

SENATE SELECT COMMITTEE HEARINGS, 8 OCTOBER 2008

Questions on Notice

Broadband, Communications and the Digital Economy

QUESTION 1

Hansard ref: NBN 57, Senator Nash

Senator NASH—How did the government arrive at the figure of 98 per cent?

Mr Lyons—I think as you will be aware there is an election commitment—

Senator NASH—I am asking how they arrived at the figure. Election commitments can spring up all sorts of wonderful things but how did they actually arrive at 98 per cent?

Mr Lyons—I would need to take that on notice because we are about implementing the government's election commitment.

Senator NASH—How did they arrive at the figure of \$4.7 billion figure as an appropriate amount of funding?

Mr Lyons—Similarly I will take that on notice because our role in the department is to implement the government's clearly stated election commitment. And remember that the \$4.7 billion is an 'up to' figure.

Senator NASH—If you could take those both on notice and in detail, I think it would be quite important for this committee to understand exactly the rationale behind the government arriving at both of those figures.

ANSWER:

The Department is implementing the Government's election commitment to invest up to \$4.7 billion in a National Broadband Network that will deliver minimum connection speeds to 98% of Australian homes and businesses. The election commitment is clearly stated in the Australian Labor Party's policy platform *New Directions for Communications – building a National Broadband Network* which was released in March 2007.

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QUESTION 2

Hansard ref: NBN 59 Senator Ludlam

Senator LUDLAM—Some time ago the Australia Communications Consumer Action Network was formed. Can you sketch what role that group has played since its inception and how it is constituted?

Mr Lyons—I would probably need to take that on notice because it is not within my direct area of responsibility. Certainly, consumer groups that are part of that overall process of the minister were invited and did make submissions to the department on what they see as the policy and regulatory issues associated with the national broadband network. But the question of the operations of that particular committee is something I would need to take on notice.

Senator LUDLAM—I would really appreciate that, just as to how active a role that group has taken or it is envisaged that it will take—

Mr Lyons—Do you mean in this process, or generally?

Senator LUDLAM—Both. I presumed it was more something for after, but we heard yesterday from one witness that there is a real gap actually in consumer protection particularly as broadband starts to take on the role of virtually an essential service. While we have spoken of most of the \$4.7 billion being in wires, cabinets, nodes and so on, there is a real need for consumer protection to be properly considered as this rolls out. It would be helpful to have that.

ANSWER:

The Australian Communications Consumer Action Network (ACCAN) has been formed to be the peak communications consumer organisation, and its Founding Board was announced on 6 August 2008. ACCAN was registered by the Australian Securities and Investments Commission as an Australian Public Company, Limited By Guarantee on 15 October 2008. ACCAN will commence formal operations from 1 July 2009, as a consumer representative body funded under section 593 of the *Telecommunications Act 1997*.

The National Broadband Network (NBN) Request for Proposals, which sets out the Commonwealth's objectives and evaluation criteria for the NBN, was released on 11 April 2008 and details the respective roles of the Panel of Experts, the Minister for Broadband, Communications and the Digital Economy, government agencies and specialist advisers involved in the evaluation process. NBN proposals will be evaluated by the Panel of Experts, who will provide a report to the Minister for Broadband, Communications and the Digital Economy.

As the Department noted in its answer to the Committee's written Question On Notice Number 15, several consumer organisations responded to the Government's public invitation for submissions on the NBN including the Australian Telecommunications Users' Group and Telecommunications Disability Consumer Representation (TEDICORE, a project of the Australian Federation of Disability Organisations), and a number of organisations which have representation on the founding board of the Australian Communications Consumer Action Network (ACCAN) such as the Internet Society of Australia and the Consumers' Telecommunications Network.

As detailed in the NBN Request for Proposals (clause 10.6.2), the Panel of Experts will be able to have regard to the regulatory submissions in its evaluation of proposals.

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QUESTION 3

Hansard ref: NBN 60 Senator Fisher (Chair)

CHAIR—By virtue of defining the 98 per cent. You are in the business of advising the government as to the formulation of its policies. Now that it is government have you provided advice as to how the 98 per cent might be defined or made up?

Mr Lyons—I would take that on notice but I do not believe that we have. One of the things that we do need to do in running this process is to start off on the basis of the government's objectives and the way that the request for proposals has been framed and then not to try to reach predetermined outcomes that are not clearly stated in the request for proposals. We want to look at the proposals that are received and evaluate the extent to which they are achieving 98 per cent.

ANSWER:

See answer to Question 1.

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QUESTION 4

Hansard ref: NBN 62-63 Senator Minchin

Senator MINCHIN—If I could refer back to the issue Senator Birmingham has been raising, the issue of the OPEL proposal, could you just remind us was that a signed contract?

Mr Lyons—There was a condition precedent in a funding agreement entered into between the Commonwealth and OPEL.

Senator MINCHIN—It was signed conditionally?

Mr Lyons—And the government on advice from the department considered that that condition precedent had not been met.

Senator MINCHIN—Just remind us how you reached that conclusion.

