

**Submission to**

# **Senate Select Committee National Broadband Network**

Terria Ltd

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## Table of Contents

1	Terms of reference .....	3
2	Introduction .....	4
3	Opportunities under the NBN .....	5
3.1	Open access for best effect.....	5
3.2	Resale service options continue.....	7
3.3	'Roll-in' deployment benefits those most in need.....	8
3.4	Fostering competition delivers innovation .....	9
3.5	Completing the sale process .....	9
4	Conclusion .....	11
5	Contact Details.....	12
6	Appendix 1 .....	13
	Extracts from the Australian Government's RFP :.....	13

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## 1 Terms of reference

- 1) *A select committee, to be known as the Select Committee on the National Broadband Network, be established to inquire into and report by **30 March 2009** on:*
  - a) *the Government's proposal to partner with the private sector to upgrade parts of the existing network to fibre to provide minimum broadband speeds of 12 megabits per second to 98 per cent of Australians on an open access basis; and*
  - b) *the implications of the proposed National Broadband Network (NBN) for consumers in terms of:*
    - i) *service availability, choice and costs,*
    - ii) *competition in telecommunications and broadband services, and*
    - iii) *likely consequences for national productivity, investment, economic growth, cost of living and social capital.*

Comments addressing the two points above, are addressed in our submission on the following pages. The conclusion on page 11 specifically addresses the points (a) and (b) above.

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## 2 Introduction

The development of a National Broadband Network (NBN) presents Australia with an important opportunity to develop the capability for next generation telecommunications services.

Done well, it will provide Australia with the platform to develop a telecommunications industry that is second to none.

Done poorly, it will destroy the limited competition that has already developed (albeit, very slowly) in the Australian fixed voice and internet industry.

This unique opportunity is not simply about technology or consumer, it is first and foremost about setting up an industry environment where competition and, therefore, consumer benefits come first.

At the same time, it needs to provide investor certainty and an effective regulatory framework.

However, an industry structure that requires constant and costly, detailed, step-by-step intervention to drive and protect competition, is clearly a failure.

In a successful industry structure, the drivers of competition will be inherent - with regulatory intervention being a protective backstop, rather than the sole or main competition driver.

Deploying an NBN, therefore, requires more than a technical solution. It demands a complementary review of the industry structure, in association with the over-riding objective of promoting the long term interests of the end users of the NBN. Those interests are best served by ensuring innovation and competition are encouraged and that the investment base is broadened to as many participants as possible.

The Government's Request for Proposals (RFP) has indicated an intent to promote an open and competitive environment (consistent with industry sentiments)<sup>1</sup>. If this is achieved, then the NBN initiative will serve Australia well.

In summary, the RFP advises that –

- *Bidders will be required to provide a full wholesale suite of products (ULLS/LSS access equivalents)*
- *Bidders will be required to provide access seekers with the ability to differentiate their products. (not simple resale)*
- *Bidders will be required to offer effective open access with no preference to themselves. (e.g. Buildings, MDFs, backhaul, truck rolls...)*
- *Bidders will be required to be able to transfer services and customers.*

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<sup>1</sup> See also - Appendix 1, page 13 for extracts from "Request for Proposals to roll-out and operate a National Broadband Network for Australia"

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## 3 Opportunities under the NBN

A number of areas where the NBN will provide positive opportunities are listed below.

### 3.1 Open access for best effect

Open access to natural monopoly infrastructure is a key component of Australia's national competition principles.

In telecommunications, open access is the term given to the facilitation of access to various network components, so that a product or service can be assembled by a service provider (or access seeker). It allows all access seekers to develop and operate products and services over a network, regardless of who owns the infrastructure, as if the network was their own.

Open access is not free access. Fair, reasonable and non-discriminatory terms determine access charges.

