

Submission to Senate Select Committee on NBN

**Inquiry into the National Broadband Network Companies Bill
2010 and the
Telecommunications Legislation Amendment (National
Broadband Network Measures
– 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.

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 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.

NBN Co should be restricted to 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 by creating an entirely separate company that complies with the Structural Separation Policy that is the basis for the NBN legislation.

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

- Enabling the NBN Co to enter the Retail market.
- Unintended outcomes of allowing volume discounts for services. [Potential for introducing inefficiencies and anti competitive conduct].
- The exclusion of good governance requirements for the NBN Co, especially for the Engineering Design and Risk Management.

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 Co infrastructure must be available equally to all retail service providers.

Part 2 Supply of Wholesale Services

In order to promote competition and innovation, as well as achieving the social goals described by Minister Conroy, the services provided by the NBN Co should be clearly and unambiguously defined.

The Legislation in its current form attempts to achieve this by defining what type of access seeker can buy services from the NBN Co. This approach has a number of policy implementation issues, which have a number of undesirable (eg. ease of circumvention) and unintended outcomes (prohibiting valid access seekers).

Both the NBN Co and Minister Conroy have clearly stated that the NBN Co is a “last mile” provider and therefore a better framework for defining the business activities of NBN Co should be as a wholesale only point-to-point service provider. This means that the NBN Co is limited to providing a Layer 2 service from Points of Interconnect (POI) to the end users’ premises. The NBN Co should have no say, or impact, on the content of the data transmitted over the link.

This definition places clear limits on the Commercial, Engineering and Infrastructure business activities of the NBN Co.

This approach also eliminates many of the regulatory issues surrounding access seeker difficulties described by the opposition and Telecom industry.

The definition also clearly excludes the NBN Co from any involvement in the Retail Service Provider (RSP) space (no matter how it is packaged or defined) nor in the Customer Premises’ services space.

Part 2 Asset Acquisition

In CEG’s 2008 Senate Submission Dr Green discussed alternative procedures for the NBN Co when acquiring assets that have retail or RSP services. It is suggested that the NBN Co be required to appoint a Liquidator to:

- Transfer the point-to-point assets to NBN Co
- Sell off remaining assets including customers and business infrastructure to other parties.

Liquidators have more expertise in maintaining and selling the parts of the business that the NBN Co is not allowed to own or manage.

The use of the definition wholesale point-to-point, also makes it easier to determine which assets the NBN Co is allowed to buy.

In the current form the proposed 12 month period of grace allows the NBN Co to enter the Retail Service Provider business through a series of rolling sales and acquisitions.

Part 2 Discounts for Efficiencies on Volume

The Legislation in its current form has the un-intended outcome of transferring the existing Telecom monopoly situation from the “last mile” monopoly to the new emerging “Layer 3” market.

If discounts are offered to large volume RSPs then these companies will have an enormous advantage over their competitors and in turn reduce competition and innovation.

In CEG’s presentation to the Senate in 2008 Dr Green also discussed how discounts could damage the NBN Co, because the NBN Co would have to make up the value of the discounts by surcharging smaller RSPs. This will lead to further reductions in competition as well as increasing pressure on the NBN Co and Legislators to provide additional protection, and reduce scrutiny of the NBN Co.

All access seekers should have the same terms, prices, conditions and service. This includes commercial terms such as 60 day or 90 day payment terms.

It is worth noting that if the NBN Co develops a single portal for interfacing with access seekers then it does not matter how many service requests (1 or 1,000) the cost of processing the service requests will be the same, because each of the destinations will be different. This means that there is little scope for “efficiency gains” for large volume RSPs. The NBN Co should be allowed to charge extra for a feature such as 90 day payment instead of 60 day payment to cover the extra financial risk and cost of capital to cover the delay in payment. It is important that all fees and features should be made available to all customers.

Part 3 Condition for Sale of NBN Co

The provisions of the Legislation with regard to the determination of when the “NBN” is complete, is vague, and subjective.

All Telecom networks are continuously evolving and changing and it is difficult to define when a network is complete, especially a network with a construction time of 10 years.

Government should be able to sell the NBN Co at an appropriate time to realize the best return of the investment.

The proposed safeguards of a Productivity Commission Inquiry and a review by a Parliamentary committee are sufficient protection without the need for additional restrictions.

Part 7 Exemption from Freedom of Information Act

The Legislation defines the NBN Co in a manner that exempts it from the statutory requirements to comply with the Freedom of Information Act and the Public Works Committee Act.

The NBN Co also faces a number of significant risks, which could result in substantial financial and social losses for the Australian taxpayer.

This Legislation effectively reduces the requirements for good governance due to lack of public scrutiny.

The importance of good governance is critical for this project as described in the following quote: “ The Institute on Governance (www.iog.ca) has defined governance as “the process whereby societies or organizations make important decisions, determine whom they involve and how they render account”. Good governance allows organisations to make effective decisions, to make them in an efficient way, and to monitor and refine the outcomes of these decisions so as to improve overall organisational performance. “

Ref: Information Governance by Dr Graham Oakes CITP, FBCS

The NBN Co should be required by legislation to be subject to public scrutiny and held accountable for:

- Commercial and Business activities,
- Engineering Design and Risk Mitigation,
- Infrastructure Management.

Flaws in the Engineering Design and Risk Mitigation present the greatest threat of financial loss to the Australian taxpayer.

It is essential that the proposed exemptions be removed and replaced with a Legislation to ensure that there is adequate auditing and critical review of NBN Co’s engineering and business activities.