

# National Broadband Network Companies Amendment (Tasmania) Bill 2014

## Introduction

1.1 The National Broadband Network Companies Amendment (Tasmania) Bill 2014 (the bill) was introduced on 5 March 2014 by Senator Anne Urquhart as a private Senator's bill.

1.2 On 27 March 2014, on the recommendation of the Senate Selection of Bills Committee, the Senate referred the bill to the Senate Environment and Communications Legislation Committee for inquiry and report by 26 June 2014.<sup>1</sup>

1.3 The reasons for referral were for the committee to consider:

- the introduction of a specific subsection to the *National Broadband Network Companies Act 2011*;
- the impact on Tasmanian economic growth and the provision of essential services such as health and education in Tasmania;
- the impact on Retail Service Providers operating in Tasmania; and
- the impact on contractors participating in the rollout of the National Broadband Network (NBN) in Tasmania.<sup>2</sup>

1.4 On 24 June 2014, the reporting date for the inquiry was extended to 16 July 2014.<sup>3</sup>

## Conduct of the inquiry

1.5 In accordance with usual practice, the committee advertised the inquiry on its website and wrote to relevant organisations inviting submissions by 23 April 2014. The committee received four submissions relating to the bill, which are listed at Appendix 1. The submissions may be accessed through the committee's website at:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/National\\_Broadband\\_Network\\_Companies\\_Amendment\\_Tasmania\\_Bill\\_2014/](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/National_Broadband_Network_Companies_Amendment_Tasmania_Bill_2014/)

1.6 The committee agreed not to hold a public hearing for this inquiry.

## Background

### *NBN rollout in Tasmania*

1.7 The *National Broadband Network Companies Act 2011* (the NBN Companies Act) came into force on 12 April 2011 establishing a regulatory framework covering

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1 *Journals of the Senate*, No. 26, 27 March 2014, pp 741–42.

2 Selection of Bills Committee, *Report No. 4 of 2014*, Appendix 8.

3 *Journals of the Senate*, No. 35, 24 June 2014, p. 974.

the ownership and operations of NBN Co and the arrangements for the eventual sale of the Commonwealth's stake in NBN Co. The NBN Companies Act provided that NBN Co would operate on a wholesale basis, and that the Australian Government would retain full ownership of NBN Co until the NBN rollout is complete. The NBN Companies Act also provided for the sale of NBN Co after the rollout.<sup>4</sup> As noted by the Department of Communications (the department), the NBN Companies Act did not include provisions regulating the day-to-day operations of NBN Co, the technologies to be used by NBN Co or the wholesale products to be provided by NBN Co.<sup>5</sup>

1.8 The Minister for Communications, the Hon Malcolm Turnbull, noted that the NBN rollout in Tasmania has been plagued by a failure to meet targets, disputes between contractors, asbestos issues and shambolic management. Labor originally promised that construction of the network in Tasmania would be complete in 2015, however, as at the election last year – only 32,020 premises had been passed by fibre.<sup>6</sup>

1.9 At the end of last year NBN Co and the prime contractor in Tasmania, Visionstream, agreed to get the NBN rollout going again after many months of stoppages and slow delivery that were the norm under Labor.<sup>7</sup>

1.10 At that time there were 32,820 brownfields premises passed by fibre in Tasmania. The NBN Co has also advised that there have been contract instructions issued covering another 17,000 premises to be passed by fibre since the election.<sup>8</sup>

1.11 There is also late planning and remediation underway in areas covering a further 19,000 brownfields premises, in which NBN Co will enter build contracts in due course.<sup>9</sup>

1.12 In February 2014, the NBN Co Executive Chairman announced on ABC radio that the NBN Co contracts in Tasmania had been renegotiated as contractors were unable to meet their obligations under the terms they had agreed to. NBN Co is currently considering the appropriate technology to use in each community across Australia, including in Tasmania, as part of its transition to a Multi-Technology Mix comprising fibre to the premises, fibre to the node, HFC, fixed wireless and satellite connections.

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4 Revised Explanatory Memorandum, National Broadband Network Companies Bill 2010 and Telecommunications Legislation Amendment (National Broadband Network Measures — Access Arrangements) Bill 2011, p. 2.