Mr Lyons—I would probably need to take the details on notice but broadly speaking the condition precedent required the proponent, OPEL, to achieve 92 per cent of coverage in accordance with the department's methodology. There were complex clauses in the deed. But ultimately the government assessed and, more importantly, the department assessed that it was significantly less than what was required under the condition precedent. That was about serving underserved premises. It was not a question of coverage, it was a question of calculating the extent to which people were going to be provided with a metropolitan-comparable service that they were not currently being provided. That involved coverage maps and detailed technical analysis. Based on the expert advice from the department and its advisers there was a decision taken that OPEL did not meet the condition precedent. It was a legal decision.

ANSWER:

The Commonwealth executed a Funding Agreement with the partner entities of OPEL Networks on 7 September 2007. To ensure that OPEL would deliver on its coverage commitments, the Department negotiated Conditions Precedent to the Funding Agreement, which gave OPEL 80 Business days to undertake detailed testing and analysis, and provide an Implementation Plan for the Government's approval.

The Funding Agreement allowed OPEL to use its own definition and number of underserved premises in determining coverage. However, OPEL was also required to demonstrate that the coverage of its number of underserved premises was reasonably equivalent to 90 per cent of the underserved premises the Department identified as falling within the coverage area committed to in the Funding Agreement. OPEL agreed to achieve coverage based on the Commonwealth's database of underserved premises in the assessment of its Implementation Plan when it agreed to the Conditions Precedent within the Funding Agreement.

The Department's analysis of the Plan confirmed OPEL's own analysis of its network coverage, which equated to 72 per cent of the 526,000 underserved premises identified by the Department.

The Department determined that this level of coverage was not reasonably equivalent to the minimum of 90 per cent coverage of those identified underserved premises required under the Funding Agreement, and therefore the Agreement was automatically terminated, in accordance with the provisions of that Agreement.

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QUESTION 5

Hansard ref: NBN 64 Senator Minchin

Senator MINCHIN—Can you remind us where the other \$2.7 billion is proposed to come from?

Ms King—I think the rest of the funding for the Building Australia Fund is coming from the budget surplus generally. That is my understanding.

Senator MINCHIN—Will you take that on notice?

Ms King—Yes.

ANSWER:

The National Broadband Network will be funded from the Building Australia Fund (BAF). It was announced in the 2008-09 Budget Paper No.2 that the Communications Fund will be closed and its assets transferred to the BAF. The BAF will also receive \$2.7 billion from the Telstra 3 sale process.

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QUESTION 6

Hansard ref: NBN 65 Senator Minchin

Senator MINCHIN—If it is not subject to the requirements that the Prime Minister announced with respect to the Building Australia Fund, it will not be subject to any comparative testing whatsoever as to where it fits in the national priorities for infrastructure spending. Should we take that as a given?

Mr Lyons—I think we would probably need to take that on notice, given that the government has not made any announcements in relation to that issue.

ANSWER:

The Australian Government has identified the National Broadband Network as an infrastructure priority. The Minister for Broadband, Communications and the Digital Economy stated at the Supplementary Budget Estimates hearings on 20 October 2008 that, ‘This [National Broadband Network] will not be subject to Building Australia Fund processes. This is a separate election commitment.’

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QUESTION 7

Hansard ref: NBN 65 Senator Fisher (Chair)

***CHAIR**—Given the emphasis placed by the government on the roll-out of the national broadband network and the recent announcements in respect of Infrastructure Australia, on what basis would the national broadband network essentially not be part of the government’s renewing vision in respect of Infrastructure Australia?*

***Mr Lyons**—I would probably again take it on notice, because the government has not made specific announcements about that issue, other than to say that after the election the government wanted to achieve its election commitments in a timely way. The government triggered a request for proposals process. It already had an election commitment to commit up to \$4.7 billion. The request for proposals implements that election commitment. The government made decisions on the policy objective that would be met through that process, and the process is under way.*

ANSWER:

See answer to Question 6.

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QUESTION 8

Hansard ref: NBN 66 Senator MacDonald

Senator IAN MACDONALD—Is it intended that there will be any sort of connection or coordination between the Infrastructure Australia process and this NBN process?

Mr Lyons—I will take the details of that question on notice, other than to say that the government has embarked on a request for proposals process. It wanted to get a timely outcome from this process and so it sets up a request for proposals set of documentation. They are the rules of the game for the bidders to bid against. They are not something that is going to be changed midstream.

ANSWER:

See answer to Question 6.

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QUESTION 9

Hansard ref: NBN 67 Senator Birmingham

Senator BIRMINGHAM—In accordance with the methodology laid out in the funding agreement? Was it the government's methodology or the contractor's methodology?

Mr Lyons—I take on notice the specifics of the question, but fundamentally it was reaching 92 per cent of underserved premises in accordance with the database of methodology of the department that had been provided to proponents.

ANSWER:

The Funding Agreement allowed OPEL to use its own definition and number of underserved premises in determining coverage. However, OPEL was also required to demonstrate that the coverage of its number of underserved premises was reasonably equivalent to 90 per cent of the underserved premises the Department identified as falling within the coverage area committed to in the Funding Agreement.

The Department's analysis of the Plan confirmed OPEL's own analysis of its network coverage, which equated to 72 per cent of the 526,000 underserved premises identified by the Department.