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CHAMBER OF COMMERCE AND INDUSTRY
WESTERN AUSTRALIA

12 September 2008

Committee Secretary
Senate Select Committee on the National Broadband Network
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Sir/ Madam

SENATE SELECT COMMITTEE ON THE NATIONAL BROADBAND NETWORK

The Chamber of Commerce and Industry of WA (CCI) is pleased to make this submission to the Senate Select Committee on the National Broadband Network (NBN).

About CCI

CCI is the leading business association in Western Australia, and is the second largest organisation of its kind in Australia. It has a membership of approximately 5,600 organisations in all sectors, including information and communication technology, resource, agriculture, hospitality, retail, transport, building and construction, community services and finance, among others.

Most members are private businesses, but CCI also has representation in the not-for-profit and government sectors. Approximately 80 per cent of members are small businesses, and members are located in all regions of the State.

Comments

CCI considers the provision of adequate telecommunications infrastructure, which includes broadband, to be a vital utility for businesses operations. The Chamber believes telecommunications infrastructure is increasingly important to business so that changes in information technology and internet applications can be embraced. CCI believes the provision of high speed broadband infrastructure in Australia is critical to ensure Australia's continued economic growth and international competitiveness.

In summary, CCI supports the Commonwealth's proposal to build the NBN which we understand will deliver 12 megabits per second to approximately 98 per cent of Australian homes and small businesses. We strongly support the new network being an open access regime and believe this is best achieved by ensuring that structural separation of the successful proponent is executed. The Chamber also supports government action to

implement the regulatory reform that will be necessary to ensure competition is encouraged in the telecommunications market.

Regulatory principles

CCI supports the Federal Government's consideration of the regulatory regime that will be used for the NBN. The Chamber has long held that poor regulation can result in avoidance behaviour, inefficiencies, reduced innovation, lower productivity and high costs.

To prevent this, CCI believes that new regulations must provide a reasonable balance between protection and compliance cost. Regulatory design should achieve competitive neutrality, transparency and have minimal overlap and duplication.

In 2006, CCI articulated seven key principles to shape and inform Australian and West Australian regulatory activity in a discussion paper called "*Regulation and Compliance: a discussion paper*". A copy of this paper has been provided although the key principles relevant to the implementation of the NBN include:

1. government intervention should be minimal and the least preferred option for achieving policy outcomes;
2. regulation should be outcomes based rather than process based;
3. regulation should not be overly prescriptive with minimum requirements such as speed limits;
4. regulation should be created with sound social and economic purpose, requiring governments to fully assess all legislative and regulatory proposals against a regulatory impact statement; and
5. the Government should regularly review and remove redundant regulation.

The Chamber strongly recommends that the Commonwealth should introduce these principles when creating the regulatory regime for the NBN.

Telecommunications legislation

CCI understands that the Commonwealth's telecommunications legislation has not been reviewed for almost a decade. Although broad regulatory reform is beyond the parameters of this inquiry, the Chamber believes that rapid changes in the telecommunications sector have warranted the full review of Commonwealth telecommunications legislation. These changes include the introduction of the NBN, technological improvements and the application of competition policy for the converging information technology, broadcasting and telecommunications sectors.

CCI believes that the Government's commitment to the NBN has created an opportunity for the Commonwealth to address the shortcomings of the current telecommunications regime, and secure the future growth, innovation and competition in the information communications and telecommunications sector.

CCI considers that by far the most important determinant of industry performance is the presence of genuine and vigorous competition. It follows that competition and the promotion

of competition should be government's overriding objective in its policies regarding the telecommunications sector.

NBN regulatory regime

CCI understands that the NBN will be a new monopoly optical fibre network in Australia that will supersede the current copper access network. In this regard, the Chamber is concerned that the introduction of poor regulation could put at risk competition, lower prices, product choice and innovation in the telecommunications sector.

The Commonwealth's commitment to construct the NBN as an open access network and implement regulatory reform necessary to encourage competition is welcomed. However, the Chamber does not believe that an open access network goes far enough to promoting vigorous competition and reducing long term industry regulation because there will remain the continual need for regulation. The Chamber considers the structural separation of the wholesale and retail infrastructure of the NBN to be an effective model.

Structural separation of wholesale and retail infrastructure

CCI believes that structural separation and independent ownership of the NBN's wholesale and retail infrastructure will promote long term competition and reduce the need for long term government regulation.

CCI is concerned that a vertically integrated carrier of monopoly infrastructure has a conflict of interest that will require long term government intervention, as outlined in the report to Government titled "Industry Vision for the National Broadband Network Plan – Supplementary Report"¹.

The Report notes that a conflict of interest arises when a monopoly carrier is required by law to provide network access to its retail competitors, and is also required by law to maximise the return to its shareholders. As described in the Report "it is unreasonable to expect a listed corporate entity to put the interests of its competitors, the broader industry or government policy ahead of its fiduciary obligations to its shareholders."