The various network components that must be subject to open access principles include -

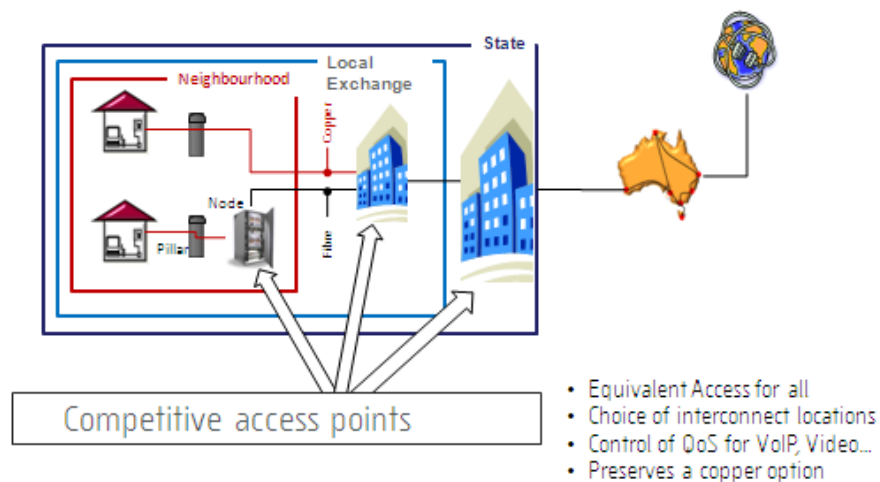
- Customer Access networks (the last mile);
- Data centre accommodation (buildings);
- Interconnection facilities (to other networks or carriers);
- Peering services (for sharing data);
- Switching systems;
- Data Storage and hosting;
- Transmission services (point to point communication links at a local, metropolitan or long distance level);
- International connectivity (to the rest of the world);
- Content;
- Customer transfer and 'churn' systems and processes.

Some service providers will have all of these components, others may acquire some and purchase others, all will have their own ideas about how the components should be put together, productised, priced and bundled for eventual sale to the market.

The terms and conditions for acquiring the various components should be subject to a level playing field with fair access to all access seekers on equivalent terms and without the complications resulting from conflicting interests. Conflicting interests will arise where public policy obligations contradict private objectives and should be carefully avoided.

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Under a genuine open access arrangement, access seekers will have flexibility in the ways in which they can access the NBN. This will enable them to best determine the access services they acquire to meet their own needs. Importantly, access to future technologies such as fibre to the premises will not be closed off and a fibre to the node deployment won't exclude incentives for complementary investment.



**Benefits:**

With a genuine open access regime, diverse service providers will compete to develop and provide a broad range of innovative products for consumers, using a broad range of access products and other network components.

Solutions based providers will develop new applications on emerging broadband services to aid productivity and reduce costs.

Alternative network technologies will continue to provide competing solutions for customers.

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### 3.2 Resale service options continue

Opportunities will exist for some service providers to develop new wholesale products and services for on-sale via retailers who do not wish to develop their own products and services. Resale allows a provider to enter the market and to build up a customer base and a business which can then lead (with appropriate scale) to investment in their own infrastructure. Most challenger brands in Australia that have their own infrastructure, initially entered the market as re-sellers.

More than 400 of the existing 421 service providers<sup>2</sup> operating in the Australian market, will continue to build their businesses, either completely or partially, around re-sold products and services, differentiating their offer, not by product design, but by service, price or positioning. Such competition will be enhanced by a genuine open access regime.

Resale is not access and should not be confused with such.

#### **Benefits:**

Hundreds of diverse service providers will compete to bundle resold products with service delivery and value-adds such as hardware and software integration and support.

Allowing open access also ensures diversity in the resale market, as different wholesale products are developed by multiple access seekers providing resellers with a choice of supply.