5 Department of Communications, *Submission 2*, p. 2.

6 <http://www.malcolmturnbull.com.au/media/statement-on-the-tasmanian-rollout>, 4 February 2014.

7 <http://www.malcolmturnbull.com.au/media/statement-on-the-tasmanian-rollout>, 4 February 2014.

8 <http://www.malcolmturnbull.com.au/media/statement-on-the-tasmanian-rollout>, 4 February 2014.

9 <http://www.malcolmturnbull.com.au/media/statement-on-the-tasmanian-rollout>, 4 February 2014.

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### ***Background to the bill***

1.13 In the second reading speech, Senator Urquhart stated that the new Coalition Government had made an election promise that NBN Co would only make fixed line connections to the NBN in Tasmania using fibre to the premises. Senator Urquhart noted that, on 26 March 2012, NBN Co announced that it had awarded a contract to Visionstream for the construction of a fibre to the premises (FTTP) internet service for 200,000 homes and businesses in Tasmania.<sup>10</sup>

1.14 Senator Urquhart went on to state that, on more than one occasion prior to the 2013 federal election, the Hon Malcolm Turnbull reassured the people of Tasmania that a Coalition Government would honour all existing contracts signed by NBN Co to roll out FTTP in Tasmania.<sup>11</sup>

1.15 Senator Urquhart concluded by arguing that the bill would amend the NBN Companies Act to ensure the Government honours what she asserts was a pre-election commitment of requiring NBN Co to deploy FTTP to over 200,000 premises in Tasmania.<sup>12</sup>

### **Purpose and summary of the bill**

1.16 The purpose of the bill is to amend the NBN Companies Act to require NBN Co to only make fixed line connections to the NBN in Tasmania using fibre to the premises (FTTP).

1.17 Item 1 of Schedule 1 proposes to insert a new Subdivision AA before Subdivision A of Division 2 of Part 2 of the NBN Companies Act. The new subdivision would comprise one section, section 8A. Proposed subsection 8A(1) would require that no fewer than 200,000 premises in Tasmania be connected to the NBN by FTTP and that no premise is connected with a fixed line (wire, cable or optical fibre) other than fibre to the premises. Proposed subsection 8A(2) is designed to avoid doubt and ensures that a technology that is not fibre does not meet the definition in subsection 8A(1).<sup>13</sup>

1.18 Item 2 of the Schedule amends the NBN Companies Act to clarify that the new provisions do not retrospectively apply to any existing connection.

1.19 In relation to the financial impact of the proposed amendments, Senator Urquhart stated:

The Senate has been advised that NBN Co is still operating under the Corporate Plan 2012–15.

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10 Senator Anne Urquhart, *Senate Hansard*, 5 March 2014, p. 906.

11 Senator Anne Urquhart, *Senate Hansard*, 5 March 2014, p. 906.

12 Senator Anne Urquhart, *Senate Hansard*, 5 March 2014, p. 908.

13 Explanatory Memorandum, National Broadband Network Companies Amendment (Tasmania) Bill 2014, pp 2–3.

Funding for the NBN Co as provided for in the Budget Papers is based on this plan and provides for Fibre to the Premises to 93% of Australia premises.

As such there are no additional financial implications of this measure.<sup>14</sup>

### **Key issues**

1.20 Three of the four submissions received rejected the rationale for and substance of the Bill.

1.21 The Tasmanian IT and T Industry Development Association (TASICT) commented on the benefits of the NBN for Tasmania, including for business. TASICT noted the NBN Co's contract with Visionstream and the Coalition's commitment to honour existing NBN contracts. However, TASICT highlighted the failure of the previous Government to address the serious underlying issues that plagued the NBN rollout in Tasmania, commenting:

By June 2013 the project was plagued by disputes between NBN Co, Visionstream and its subcontractors as well as concerns over asbestos risks during remediation work. These issues were never dealt with by the Government of the day. In fact, they were completely ignored and the rollout had almost stopped by September 2013.<sup>15</sup>

1.22 While being committed to working with government to see that Tasmania gets the best NBN possible, TASICT stated that 'it does not believe the answer to problems facing the rollout is to force the Australian Government into policy through legislation'.<sup>16</sup>

1.23 TASICT went on to argue that the immediate issue facing the NBN in Tasmania was not what technology is going to be used but how to get the project moving at a reasonable rate. TASICT commented:

The NBN rollout and connection process in Tasmania has been so shambolic and failed so abysmally to meet its targets that the question about what NBN technology Tasmania will get has become less relevant...

