

**COMVERGE**

CREATING INTELLIGENT NETWORKS

**Submission on Telecommunications Legislation  
Amendment (Fibre Deployment) Bill 2011**

**to the**

**Joint committee on the National Broadband Network**

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## Submission on Telecommunications Legislation Amendment (Fibre Deployment) Bill 2011

Minor amendments stand between this Bill being an absolute disaster for our industry and being a reasonable Bill worthy of support.

Initial reading of the *Explanatory Memorandum* leaves one hopeful that this could be a workable Bill however it is difficult to reconcile the *Explanatory Memorandum* with the *Bill*. Unfortunately what could be a workable Bill as per the intent of the Explanatory Memorandum, is fatally and fundamentally flawed by the drafting of the Bill.

The key issue is associated with the very liberal use of the term *“provider of last resort”* which we strongly support and which hollowly appears throughout the Explanatory Memorandum (first appearance in second paragraph of first page). In the limited time available we however cannot find reference to this term or concept in the associated Bill, nor the Companies or Access Arrangements Bills either.

We can only assume this misleading of Parliament is so gross that the omission of any reference to it in the Bill itself is just an oversight of an overworked department. This oversight in itself also underlines our unease at various other aspects of the Bill where this self same Department is proposing other additional far reaching “standards setting” powers for itself, away from the very robust public process between competing vendors, carriers and others in arriving at workable standards.

### 1. Provider of last resort

We agree with the Departments obvious conclusion indicated by it’s liberal and oft repeated references in the Explanatory Memorandum to the term “Provider of last resort” that the only way this Bill will work is for NBN Co to be the “provider of last resort”.

We thus suggest that as a minimum the Bill is amended to reflect the intent of the Explanatory Memorandum. The concept of “provider of last resort” is well understood with both Health Care and Electricity Consumer Protection legislation likely to provide a source of suitable drafting inspiration.

Issues that we believe will need to be addressed in the amendment are humbly suggested below:

- (a) Definition: “Provider of last resort”

*An organisation tasked to provide, manage and operate telecommunications infrastructure to provide services to the*

*end users of that infrastructure where it is accepted that no other organisation has:*

- *the interest or*
- *the means or*
- *the capability*

*to provide such telecommunications infrastructure.*

(b) Who should be appointed as provider of last resort ?.

As is no doubt understood by the Department a case of “last resort” would typically refer to a person who is very vulnerable, who can be exploited and thus would require some sort of state sponsored welfare safety net. In line with what appears to be a Commonwealth social program that has nightmarishly lost its way, NBN Co is state funded and has already been identified for the role. In the hopes that something good will come of the NBN concept we do not oppose this and believe (assuming ongoing operation of NBN Co) it would be broadly acceptable across both sides of the political spectrum that NBN Co be initially charged as the actual “provider of last resort”.

(c) When is it a question of requiring a provider of last resort ?.

Two clear models are already apparent in the industry,

- Those forward thinking developers who wish for more than the bare minimum data and voice services that NBN Co provide. These developers are still entering into direct contracts with the established FttH providers; and
- developers who just want to get going with what they do best and who fervently hope this new nightmare of complexity and funding foisted on them will just go away. They just want to develop houses for people to live in and are prepared to sacrifice features available from a FttH network against the possibility of state funding and the handing over of the complexity of telecommunications service provision to a third party.

We would thus suggest that:

- Those developers who wish for more than the bare minimum offered by the NBN Co **be allowed to exercise this right.** Note: This not only impacts the issue of last resort but also of standards, an issue we will additionally address.
- That the developers who identify themselves as wishing for state help be allowed to identify their developments and register with some neutral party with no direct vested interest in providing Greenfields FttH (similar to the old Telstra wholesale interface they are used to). These developers putting up their developments for Federal funding would do so on the understanding that they would then be subject for simple bidding by accredited Greenfield providers via a “low transaction cost” type interface. Only for those developments for which there was either no bid, or bids exceeded a figure per-home-connected, to be determined by the Minister

(initially set at \$1500) would the development be handed over to NBN Co to be fully taxpayer funded.

(d) How would the developments be funded ?

We do not anticipate an issue with funding, instead anticipating a saving for taxpayers. NBN Co is diverting public funding from other areas of build to now address Greenfields. We suggest this funding is rather redirected directly to the developers, or to some neutral third party such as the Universal Service Obligation fund to directly reimburse the bidder for the capital portion of the bid.

Wholesale pricing would be capped at NBN Co's published pricing with operating costs to be recovered from that margin, as opposed to any public operating cost contributions.

