



TELSTRA CORPORATION LIMITED

INQUIRY INTO THE TELECOMMUNICATIONS LEGISLATION AMENDMENT (FIBRE DEPLOYMENT) BILL 2011

Response to the Joint Committee on the National Broadband Network

23 May 2011

TABLE OF CONTENTS

Contents

- 1. Executive summary 3
- 2. The Fibre Deployment Bill 3
- 3. Concerns of the GFOA Document..... 4
- 4. Universal Service Obligation 5

1. EXECUTIVE SUMMARY

Telstra appeared at a public hearing of the Joint Committee on the National Broadband Network ("Joint Committee") on 16 May 2011, as part of the Joint Committee's inquiry into the Telecommunications Legislation Amendment (Fibre Deployment) Bill 2011 ("Fibre Deployment Bill"). During that appearance, Telstra was asked to provide its views on the document entitled "Testimony of Greenfield Fibre Operators of Australia (GFOA)" ("the GFOA Document"). Telstra did not have an opportunity to review the GFOA Document prior to the public hearing and was therefore not able to comment on the GFOA Document at the hearing. Telstra has now received a copy of the GFOA Document and the purpose of this response to the Joint Committee is to provide Telstra's views on that document.

The GFOA document raises a number of issues of public policy. This response will:

- a) Provide an overview of the contents of the Fibre Deployment Bill and why Telstra supports its passage;
- b) Show that the concerns in the GFOA Document are distinct from the actual measures that the Fibre Deployment Bill seeks to implement; and
- c) Correct some inferences the GFOA Document makes in respect of the funding that Telstra pays into, and receives as part of, the Universal Service Obligation Fund.

2. THE FIBRE DEPLOYMENT BILL

The Fibre Deployment Bill provides for the following:

- An "optical fibre line requirement" which enables the Minister to specify by legislative instrument new developments or classes of new developments in which optical fibre lines must be installed if fixed lines are to be installed in those new developments. For example, if the Minister so specifies certain developments or classes of developments, Telstra would be prohibited from installing copper lines in those developments;
- A "fibre ready facilities requirement" which provides that where fixed line facilities are installed in a development located within the long term fibre footprint of the National Broadband Network (NBN), then those facilities must be "fibre ready facilities". Fibre ready facilities are those elements of pit and pipe necessary to ensure the ready deployment of optical fibre cabling within those facilities. For example, they have to be designed to have the right kinds of bends to the pipes to enable fibre optical cables to be easily threaded through them;
- A "fibre ready installation requirement" which prohibits constitutional corporations from selling or leasing land or buildings within a new development unless fibre ready facilities have been installed within those developments;
- A facilities access regime for carriers to secure access to fixed-line facilities owned by non-carriers.

In Telstra's view, the Bill provides clarity on the obligations of developers and infrastructure providers in new development areas. This clarity will facilitate a more streamlined application of the Government's policy objective of achieving fibre rollout in new developments. As the Universal Service Provider for Australia, Telstra has a substantial interest in achieving such certainty. Telstra requires certainty of its obligations and role in providing standard telephone services to Australians on request. Telstra is also aware that

the developer community is seeking policy clarity to enable them to plan and build new homes and business premises for the broader Australian community.

3. CONCERNS OF THE GFOA DOCUMENT

The elements of the Government's policy as articulated by the Fibre Deployment Bill are in the main not within the scope of concern of the GFOA Document. Rather, the GFOA Document has concerns with elements of public policy which are outside the scope of the Bill. For example:

- Concerns with NBN Co's selection of a single provider of fibre infrastructure in new development (rather than a panel of providers). We understand that NBN Co's choice of contractor to provide infrastructure in new developments is a commercial matter for NBN Co and do not see it as relevant to the content or intent of the Bill;
- Concerns with the "provider of last resort" status of NBN Co. Namely, that if NBN Co has an obligation to provide fibre infrastructure without an upfront cost to the developer, then it will be difficult for the private sector to compete against NBN Co. The GFOA Document is advancing a Government subsidy model that is open for all market participants, rather than NBN Co being the sole recipient of Government funding. Again, this is a policy matter which we believe is not relevant to the content of the Bill¹;
- Concerns with NBN Co deploying to 120 points of interconnect ("POIs"). This is an issue which has been subject to a separate process consisting of substantial public consultation and ACCC review². Again, this is a policy matter which is not relevant to the content of the Bill;
- Concerns that the Bill will enable the Minister to determine the standards and specifications for fibre deployment and interconnection. That the Minister will either

¹ The GFOA document references the Media Statement published on 13 May calling for submissions by 20 May, which stated the Bill "enables NBN Co to be the fibre provider of last resort" in new developments. With respect, the Joint Committee's Media Statement was not an accurate reflection of the contents of the Bill. Our understanding is that the Media Release was a reflection of the Explanatory Memorandum to the Bill that does reference NBN Co's role as fibre provider of last resort but the reference in the EM is to Government policy announced on 20 June 2010 with further detail announced on 9 December 2010. The actual implementation of that policy is not facilitated by the Bill.