CCI understands that both structural separation and open access regulations have costs and benefits to government, industry and the incumbent. However, CCI believes that the benefits of structural separation of the NBN would outweigh the costs as it is an economic model that will reduce the need for long term government regulation, promote vigorous competition and allow industry to innovate in the retail market.

In this regard, CCI strongly urges the Government to ensure the NBN is structurally separated between the access provider and any or all access seekers to encourage competition and reduce the need for government regulation.

¹ Australian Telecommunication Industry – Facilitated by Paul Budde, (2008) An Industry Vision for the National Broadband Network Plan – Supplementary Report Prepared for the Panel of Experts to assess National Broadband Network Proposals and the Minister for Broadband, Communications and the Digital Economic.

Open access regulatory regime

CCI considers that should structural separation not be achieved, then a sub-optimal solution would be to regulate open access. This would need targeted regulation imposed on the proponent of the NBN to address pricing, access, competition, a dispute resolution process etc, similar to the regime used on the copper access network owned by Telstra.

CCI agrees that an open access regime is one way to ensure competitive access to nationally significant monopoly infrastructure, however poor regulations can allow the incumbent to 'game' the regulations in order to avoid providing equal access.

The Chamber understands there are a number of shortcomings in the current open access regime used for the copper access network that must be addressed prior to it being used for the NBN. These concerns relate to the arbitration process for access disputes which lacks clarity and provides investors with little confidence that they will be able to obtain access to the network. The Chamber further understands that an incumbent has little incentive to resolve disputes quickly which may prevent a competitor gaining access to the network and the retail market.

CCI strongly recommends the Commonwealth address the shortcomings in the telecommunications regulations and arbitration process as noted above, prior to awarding the NBN.

Open access to the inter-exchange network

CCI believes there may be value in providing open access to the NBN's inter-exchange network since this section of the network is unlikely to support stand alone infrastructure competition. Providing open access to this section of the network will allow carriers to more effectively distribute its communications over the network. CCI understands that this issue would be partially resolved by the structural separation of the NBN's retail and wholesale infrastructure. CCI recommends the Commonwealth, through the ACCC, investigate the value of providing open access to the inter-exchange network through a service declaration.

Technology neutral regulations

CCI believes that the convergence of information technology, communications and broadcasting will impact the effectiveness of the current telecommunications regulations. Since the NBN will be a fibre network it is important to evaluate how any regulatory changes for the NBN may impact alternative telecommunications channels such as mobile, copper, wireless and satellite. CCI strongly recommends that the Commonwealth should ensure telecommunications regulations are technology neutral where ever possible.

Black-spots and under-serviced areas

Given the significant amount of Government funding required for the NBN, CCI contends that it is reasonable for the Government to direct this funding to black-spots and under-serviced centres in the metropolitan and regional areas. CCI recommends the Government ensure that black-spots and under serviced areas are the first priority for the roll out of the NBN.

The remaining two per cent of the population not serviced by the NBN

CCI is concerned that the NBN will have limited coverage in Western Australia based on the Commonwealth's target to cover 98 percent of the Australian population and WA's large land mass and sparse population. CCI believes the Commonwealth should develop a solution that will address the provision of high speed broadband to the entire Australian population.

According to *Profile of WA Business 2008*¹ the Western Australian economy has rapidly expanded and maintained an above average annual growth rate of 4.7 per cent over the 15 years ending 2006-07. This economic expansion has largely been attributed to the dominance of key regional industries such as mining and resources in regions such as the Pilbara, Goldfields and Esperance, Peel and the South West.

This Report also identified that WA had firmly cemented its position as a driving force behind Australia's recent economic success by contributing \$127.8 billion to the national economy in 2006-07. Given the importance of telecommunications as a utility to support business and regional communities CCI maintains that it is critical to ensure adequate broadband infrastructure is available to facilitate the State's continued economic growth.

CCI understands that currently, the Commonwealth aims to provide broadband services to regional areas at a comparable rate to metropolitan centres. We believe the completion of the NBN will redefine the speed of broadband services in metropolitan areas to a minimum of 12 megabits per second.

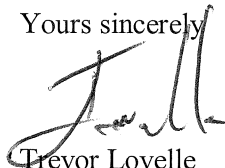
The Australian Broadband Guarantee rebate program defines metro-comparable services as a minimum of 512 kilobits per second download and 128 kilobits per second upload. To ensure all Australian residents and small businesses have access to metro-comparable services the Chamber recommends that the Commonwealth review the Australian Broadband Guarantee to ensure that all Australian residents and small business have access to 12 megabits per second broadband services.

In closing

The Chamber recognises the importance of broadband infrastructure in Western Australia and is currently finalising two discussion papers that explore industry's concerns about the provision of retail and wholesale broadband infrastructure. These papers are expected to be released later this year and can be provided as supplementary information to the Committee.

CCI's Ms Sharon Dignard, Senior Adviser Industry Policy would be pleased to provide further detail on this submission. Ms Dignard can be contacted on (08) 9365 7531 or email: Sharon.Dignard@cciwa.com.

Yours sincerely



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¹ Chamber of Commerce and Industry of WA, (2008), *Profile of WA Business 2008*.