(e) Supplier Exit

Given the very real probability that NBN Co will exit the Greenfields (and other markets) we are extremely concerned about the short term pain that would be inflicted on consumers. To protect both the public and the service providers a minimum safeguard as part of the countries NBN concept needs to be a part of the entire "provider of last resort" package. As in the electricity markets we suggest explicit allowance be made for these consumers to be reassigned in logical blocks by some method to be determined by the Minister which could include auction as a default.

The approach outlined above has the additional benefit in that those developments of less than 100 (arbitrarily ignored by NBN Co) or even those towns of less than 1000 dwellings (ignored by NBN Co but forming a huge proportion of rural Australia) can submit to the same process. We strongly disapprove of the NBN Co CEO, Mr Quigley suggestions that these towns and users pay additional over and above their taxes currently earmarked to subsidise urban dwellers. We however agree with the sentiment that a method has to be found.

Regardless of whether the Minister exempts service provision to infill and rural developments as identified above, using his powers outlined in this Bill this is not the critical issue. These consumers will at some stage require higher bandwidth services than fixed wireless (an excellent bridging technology) alone can provide. See our further comment of section 3.

On a more immediate level we highlight a growing trend already triggered by this and the other associated Bills that Telstra is reportedly refusing to provide fixed service to these infill developments. As part of this trend we also anticipate a withdrawal of fixed copper services in the rural towns removing any chance of alternative higher bandwidth innovative copper service being provided.

It is also assumed the conduit (once provided by public funding and ceded to Telstra for safe keeping) in towns marked for abandonment will no longer be maintained making it, as highlighted in the Explanatory Memorandum (page 8), far harder and more expensive to provide fibre services in those areas in the future.

## **2. Standards**

We refer to item 372B(2), 373B(4), 372B(5) and 376A amongst others, allowing in essence the possibility of politically motivated or even vendor specific political lobbying for the setting of biased standards favourable to a particular party. We would remind the committee of the innuendo and controversy surrounding the Alcatel bribery scandal with the very negative perceptions for Australia being created, and strongly submit that this is just one example of why such concerns are not so far from the realms of possibility.

Essentially it has taken the country years to evolve away from the old days of Telecomm setting the monopoly standards to a broad-based, albeit fractuous industry grouping collaboratively arriving at standards. At this stage there are numerous bodies capable of setting these standards, including the Communications Alliance who are standing ready and able.

While we acknowledge and intensely disliked the frustrations in the process this is far better than forcing the industry to accept what we believe would be throwback and feature specific standards proposed by NBN Co. To illustrate by referring to a similar field (not standards), we highlight that the basic services proposed by NBN Co tie the country to the days of xDSL (as opposed to a modern fibre network) and further note the mandatory bundling of data and voice services is not a practise seen on the more open style networks operated by the industry.

As such we request that the Bill ensures the continuing collaborative standards setting process with those numerous clauses allowing the political setting of standards to be struck out.

## **3. Geographically based exemptions**

Despite the corners that the politically parties have painted themselves into, we ultimately must not lose sight of the end customers. Service must be provided in a just and equitable manner especially when it is taxpayer funded and not serve to further exacerbate the digital divide. A consequence of this digital divide will be a migration of the youth and business away from poorly served rural areas – an outcome directly in conflict with both major parties population goals and well as further compounding the polarization of rural Australia.

From a social perspective we are aghast that this legislation seems to be penalizing those rural end users least able to protect themselves, and in many cases just not able to afford to live in the urban areas that will be built out by NBN Co. We believe it is these end users that should be getting support but already see the extremely narrow coastal hugging NBN Co FttH footprint being reduced as new intricacies come to light, with funding being moved from rural customers to rather support NBN Co actions to put existing operators in markets that are already well serviced, out of business.

In combination with the reallocation of funding are the numerous direct clauses (referring to section 372J, "*NBN Co may issue statement about the non-installation of optical fiber lines*") providing exemptions to developments, and specifically to those that do not fit into what is described in the Explanatory Memorandum as the "NBN Co footprint".

Town areas develop and as acknowledged in the Explanatory Memorandum (Page 8) it becomes expensive and extremely disruptive to retrofit the basic infrastructure required for FttH services at a latter date. The exemption of developments arbitrarily outside of the narrow NBN Co FttH footprint will be relegating those areas to a marginal status in perpetuity.