A debate about what policy would see the greatest number of new connections to NBN infrastructure in the shortest period of time would be more relevant than one about proposed changes to the NBN technology mix.<sup>17</sup>

1.24 TASICT pointed to the NBN aerial trial sites plan and supported the proposal as the 'trial could lead to a faster, more cost-effective deployment of the network with a higher ratio of FTTP technology than would otherwise be the case'.<sup>18</sup>

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14 Senator Anne Urquhart, *Senate Hansard*, 5 March 2014, p. 908.

15 TASICT, *Submission 1*, p. 1.

16 TASICT, *Submission 1*, p. 2.

17 TASICT, *Submission 1*, p. 3.

18 TASICT, *Submission 1*, p. 2.

1.25 TASICT identified the inconsistencies of this bill stating:

The Bill in question appears to be politically motivated and will not provide any solution to the ongoing issues being felt in Tasmania.<sup>19</sup>

1.26 NBN Co demonstrated that there is a great misunderstanding of the role that access technologies play in the experience of broadband in home and office settings. NBN Co commented that it was inherent in the language of the bill that a broadband service delivered by fibre to the node (FTTN) NBN 'will be "substandard" and by implication deny Tasmanians access to vital services in the areas of health education and business'. NBN Co outlined that this was 'simply not the case'. Rather, FTTN is a proven technology being used extensively to deliver fast broadband in other countries, including the United States and Germany. It is also capable of very high speeds.<sup>20</sup>

1.27 NBN Co is currently running a fibre-to-the-building (FTTB) and FTTN pilot program to examine new ways to accelerate the rollout of the NBN. NBN Co has installed very-high-bit-rate digital subscriber line (VDSL2) vectoring equipment, which enables the delivery of high-speed broadband services, over the existing telephone cabling.<sup>21</sup>

1.28 Preliminary tests of the technology by NBN Co produced download speeds of more than 100 Mbps and upload speeds of more than 40 Mbps.<sup>22</sup>

1.29 In addition, NBN Co stated that the debate over whether to use FTTN or FTTP 'overstates the importance of the access technology' as the most important issues are the cost of the services and 'to deliver the speeds people need to use the applications and services they value, to achieve ubiquitous availability as quickly as possible, and to ensure the network has the capacity to be upgraded as required'.<sup>23</sup>

1.30 The suggestion that this bill would have no cost impact on NBN Co is disputed. The NBN Strategic Review found that the cost of completing the NBN under the former Labor's plan is significantly higher than Australians were previously told.

1.31 The Strategic Review found that the difference between finalising NBN Co under the policy settings established under the previous Labor Government, and an optimised multi-technology mix, is approximately \$29 billion and would result in significantly higher interest repayments and consumer charges.<sup>24</sup>

1.32 This is in line with international experience. A 2008 report by Analysys Mason stated that deployment of FTTC in the United Kingdom by the incumbent had

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19 TASICT, *Submission 1*, p. 2.

20 NBN Co, *Submission 3*, p. 1.

21 <http://www.nbnco.com.au/corporate-information/media-centre/media-releases/nbn-co-prepares-for-revised-rollout-model.html#.U7ueWFR-9aQ>

22 NBN Select Committee, *Committee Hansard*, 5 May 2014, p. 3.

23 NBN Co, *Submission 3*, p. 2.

24 NBN Strategic Review, p. 12.

a capital cost of approximately 20 per cent of FTTH at all points along the curve from low-cost to high-cost premises.<sup>25</sup> A report by WIK Consult for the European Competitive Telecommunication Association, also in 2008, estimated that FTTC costs per premise were \$690 in Germany and \$530 in Sweden. Costs for FTTH were roughly four times higher at \$3,100 in Germany and 3.5 times higher at \$1,900 in Sweden.<sup>26</sup>

