



Submission by Internode Pty Ltd in regards
to the National Broadband Network
Companies Bill 2010; and
Telecommunications Legislation
Amendment (National Broadband Network
Measures - Access Arrangements) Bill
2010

February 2011

To: Committee Secretary
Senate Standing Committees on Environment and Communications
Parliament House
Canberra

via ec.sen@aph.gov.au

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Introduction

Disclosures

The submission is made by Internode Pty Ltd as a Retail Service Provider on the NBN Co network.

Internode's sister company Agile Pty Ltd holds an Australian Carrier License and has received Commonwealth, State and Local Government funding for numerous regional telecommunications projects over the last decade.

Internode is a member of the Internet Industry Association.

Agile is a member of the Competitive Carrier Coalition and a Carrier member of CommsAlliance.

Publication

Any part of this submission may be published with attribution to Internode.

Background

Internode has been providing Internet access services in Australia since 1995 and Agile was formed and received a Carrier License in 1997.

Preamble

Internode would like to thank the Committee for providing this opportunity to contribute to the national debate on the future of telecommunications in Australia.

General comments

Internode is highly supportive of the NBN and the public policy goals of the government. We are however concerned that the legislation before the parliament does not necessarily attempt to implement those goals but rather a broader range of services under a broader range of restrictions.

Internode and sister company, licensed carrier Agile, are concerned that the economic value of our existing network is diminished greatly by the "*anti-cherry-picking*" provisions and that they will have unintended but significant consequences.

Specific clauses in the National Broadband Network Companies Bill 2010

Clause 18 Non-communications services not to be supplied

This clause or some other clause needs to clarify that the supply of services enabling the use of the network are explicitly permitted, in particular the use of data centre or equipment colocation facilities for locating access seeker equipment.

Specific clauses in the Telecommunications Legislation Amendment Bill 2010

While the proposed section 152AXC is titled "*NBN corporation to supply declared services on a non-discriminatory basis*" its effect is to specifically allow NBN Co to supply services on a *discriminatory* basis. This is utterly unacceptable and will lead to uncompetitive competitors and significantly higher retail prices.

Of similar concern, Schedule 1, Part 3, page 47 adding Part 7 (from line 15) at line 1 of page 48:

"the network came into existence, or was upgraded, after 25 November 2010; and"

will have the effect of preventing any network construction immediately regardless of the eight to ten year roll out of the NBN Co network. This clause is utterly irresponsible and a dramatic over reaction to fears of "cherry-picking" and overbuild. A specific example of how this fails is the construction by our sister company Agile at present of a fibre between two data centres that will be used to provide services to multiple customers at each location. This cable is captured by this section as soon as NBN Co provide a service at these sites. Given that there is no certainty as to when this will occur licensed carriers have no ability to determine the economic value of the investment. This provision will have the effect of stagnating the development of the online content industry let alone ensuring that people moving into new housing developments face another decade of uncertainty as to the availability of high speed Internet services.

The anti-cherry-picking amendments are not required in an environment where all operators are required to provide access to the NBN or equivalent access to retail service providers.

As written, these amendments will have the effect of ensuring no new fibre is deployed in Australia other than by NBNCo and to their unspecified multi-year roll out schedule.

Proposed amendments to National Broadband Network Companies Bill 2010

Internode supports Mr Brandt's proposed amendment re Freedom of Information.

Internode supports some of Mr Turnbull's proposed amendments, specifically:

(5) and (6) on the basis that NBN Co should not be entering into the direct supply of services that are rightly the current domain of other licensed carriers and service providers.

(7) on the basis that NBN Co should not be providing higher level managed services beyond OSI layer 2.

(16) on the basis that parliamentary oversight of NBN Co's extensive and expensive activities is highly desirable.

(17) being consistent with Mr Brandt's proposed amendment.

(18) and (19) being consistent with ensuring NBN Co remain a wholesale only service provider.

Internode does not support Mr Turnbull's proposed amendments (1) to (4) and (8) to (15) on the basis that it is critical any future sale of NBN Co or its assets be subject to the oversight of the parliament.

Proposed amendments to Telecommunications Legislation Amendment Bill 2010

Internode supports Mr Turnbull's proposed amendment (1) on the basis that the largest market participant has over 50% of the fixed line market and that allowing price discrimination against other service providers will only entrench their position and lead to a significantly less competitive market.

Internode's support of the NBN to date has been on the basis of open and fair competition.

Mr Turnbull's proposed amendment (2) has some significant merit although Internode considers that it throws away significant regulatory benefits while addressing the *anti-cherry-picking* issue. On balance, Internode would prefer Mr Turnbull's amendment in the absence of a narrower amendment that throws out the anti-cherry-picking provisions.

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