TPA and they state that:

The Draft Bill proposed dramatic changes to the regulatory regime governing the telecommunications industry despite the Government not having undertaken a rigorous analysis or inquiry into whether there has been significant market failure justifying such changes".<sup>34</sup>

"The proposal to give the Commission the broad power to make interim access determinations without giving affected parties procedural fairness is contrary to well established principles equally of good public policy and administrative law designed to protect against arbitrary decision making."<sup>35</sup>

In relation to the abolition of merits review, BT Investment Management Ltd stated:

As investors in Australian telecommunications we consider there are huge risks in allowing the ACCC to set prices up front without any right of appeal. Ordinarily in a market price setting is a right that follows investment, and in turn is instrumental in driving investment. The ACCC is not a market player; it does not make investment decisions and it does not face investment risk.<sup>36</sup>

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<sup>33</sup> Vodafone Hutchinson Australia, Submission, p 1

<sup>34</sup> Foxtel Submission, p 1

<sup>35</sup> Foxtel Submission, p 2

<sup>36</sup> BT Investment Management Ltd Submission, p 9

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Vodafone Hutchinson highlight their concerns with the broad powers given to the ACCC under the proposals. They state in their submission to the inquiry that:

We are concerned, however, that the move to strengthen and streamline the access regime provides too much discretion to the Australian Competition and Consumer Commission (the Commission), with too little accountability.<sup>37</sup>

Vodafone Hutchinson also highlight the potential conflict of interest that exists due to the ACCC's responsibility for "*both building the case for an access determination and assessing its merits*" and that "*the benefits from a merits review process exceed the costs associated with regulatory uncertainty of delays*".<sup>38</sup>

Coalition Senators strongly agree with the views of Foxtel regarding the abolition of procedural fairness.

...the proposal to give the Commission the broad power to make interim access determinations without giving affected parties procedural fairness is contrary to well established principles equally of good public policy and administrative law designed to protect against arbitrary decision making.<sup>39</sup>

## **Consumer Measures**

The Coalition supports sensible measures to ensure consumers are given appropriate protections and support in their telecommunications choices.

Coalition Senators note that these consumer measures are scheduled to commence on 1 July 2010.

In relation to the Universal Service Obligations (USO), Coalition Senators want to ensure that the arrangements underpinning the USO are strong in order to ensure rural and regional Australians have access to quality and affordable telecommunications services.

However, Coalition Senators strongly believe that the NBN will require a thorough and comprehensive review of the USO regime. Even the Government has acknowledged that issues surrounding the USO would be considered when the NBN roll out was determined.<sup>40</sup>

The Explanatory Memorandum (EM) entirely contradicts the Government's proposed timing for this Bill. The EM States:

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<sup>37</sup> Vodafone Hutchinson Australia, Submission, p 1

<sup>38</sup> Vodafone Hutchinson Australia, Submission, p 2

<sup>39</sup> Foxtel, Submission

<sup>40</sup> Communications Day, 22 October 2009, p 2

Broadening universal service arrangements at this time could lead to significant higher costs that may be avoided if the reforms were deferred until after the detailed operating arrangement for the NBN had been settled.

The Government has announced that once the detailed operating arrangements for the NBN have been settled, the Government will consider the broader range of issues associated with the delivery of universal access in an NBN environment.<sup>41</sup>

It also specifically states that: “*Future USO arrangements will be considered once the detailed operating arrangements for the NBN have been settled in early 2010.*”<sup>42</sup>

We therefore think on balance that it makes more sense to await the Implementation Study, which if completed on schedule, will not delay the 1 July 2010 commencement of these measures, to ensure that the USO does reflect the operating environment created by any NBN roll-out.

## **Conclusion**

Coalition Senators believe that the structure of Telstra is a matter for Telstra and its shareholders.

The Government’s decision to hold a gun to the head of the company is a concerning precedent that has raises sovereign risk questions about the Australian investment climate.

The threat to starve Telstra of future advanced mobile and wireless spectrum will harm rural and regional customers and will reduce competition in a highly competitive market.

While Coalition Senators strongly support sensible reforms to ensure competition improvements in the telecommunications market, we have concerns about the discretion this Bill gives to the Minister and ACCC, particularly through the proposed waiver of procedural fairness and the removal of merits review of regulatory decisions made by the ACCC under part XIC.

Given the proposed expansion of powers to the Minister and ACCC proposed by this Bill, Coalition Senators support continued consideration of areas in which the Bill can be improved.

## **Recommendation**

**Coalition Senators recommend that further consideration of this Bill not proceed until after the NBN Implementation Study has been completed, the Government**

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<sup>41</sup> Explanatory Memorandum, p 66

<sup>42</sup> Explanatory Memorandum, p 80

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**has tabled its response to the Implementation Study and the Senate has certainty about the network structure of NBN Co and the regulatory framework which will surround it.**

**Should debate proceed in advance of the completion of the Implementation Study, the Bill should be amended to address the significant concerns raised with the Committee.**

**Senator Simon Birmingham  
Senator for South Australia**

**Senator the Hon. Nick Minchin  
Senator for South Australia**

**Senator the Hon. Ian Macdonald  
Senator for Queensland**

**Senator Mary Jo Fisher  
Senator for South Australia**