² In October 2010, the ACCC issued a consultation paper in response to a request from the government for the ACCC and NBN Co to undertake a process, including public consultation, to seek agreement on the number and location of initial Points of Interconnect (POI) for the National Broadband Network (NBN) that will best meet the long-term interests of end-users (LTIE). In November 2010, the ACCC provided advice to the Government that the appropriate number would be between 108-130 POIs. With the ACCC's guidance, NBN Co developed a set of network Planning Rules based on the ACCC's Competition Criteria. The Planning Rules include a 'soft cap' of approximately 80,000 premises for metro POIs and approximately 100,000 premises for outer metro/regional POIs. In December 2010, NBN Co developed a list of 120 initial POIs to the NBN based on the Competition Criteria and the Planning Rules. On 20 December 2010, the ACCC commenced a public confirmation process in respect of the 120 POIs which were proposed by NBN Co as a result of applying the Competition Criteria and the Planning Rules. The ACCC received 8 submissions in response to this confirmation process. As a whole, these recommended the (a) relocation of 7 POIs; (b) addition of 20 POIs; and (c) consolidation of 9 POIs into 4 (generally where proposed POIs were close together). On 3 May 2011, the ACCC published a revised list of POIs to the NBN. The revised list is a refinement of the outcome of the public confirmation process about the initial POIs to the NBN. The May 2011 list identifies POIs that have changed from previous lists due to space and/or power and cooling issues in the facilities originally identified for the POIs. The ACCC anticipates that POIs will usually be located in Telstra exchange buildings, consistent with the Planning Rules. The number of premises (measured in GNAFs) and the number of Fibre Serving Areas expected to be served by each POI is still being finalised (by NBN Co) and will be made available when the ACCC has received the relevant information. The May 2011 list of POIs identifies: 20 POIs that have been relocated and the name of their previous location, and 10 POIs where NBN will build its own facilities (two of which are among the 20 that have been relocated).

set standards and specifications that only suit NBN Co network design and business or be silent and allow NBN Co standards and specifications to become the default standards and specifications.

Any concerns relating to standard setting in this area has already been addressed in previous legislation. The standard making powers in the Bill refer to standards ensuring the interoperability of **customer equipment** with the NBN or other superfast networks, rather than with the standards required of the network builder. The Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Act 2011, in amending Part 21 of the Telecommunications Act 1997 provided the Australian Communications and Media Authority (“ACMA”) with powers to make technical standards relating to layer 2 bitstream services. There are general powers for the making of Codes and Standards under sections 117 and 118 of the Telecommunications Act which can be used by the Communications Alliance and the ACMA to make the type of codes and standards that the GFOA Document is referring to. Hence concerns raised by the GFOA Document are not relevant to the content of the Bill.

In summary, the GFOA document does not appear to raise concerns with the content of the Fibre Deployment Bill itself (namely the optical fibre requirement, the fibre ready facilities requirement, the fibre ready installation requirement and the facilities access regime to fixed line facilities owned by non-carriers). Rather it goes to aspects of Government policy which, while being important, have either been addressed through consultation or should be considered separately to the Bill in question. We do not believe these concerns should not cloud the Joint Committee’s understanding and support for the passage of the Bill itself which, in Telstra’s view, will provide much needed certainty to the developer and infrastructure community on the provision of fibre and fibre ready facilities in new developments.

4. UNIVERSAL SERVICE OBLIGATION

The GFOA Document makes a number of assertions in relation to Telstra and Telstra’s role as the Universal Service Provider (“USP”) for Australia.

Particularly it states “Government funding even to the extent of universal service obligation (“USO”) contributions for each new connection (about \$1000/connection) has not been available to GFOA carriers”. The inference of this statement (as confirmed by the testimony of the GFOA representatives at the public hearings held on 16 May) is that the USO fund that Telstra pays into and receives is for the purpose of funding new developments. This is not accurate.

Telstra as the USP for Australia receives funding for the shortfall that it incurs in providing standard telephone services. In Telstra’s view, the amount of the funding is not sufficient to cover the shortfall incurred. This shortfall (between costs and revenues) occurs in high cost areas of Australia. High cost areas of Australia are predominantly in rural and regional parts of Australia where due to distance, density and terrain, the cost to supply services is greater than the amounts received from customers. Historically, Telstra would not have suffered such a shortfall in respect of most new developments as it would earn a positive return on the initial build costs over the long term life of those assets.

Telstra recognises the term “new development”, as defined under the Bill, can extend to single dwellings, so a new individual farmhouse or outback station, which would be a high cost connection, could be said to be a new development to which the USO funding is applied. However, the kinds of new development areas to which the GFOA group would

themselves be supplying infrastructure would generally be on the outskirts of suburban areas and major towns. These kinds of new developments would generally not, over the longer term, provide Telstra with a shortfall where Telstra had installed copper in those new developments.

It is important to note that due to the higher cost of installing fibre rather than copper infrastructure and increasingly lower overall fixed line penetration in Australia, there is less certainty of earning a return over the longer term for the installation of fibre in new developments without some form of subsidy or other form of upfront capital contribution. Hence, the position articulated in the GFOA Document. However, the solution is not to reallocate USO funding which has generally been provided to Telstra for another set of high cost customers, not for the purpose of supplying new developments with fibre infrastructure. The Government's approach has been to provide for NBN Co to be the provider of last resort and to subsume the cost of these developments in the overall build of the NBN.