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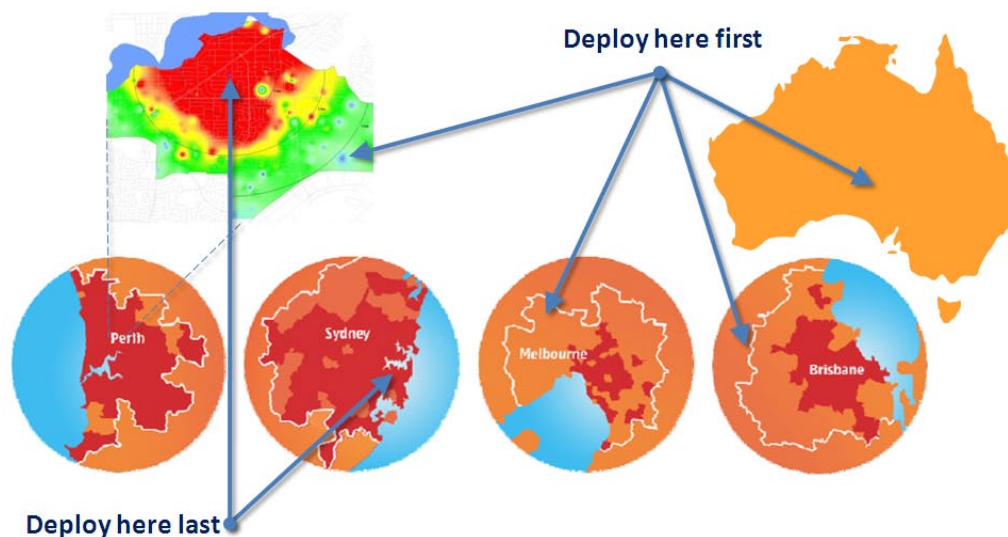
<sup>2</sup> [Australian Bureau of Statistics, Dec 2007.](#)

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### 3.3 'Roll-in' deployment benefits those most in need

The NBN provides an opportunity to schedule the deployment of the new infrastructure in such a way that those consumers currently without broadband, are the focus for the initial deployment.

This approach should vary by location, so that it may, in some instances, resolve a 100% lack of service in regional exchanges or a 20% or 30% deficiency in metropolitan exchanges, which have 'black-spots' in an otherwise enabled area. Once a given exchange is brought up to capital city standard, the deployment will address the next exchange and then the next.



'Rolling-in' the NBN starting with currently under-served areas will clearly reduce the gap between broadband 'haves' and 'have-nots'. Conversely, rolling out the NBN from already well served areas not only widens the current gap, but is also inequitable, counter-productive and devalues and destroys competitive gains already made. Areas currently suffering a complete absence of service or from the presence of 'black spots' would receive early attention under a 'roll-in' approach.

Many regional centres have access to sub-optimal services through lack of competition. Surrounding rural dwellings are further limited by the impact of distance. Many metropolitan homes are isolated as a result of technology choices in the current networks. Prioritising these areas for the initial deployment of the NBN is a simple matter, responds to community concerns about equity, increases broadband penetration more quickly than 'rolling-out' and still allows for a managed upgrade of existing metropolitan broadband infrastructure.

#### **Benefits:**

The quickest method of raising the penetration of real broadband can be used. This addresses community concerns and extends the life of existing high speed infrastructure already deployed.



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### 3.4 Fostering competition delivers innovation

The existing industry structure is unbalanced and distorted in favour of one company who continues (a decade after competitive reform) to extract around 80% of the industry's entire profit pool.

A genuine open-access regime, as envisioned in the RFP, will encourage further competitive development and benefit consumers and the industry. The current, albeit limited, regime has shown the potential benefits of a well structured industry, where it is allowed to operate.

Innovations in the fixed line broadband market have all been developed and introduced to customers by challenger brands. Incumbents are notoriously slow to market, slow to introduce new services, slow to lower prices and slow to facilitate customer choice. Allowing an environment which protects and supports the incumbent, is making the choice for reduced innovation, limited customer choice and a sluggish adoption of new technologies.