1.33 NBN Co also noted that the updated Statement of Expectations to NBN Co issued by the Government instructs it to proceed with the rollout using the 'optimised multi-technology mix' model. This does not involve a preference for any particular technology or network design, rather, it provides NBN Co:

...with the flexibility and discretion to leverage existing infrastructure where this makes economic and technological sense, and to deliver superfast broadband using the most cost-effective technology available to it in each part of Australia.<sup>27</sup>

1.34 NBN Co submitted that the use of the optimised multi-technology mix model will allow for a quicker rollout of NBN in Tasmania. The use of this model is also expected to have a positive impact for Retail Service Providers. Changes in construction arrangements in Tasmania are also expected to increase the rate of connection and reduce the time between ordering a service and receiving it. At the same time NBN Co is working to rebuild and strengthen relationships with delivery partners.<sup>28</sup>

1.35 As Australian Bureau of Statistics (ABS) statistics show, the biggest determinant of a household's take-up of broadband services is price – 38 per cent of households with an annual income below \$40,000 have no broadband at home compared to just 7 per cent of those with an annual income above \$120,000.<sup>29</sup> Additionally researchers from Swinburne University noted that even those who do have broadband at home, 12 per cent say that their lack of willingness to pay for their service means that maintaining a service is a stretch for them. The researchers noted that affordability should be central to Government policy in encouraging high-speed broadband take-up.<sup>30</sup>

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25 Analysys Mason/Broadband Stakeholder Group, (2008), 'The Costs Of Deploying Fibre-based Next-Generation Broadband Infrastructure', p. 4, [http://www.analysysmason.com/PageFiles/5766/Analysys-Mason-final-report-for-BSG-\(Sept2008\).pdf](http://www.analysysmason.com/PageFiles/5766/Analysys-Mason-final-report-for-BSG-(Sept2008).pdf)

26 WIK-Consult/ECTA, (2010), 'The Economics of Next Generation Access', [http://wik.org/uploads/media/ECTA\\_NGA\\_masterfile\\_2008\\_09\\_15\\_V1.pdf](http://wik.org/uploads/media/ECTA_NGA_masterfile_2008_09_15_V1.pdf)

27 NBN Co, *Submission 3*, p. 2. See also, Department of Communications, *Submission 2*, p. 1.

28 NBN Co, *Submission 3*, pp 2–3.

29 ABS, (2014 ), 'Household Use of Information Technology', available online at: [http://www.abs.gov.au/ausstats/subscriber.nsf/log?openagent&81460do001\\_201213.xls&8146.0&Data+Cubes&E998E9B17EC34C0BCA257C89000E4007&0&2012-13&25.02.2014&Latest](http://www.abs.gov.au/ausstats/subscriber.nsf/log?openagent&81460do001_201213.xls&8146.0&Data+Cubes&E998E9B17EC34C0BCA257C89000E4007&0&2012-13&25.02.2014&Latest)

30 Morsillo, Robert. 2012. 'Broadband affordability in Australia: looking beyond availability'. *Telecommunications Journal of Australia* 62 (5): 80.1–80.16.

1.36 The Strategic Review identified that completing the NBN under the former Labor Government's plan would cost \$73 billion, increase prices for consumers by up to 80 per cent and not be complete until 2024.<sup>31</sup> As Tasmania has the lowest average income in Australia, the former Labor Government's plan was likely to disproportionately disadvantage Tasmanian families due to a higher proportion of price sensitive households.

