

15 April 2008

Committee Secretary
Senate Standing Committee on Environment, Communications and the Arts
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Sir/Madam,

iiNet welcomes the opportunity to comment on the *Telecommunications Legislation Amendment (Communications Fund) Bill 2008*.

iiNet was established in 1993 and listed on the ASX in 1999, growing from a small Perth business into the third largest Internet Service Provider in Australia. The Company now supports over half a million dial up, broadband and telephony services nationwide, with revenues of over \$240m, and proudly employs over 600 people in Perth, Sydney and Auckland.

Our goal is to lead the market with the best Internet access products and then differentiate with genuine, plain speaking customer service. The company has its own high speed ADSL2+ network reaching around 4 million households across Australia, the largest Voice over IP network in the country, and is delighted to have led yet again with Naked DSL, recognized by PC User Magazine as the 2007 Product of the Year.

We recognise that this Bill is the first piece of legislation that enables the Federal Government to fulfil its election funding commitment to build a National Broadband Network.

In broad terms, we support the Government's intentions relating to the deployment of the National Broadband Network.

Importantly however, as its establishment will have a significant impact on our customers, employees, business and the future of Australian telecommunications industry we would like to take this opportunity to comment broadly on the proposed National Broadband Network and related matters.

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The Government's pre-election policy stated that building a national broadband network is a major and historic step and one that is critical for Australia's future economic prosperity.

Critically, the network's construction is not only an historic step, but a major and historic opportunity to set in place an access and regulatory regime that will secure the future growth, innovation and competition in the information, communication and telecommunications sector.

The Government's pre-election policy, *New Directions for Communications - Building a National Broadband Network*, correctly identifies the relative parlous position of Australia's access to broadband.

It also correctly identifies the benefits of a more extensive and comprehensive broadband availability. In doing so, it highlights that the lack infrastructure investment has left many Australians with no access to fixed line broadband.

While this in part is true, the level of access to high-speed broadband and expansion of the Australian ICT industry has also been driven by the lack of genuine open access to the current infrastructure.

Notably, where genuine open access is available, either due to competition or enforced by determinations of the Australian Competition and Consumer Commission (ACCC), many Australians have access to broadband at higher speeds than proposed by the Government's National Broadband Network policy.

For example, iiNet can provide ADSL2+ to more than 90 percent of metropolitan Australians as a result of its own infrastructure investment in more than 300 exchanges and competitive access to other existing infrastructure.

In considering the implementation of the National Broadband Network, the Government and Parliament must recognise and consider this important fact: "many Australians have been left with no access to fixed line broadband" not just because of a lack of infrastructure investment, but also because of a lack of genuine open access to existing infrastructure and a regulatory regime that promotes, encourages and protects competition.

In this context, the Government's commitment to "construct a genuinely open access national fibre to the node network and put in place regulatory reforms necessary to facilitate such an investment" is welcomed.

Additionally, the Government's commitment that a pre-requisite for all proposals made under the policy must provide genuine open access to bottleneck fibre to the node infrastructure is also welcomed.

As noted in the pre-election policy, genuine open access must require equivalence of access charges and full scope for access seekers to differentiate their product offerings by allowing the customisation of access speeds, quality of services and contention ratios.

The Government's plan to move to a next generation telecommunications network, and the Parliament's consideration of related legislative measures, is an opportunity to address some of the shortcomings inherent in the existing regulatory regime.

Deployment of a new telecommunications infrastructure provides a unique opportunity to achieve a true open access regime, unsuccessfully pursued by Australian Governments since 1991.

Getting the access framework right, so that markets can operate efficiently is the key. Failing to address the known deficiencies while changing the architecture of the network platforms will destroy the competitive gains achieved to date.

This is an opportunity to not only fine tune existing regulatory settings, but also consider innovative approaches to service delivery. With multiple providers and any-to-any connectivity comes an ability to create competitive tensions on a geographic basis.

A failure by the Government or the Parliament to take this opportunity to entrench a genuinely open access national fibre network and put in place regulatory reforms necessary to facilitate and encourage further telecommunications investment will be a significant opportunity lost.

More than a lost opportunity, it will see Australian customers paying more, fewer internet providers and a reduction in innovation and competition and render the nation's broadband second rate at best.

The general principles that need to be applied to the regulatory improvements are those that have been in place for some time and expressed by government policy:

- Promoting competition;
- The long term interests of the end user.

Additionally, these improvements should address obvious deficiencies in the powers provided to the regulatory authorities pursuing these principles. These include:

- The establishment of reasonable access terms;
- Broadening the scope and improving the efficiency of arbitration processes;
- Reducing the ability of parties to 'game' regulatory processes;
- Eliminating conflicts of interest between commercial interests and regulatory compliance.

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Getting the regulatory settings right will ensure consumer interests are promoted and the benefits of competition are realised in months rather than decades.

As noted earlier, getting the regulatory settings wrong at this significant opportunity will lead to a reduction in competition and a return to higher prices, less choice and reduced product innovation.

Further, the recent High Court judgement in *Telstra Corporation v The Commonwealth* (6 March 2008) reinforces the critical importance of setting in place a statutory access regime in advance of awarding any consortium the rights to build the National Broadband Network. That statutory access regime must be directed at expressly “promoting ... competition in the telecommunications industry generally and among other carriers” and seeks to achieve this goal by “giving each carrier the right ... to obtain access to the services supplied by other carriers”.

While the provisions of current Bill before the Parliament are not directly related to many of the issues we have raised here, it is critical that Members and Senators, as they consider the Government’s first piece of enabling legislation for a National Broadband Network, are aware and consider the wider and significant implications.

Finally, iiNet has provided the Government’s Panel of Experts with a detailed submission on these and related matters. A full copy of that submission can be made available to the Senate Committee. In addition to the issues we have raised above, that submission also argues that:

- structural separation of the access provider from a retail business unit is essential;
- the current ‘negotiate - arbitrate’ process is dysfunctional with some disputes still unresolved almost 10 years later;
- any future negotiate - arbitrate model must have a single arbitration automatically applied to all similar arbitrations;
- access seekers to any new Network must have the ability to operate the services with decisions on throughput, line speeds, contention ratios and other access characteristics at their discretion;
- any new Network must provide access seekers with a platform capable of delivering at least the full range existing services, including ADSL, PSTN, VoIP and other data networks;
- these services should be available at the same or less than current costs;
- legitimate infrastructure owners must be either compensated for any stranded assets or allowed to retire their assets in line with reasonable investment returns;
- customer transition from existing services to any new Network service must be possible without outages, compulsion or disadvantage;
- a fully automated and compulsory customer transfer regime must be established to provider customers choice and drive competition;

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- future access terms and conditions must be transparent, comprehensive and available for publication; and
- any new Network must allow for the continuation of, or the migration to, functionally equivalent services.

The future access and regulatory regime will be a key determinant of the ability of the Parliament to successfully implement the Government's election policy and deliver on its commitment to put "Australian back into the fast lane of the information super-highway."

Once again, we welcome the opportunity to provide comment on this most important policy issue and Bill. We also appreciate the Senate's consideration of our submission.

Yours sincerely



Steve Dalby
Chief Regulatory Officer
iiNet Ltd