By extending the range of access services in a re-structured industry which has removed conflicts of interest, the network operator will be motivated to encourage retailers to increase traffic on the network, lower unit costs through economies of scale and build strong cases for increased investment on new network services and extended reach.

#### **Benefits:**

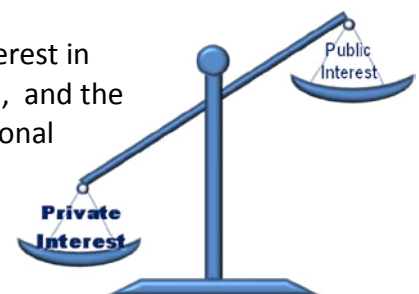
Encouraging competition will deliver benefits to consumers, businesses and to the economy at large. By encouraging innovation and applications development, network usage will increase and further investment will be justified.

As consumers incorporate telecommunications usage into more and more of their daily activities, integrating with new devices and applications, the NBN will provide greater opportunity for productivity gains and lower unit cost.

### 3.5 Completing the sale process

Removing the conflict of interest between owning and regulating Telstra was a major public policy objective announced by the previous Government<sup>3</sup>. That conflict of interest was well understood and needed resolution.

A conflict of interest still exists, however, between the public interest in achieving equitable access to telecommunications services for all, and the commercial interests of any company that both operates the national network and is also the dominant retailer. This conflict has been made crystal clear by Telstra's permanent war against the ACCC and the previous government and increasingly against the present government.



Telstra has consistently and openly stated that its commercial interests always come first, notwithstanding the public benefit objectives of government. It has made clear its opinion

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<sup>3</sup> <http://www.abc.net.au/7.30/content/2005/s1455526.htm>

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of universal service obligations, which it sees as an impost. It has rejected the notion of public private partnerships to deliver social dividends. It has lambasted the notion of open access to its network as a 'free ride' by 'leeches'. It has condemned regulation of the industry by the government as akin to 'maggots' consuming its wealth. It continues to argue that if it builds the NBN then the services for which the NBN is to be developed should not be regulated.

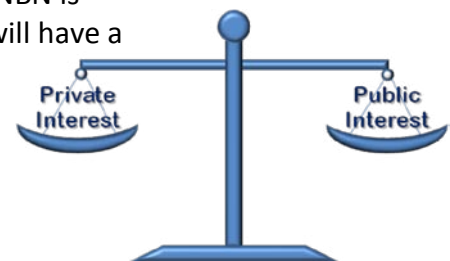
As well as this, Telstra makes it clear that it seeks premium prices for its services, going as far as to nominate a rate of return in excess of 18% (after tax) on any investment in NBN.

Telstra has no hidden agenda.

Its agenda is clearly (if obnoxiously) on the record and is regularly repeated.

However, the building of a new national broadband network provides an historic opportunity to overcome the conflict of a dominant incumbent (or any other company for that matter) both owning and operating the network and providing retail services.

By building a new NBN and ensuring the owner of that new NBN is independent of any retailer the owner of the new network will have a clear commercial incentive to support innovation and competition for the purpose of increasing traffic on the network, rather than being motivated to discriminate against any access seeker.



In other words, an independently owned NBN aligns commercial interest with the public interest.

An independent, open-access National Broadband Network, with separate functions and ownership from any downstream retailing activities, will have only one incentive – to drive traffic onto the NBN.

It will do this by providing open access to interconnection points, network components and world's best technologies. It will need to do this commercially and responsibly, delivering on community obligations. It will provide both social and financial dividends to its shareholders. It will compete with other modes of communication, but there will be only one NBN which will have a clear regulatory framework and no conflicting retail interests.

**Benefits:**

Choice, innovation and price competition will be driven by access seekers who have demonstrated their superior ability in these respects. Conflicts of interests are barriers to industry development, market development, product and service development.

An independent national broadband network, separate from any retail activity, removes these conflicts.

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## 4 Conclusion

In addressing the terms of reference, we therefore make the following concluding comments.