1.37 The department provided the committee with information on the rollout of the NBN in Tasmania. The department noted that the 'the contract with Visionstream provides flexibility with NBN Co to change rollout technologies' and added that:

It is our understanding that NBN Co's management of the rollout in Tasmania is entirely consistent with this contractual flexibility. NBN Co and Visionstream have agreed on arrangements for the rollout which have resulted in an improved rate of progress over recent months.<sup>32</sup>

1.38 The department also submitted that there are a number of conceptual and implementation challenges associated with the bill. The department noted that the NBN Companies Act does not regulate NBN Co's day-to-day operations, the technologies it uses or the wholesale product it provides. As a commercial entity, NBN Co is 'run on commercial lines with products and pricing to be determined on commercial principles',<sup>33</sup> giving it the 'flexibility to invest in and divest itself of assets as necessary, especially to facilitate the cost-effective roll-out of the NBN'.<sup>34</sup>

1.39 The department went on to note that the NBN Companies Act states that a key objective of the Act is to provide a regulatory framework for NBN corporations that promotes the long-term interests of end-users of carriage services. Thus, a proposed amendment to the NBN Companies Act could 'therefore reasonably be required to demonstrate that it meets the long term interests of end-users across the nation'. The department stated:

NBN Co specific legislation was primarily established to prevent NBN Co from acting in ways that abuse its market power and monopoly position; not to prescribe what services or technologies it should deploy. As such, the proposed additions to the NBN Companies Act in this Bill would represent an exception that operated in a distinctly different manner to the overarching intent of the entity-specific legislation that applies to NBN Co.<sup>35</sup>

1.40 In addition, the department noted that successive governments have avoided specifying technologies in telecommunications legislation on the grounds that industry

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31 NBN Strategic Review, p. 19.

32 Department of Communications, *Submission 2*, p. 2.

33 Department of Communications, *Submission 2*, p. 3.

34 Revised Explanatory Memorandum, National Broadband Network Companies Bill 2010 and Telecommunications Legislation Amendment (National Broadband Network Measures — Access Arrangements) Bill 2011, p. 18.

35 Department of Communications, *Submission 2*, p. 3.

and the market are in a better position to determine the most appropriate technology to meet the conditions in a particular area. The department went on to comment that this is 'reflected in the Government's decision to support NBN Co's adoption of a multi-technology mix'.<sup>36</sup> It is expected that the NBN Co Board and management will monitor the capabilities required to implement a multi-technology mix, with the department commenting:

In this context, the proposed amendment to the NBN Companies Act would represent a conflicting direction to NBN Co which is inconsistent with the broad NBN Co model (being established under Corporations Law) and the Act.<sup>37</sup>

1.41 The department also pointed to the following technical issues arising from the bill:

- it could have the effect of making the connection of 200,000 premises in Tasmania a priority, over and above the rollout in other under-served areas in the rest of Australia;
- the resourcing requirements may delay the rollout plans in other parts of Australia and conflict with the NBN Co Board's responsibility to achieve the rollout on the most cost-effective basis;
- with no definition of 'connected' in the bill, it is unclear whether 'being connected' refers to end-users adopting services on the NBN. As NBN Co is a wholesale-only provider, it has no capacity to compel end-users to take up services on its network or to accept compulsory installation of connection equipment at end-user premises. NBN Co would not be in a position to guarantee this outcome and meet the target required by the bill; and
- the March 2012 media release cited in the Explanatory Memorandum does not specify 200,000 as the number of premises covered by the Visionstream contract; rather, it refers to 'around 200,000 homes and businesses'. The department recommended that the Explanatory Memorandum be updated 'to clarify this by aligning its language'.<sup>38</sup>

1.42 The department concluded:

In summary, the Bill if enacted would create a number of significant policy and commercial challenges and conflict with the overarching governance framework of legislation, regulation and company responsibilities established to provide oversight for the NBN rollout.<sup>39</sup>

1.43 The solitary submission not opposing this bill, from Advanced Computer Fix, argued that FTTP offers:

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36 Department of Communications, *Submission 2*, p. 3.