Further compounding this problem will be the withdrawal of copper services with developments then relying on clusters of wireless or satellite equipment, and associated antennas. Such solutions are excellent interim solutions to "buy time" but are limited in further expansion. Based on the NBN Co minimum bandwidth forecasts used to justify the NBN's FttH approach, this problem will become apparent around 2015 once bandwidth exceeds 12 Mbps for trailing edge users and earlier for leading edge users (NBN Co Customer Collaboration Forum, Mike Quigley 2011). Please also note that it is our understanding that Satellite services provided for the Geographic majority of Australia will not include voice.

We would thus strongly recommend that all developments are mandated to

- be fiber ready. It then becomes a relatively simple matter to consider the option of FttH for these developments as a matter of course once the other missing half of the equation, the backhaul services are provided and
- where a fixed copper service is to be recovered it be replaced with a fixed fiber service..

We highlight the positive impact recently provided backhaul has had on the Victor Harbor area. Existing carriers are now providing fixed wire services with no further impost on the taxpayer or long wait by the residents. While it is hoped that Government would be focusing on providing these backhaul services other projects such as mines and railways can also provide. The proposed mining areas and SKA telescope areas of WA are but a few further examples of possible backhaul provision that can be utilized by the surrounding areas.

We thus suggest that amendments required are:

- (a) Once again ensure NBN Co is not allowed to divert funding away from these communities by embarking on service provisions in Greenfields developments that are not cases of last resort. Please refer to point 1 for further detail on this;
- (b) Ensure that before fixed wire line services can be abandoned by Telstra, like fiber based services are provided; and
- (c) Strike out the clauses that exempt developments not in the NBN Co determined footprint and thus ensure they are at least Fiber Ready. Practically we suggest the removal of clauses similar to the below excerpt:

(3) Subsection (2) does not apply if NBN Co has issued a statement under section 372J to the effect that neither it nor any other NBN corporation has installed, is installing, or proposes to install, optical fibre lines in the project area, or any of the project areas, for the project.

#### 4. Definition of Fiber Ready

There is a fundamental concern with the definition of 'Fiber ready', and particularly as it relies on the definition of a fixed-line facility. Referring to the excerpt below, this mandates a "Fiber ready" installation may not be on the "customer side of the boundary". This is counter to the reality of the unfortunate situation that the Developers find themselves in.

##### **372V Fixed-line facilities**

For the purposes of this Act, a *fixed-line facility* is a facility (other than a line) used, or for use, in connection with a line, where the line:

- (a) is not on the customer side of the boundary of a telecommunications network; and

The reality is that many developers are going to have to put in place interim arrangements (in some cases 10 years) to provide services within their developments, especially as Telstra is giving every indication that it is no longer going to service these developers. There is a high probability that these interim solutions will rely on setting a network boundary at the "entrance" to the development with "private wiring" then being required to provide the service. In terms of the definition this interim arrangement will immediately void any claim the development has to the development being "fiber ready".

We thus suggest modifying the definition by deleting the linkages to either the fixed line definition or deleting point (a) of the definition.

The objective of this portion of the Bill, that there is conduit available for later use and thus avoiding inconvenient civil works in an established area at a

later date would have been met. Access to this conduit is adequately covered by the Bill's access arrangements.

## **5. NBN Co dominates the legislation**

We are concerned that NBN Co is dominating the legislation with little mention of other operators that actually have carrier licenses.

We are also worried that NBN Co is effectively taking on regulatory powers to issue regulatory statements impacting the country. Both sides of politics have made it clear that they will privatize NBN Co. Do we want private organization fulfilling a regulatory role ?

We highlight this to emphasize at least our point 3 above and suggest NBN Co policy powers are removed.

## **6. Division 2 – Deployment of optical fibers**

There is little scope for interim arrangements to be put in place to tide developers over until such time as NBN Co or some other carrier installs service – which could be 10 years from now. To compound this issue the small infill developments are denied the use of copper to provide a service. This will compel the developer of small lots to invest in a private fiber network he might later wish to switch over to the NBN Co network.

For certainty, and not to rely on Ministerial decrees we would suggest the insertion of a section allowing for the explicate acceptance of;

- (a) Interim copper arrangement for infill developments where copper plant already exists in the vicinity of an area. Providing the development is “fiber ready” (even for two dwellings) this would permit simple connection. For small infill developments the developer would fund this copper reticulation (or negotiate with existing service providers wishing to improve the possibility of capturing customers);
- (b) The immediate servicing of infill development with Fiber by the local fiber operator once the local Fiber operator has already completed installation in an area;
- (c) The installation of fiber financed by the USO with temporary active electronic equipment being acceptable with the compulsion that provided the fiber segments were built to industry standards, NBN Co would need to connect the fiber and reimburse the USO fund when it eventually passed the development.