- a) the Government's proposal to partner with the private sector to upgrade parts of the existing network to fibre to provide minimum broadband speeds of 12 megabits per second to 98 per cent of Australians on an open access basis;***

High speed broadband is available to many communities in Australia today. In order to address this policy objective in its fullest sense (98% coverage), Terria recommends a 'Roll in' deployment. Prioritising the delivery of new services to those sections of the community that do not currently have access to high speed broadband will be the fastest means to achieving this end.

Delivering first to customers currently without adequate services, is the most fair and equitable approach to improving broadband access.

Information on the availability of existing services and the performance experienced by customers across Australia is important in assessing which communities or geographies should be prioritised for service. This information should be publicly available and regularly updated.

- b) the implications of the proposed National Broadband Network (NBN) for consumers in terms of:***
- i. service availability, choice and costs,***
  - ii. competition in telecommunications and broadband services, and***
  - iii. likely consequences for national productivity, investment, economic growth, cost of living and social capital.***

A telecommunications market that encourages competition will deliver improvements to all the areas listed. Technology in itself is not the solution to these issues. Focusing on the availability of a specific kind of network misses the point.

Market structure is essential to ensure competitive forces deliver the desired outcomes listed above. In order to ensure the correct incentives are in place for market participants, conflicts of interest between public policy requirements and private interests must be removed. Getting the market structure right allows the market to deliver on these objectives in an optimal fashion.

Allowing conflicts to continue will impede the market's ability to deliver on public policy, where private interests over-rule community benefit. An important requirement, in this respect, is to ensure that the NBN is structurally separated from any retailing activity.

To enable the most appropriate market settings, the ACCC is well placed and has significant experience to complement its regulatory powers. We believe an ongoing and active role by the ACCC is a key component of the industry and its structural reform.

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## 5 Contact Details

**The Hon. Michael Egan FAICD**

Chairman,

Terria Ltd

Tel: 02 9331 8772

Mobile: 0409 788 648

Email: [michaelegan@iprimus.com.au](mailto:michaelegan@iprimus.com.au)

**Mr Michael Simmons**

Managing Director

Terria Ltd

Tel: 02 9006 3320

Mobile: 0427 507 939

Fax: +61 2 9006 1010

Email: [msimmons@terria.com.au](mailto:msimmons@terria.com.au)

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## 6 Appendix 1

### Extracts from the Australian Government's RFP :

(emphasis added)

#### ***“Request for Proposals to roll-out and operate a National Broadband Network for Australia”***

1.1.10 Proponents should submit arrangements for **open access to their networks**, including measures or models to ensure equivalence of access prices and non-price terms and conditions, and arrangements for **allowing access seekers to differentiate their service offerings to customers**

1.3.1.10 The Commonwealth's objectives for the NBN project are to establish a national broadband network that ... **facilitates competition through open access** arrangements that ensure equivalence of price and non-price terms and conditions, and **provide scope for access seekers to differentiate their product offerings**

1.4.1. (a) Proponents should, as a minimum, provide a service description for each wholesale service to be offered by the NBN ... Amongst other things, Proponents should include ...the extent to which the service is compatible with equivalent existing ... and arrangements for **seamless transfer of existing services** and applications to the new service where appropriate.

1.4.1. (b) Wholesale services should be taken to **include the full range of wholesale services** including facilities access, interconnection, basic access (including bitstream), transmission (including backhaul) and other wholesale ... and other services.

1.5.14 The **Government is therefore determined to ensure that appropriate open access arrangements are in place to promote competition** and ensure efficient investment. In this context it will be important to ensure that access is provided on equivalent price and non-price terms and conditions.

1.5.16 If a Proponent proposes to supply both wholesale and retail services it should demonstrate what **structural measures** or models it proposes be put in place and maintained **to prevent inappropriate self-preferential treatment** and **ensure that effective open access is achieved** on the terms required by the Commonwealth.