37 Department of Communications, *Submission 2*, p. 3.

38 Department of Communications, *Submission 2*, p. 3.

39 Department of Communications, *Submission 2*, p. 4.



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- much better latency that provides a much better experience with video conferencing, remote desktop and other time critical software;
  - a measureable speed making it much simpler to determine a fault; and
  - an even playing field for all Telcos.<sup>40</sup>

1.44 Advanced Computer Fix commented that video conferencing 'will play a huge part of our future as education and medical industries find their feet with this technology'.<sup>41</sup> Furthermore, upload speeds were important in allowing businesses to save costs by backing up data offsite and using offsite servers, and in giving businesses more workplace flexibility by allowing for remote access.<sup>42</sup>

1.45 However, the Advanced Computer Fix submission appears to compare a FTTP NBN with no upgrade and continued use of ADSL services, not the vectored VDSL services FTTN will deliver. As trials have demonstrated and experience around the world shows, vectored VDSL services over FTTN are able to provide upload and download speeds far in excess of the needs of the vast majority of users.<sup>43</sup>

1.46 The committee notes that the Explanatory Memorandum to the bill claims that there are no additional financial implications of this measure, citing existing funding for NBN Co, as provided for in the Budget Papers, based on the Corporate Plan 2012–15, despite the obvious deficiencies of the plan which failed to meet a single construction target and saw significant cost blowouts as detailed in NBN Co's strategic review.<sup>44</sup> The committee does not accept that the provisions of this bill will come with no additional financial implications.

## Conclusion

1.47 The committee does not support the amendments proposed in the bill. The committee notes the shambolic nature of the previous NBN rollout and considers that flexibility is required to ensure that the ongoing rollout of the NBN is undertaken in a timely, cost-effective and efficient manner.

1.48 The committee considers that examining or learning from the systemic and material failures of NBN Co, which by September 2013 had reached just 3 per cent of Australian premises at a cost to taxpayers of \$6.5 billion, has assisted in developing more effective and affordable options.

1.49 To continue with this failed approach is not an option, as it represents the single largest destruction of value for taxpayers in the history of the Commonwealth.

1.50 The committee does not accept the assertion that NBN Co did not honour its existing contracts. NBN Co has not reneged on or terminated its contract with

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40 Advanced Computer Fix, *Submission 4*, p. 2.

41 Advanced Computer Fix, *Submission 4*, p. 2.

42 Advanced Computer Fix, *Submission 4*, pp 2, 3.

43 NBN Select Committee, *Committee Hansard*, 5 May 2014, pp 3–4.

44 NBN Strategic Review, p. 12.

Visionstream. The company has been working with its construction partners to settle disputes, improve processes and clarify objectives.

1.51 The committee accepts that the Government honoured its contractual commitments. The Minister for Communications stated prior to the election that existing contracts would be honoured by NBN Co. Visionstream, not NBN Co, sought revisions to the contracts as it was unable to meet the terms the contract specified.

1.52 In Tasmania, there were delays to construction, low rates of connection and delays between consumers ordering a service and receiving it. The use of a multi-technology mix and changes being made by NBN Co are expected to have a positive impact on these issues in Tasmania and across Australia.

1.53 It is clear that the rollout in Tasmania was failing to meet the needs and expectations of Tasmanians.

1.54 As noted by the department, the new Statement of Expectations indicates that NBN Co should proceed with the NBN rollout using an optimised multi-technology mix. This includes prioritising under-served areas so that these locations, on average, will receive upgrades two years sooner than would otherwise be the case. Further benefits include:

- project funding will be reduced by \$32 billion;
- the NBN will be finished four years sooner; and
- download speeds of 50 megabits per second will be delivered to premises in 90 per cent of the fixed line footprint by 2019.<sup>45</sup>

1.55 This is a significant outcome for all Australians: the NBN will deliver vital services in the areas of health, education and business through an infrastructure that addresses economic and technological issues.

1.56 The amendments contained in this bill would unnecessarily restrict NBN Co. It would remove flexibility to deliver broadband upgrades sooner, at a lower cost for taxpayers and at a more affordable price for consumers. As noted by the department, there are also conceptual and implementation challenges as well as a range of technical issues arising from the proposed amendments. The committee considers that the proposed amendments contained in the bill are deeply flawed.

1.57 The committee therefore recommends that the Senate not pass the bill.

### **Recommendation 1**

**1.58 The committee recommends that the National Broadband Network Companies Amendment (Tasmania) Bill 2014 not be passed.**

**Senator Anne Ruston**  
**Chair**

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45 Department of Communications, *Submission 2*, p. 1.