

COMMUNICATIONS
ALLIANCE LTD



SUBMISSION ON THE LEGISLATIVE FRAMEWORK FOR
THE NATIONAL BROADBAND NETWORK
JULY 2009

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1. EXECUTIVE SUMMARY

On 3 July 2009 the Minister for Broadband, Communications and the Digital Economy issued a Media Release calling for submissions on the legislative framework for the National Broadband Network.

Communications Alliance submits that in respect of any legislation that is proposed to be implemented in the short term for the regulatory framework for the National Broadband Network, the legislation must:

- i) Preserve the regulatory objective in the *Telecommunications Act 1997* of the 'maximum use of industry self-regulation'. For the avoidance of doubt, this objective relates to the technical and operating arrangements, and not to access or competition regulation.
- ii) Not pre-empt or foreclose consideration of policy options in the 2011 review of the Government's 'overall approach to regulation in a convergent environment', as foreshadowed in the Government's *Discussion Paper 'National Broadband Network: Regulatory Reform for 21st Century Broadband*
- iii) Not pre-empt, foreclose or make redundant the industry work currently underway through Communications Alliance to more clearly define the NBN environment, including defining the wholesale services,
- iv) Ensure maximum industry consultation is maintained throughout the process of deploying the National Broadband Network and developing the appropriate regulatory framework. .
- v) Be consistent with the Government's overall approach to regulation – in particular by adopting the principles of good regulatory process as recommended by the Productivity Commission in its 2006 paper '*Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business*'.

- vi) Be aligned with the policy initiatives and directions in *'Powering Ideas: An Innovation Agenda for the 21st Century'* and the *'Australia's Digital Economy: Future Directions'*.

In specific response to the issue identified in paragraph 1(b) in the Media Release – that is, the process for identifying services to be offered – Communications Alliance submits that it is absolutely critical that the proposed legislation not undermine or make redundant the work currently underway at Communications Alliance to define the wholesale services market in the NBN environment.

Communications Alliance notes that its members have divergent views on the appropriate regulatory framework for industry access and competition arrangements and they will be making their individual submissions. For the avoidance of doubt, nothing in this submission is to be interpreted as referring to the legislative framework for access or competition.

2. INTRODUCTION

Communications Alliance welcomes this opportunity to provide a submission on the legislative framework for the National Broadband Network.

Communications Alliance is the peak industry body for the Australian communications sector. Its mission is to create a co-operative stakeholder environment that allows the industry to take the lead on initiatives which grow the Australian communications industry and foster the highest standards of business behaviour.

3. PRINCIPLES-BASED LEGISLATION

Communications Alliance submits that in respect of any legislation that is proposed to be implemented in the short term for the regulatory framework for the National Broadband Network, the legislation must:

- i) Preserve the regulatory policy objective in the *Telecommunications Act 1997* of the 'maximum use of industry self-regulation'.

Section 4 of the *Telecommunications Act 1997* provides that '*Parliament intends that telecommunications be regulated in a manner that:*

- (a) *promotes the greatest practicable use of industry self-regulation;*
and
(b) *does not impose undue financial and administrative burdens on participants in the Australian telecommunications industry; but does not compromise the effectiveness of regulation in achieving the objects mentioned in section 3.'*

The main reason for the emphasis on industry self-regulation in the *Telecommunications Act 1997*, as reported by the Productivity Commission, in its 2001 Report *Telecommunications Competition Regulation*:

'springs from the fact that the changing nature of telecommunications technology and its complexity make it difficult for any government agency to devise appropriate standards. Further, the potential costs to the industry from regulatory error are very high.'

Communications Alliance submits that this rationale for industry self-regulation is even more pertinent in the complex environment of deploying new technologies in the rollout of the National Broadband Network.

The industry has demonstrated over 12 years, particularly in the context of the technical and operating environment, that self-regulation is a fundamentally sound mechanism. This was the conclusion of the PC in 2001, and the outcomes of the industry through Communications Alliance since that report serve to reinforce that conclusion.

Further, the industry is demonstrably embracing its role in taking responsibility for the environment through the pro-active work it has commenced on the NBN Project through Communications Alliance.

For the avoidance of doubt, these comments relate to the technical and operating arrangements, and not to access or competition regulation.

- ii) Not pre-empt or foreclose consideration of policy options in the 2011 review of the Government's 'overall approach to regulation in a convergent environment', as foreshadowed in the Government's *Discussion Paper 'National Broadband Network: Regulatory Reform for 21st Century Broadband*

Communications Alliance, in its response to the Government's April 2009 Discussion Paper, submitted that the present needs to be guided by the future direction:

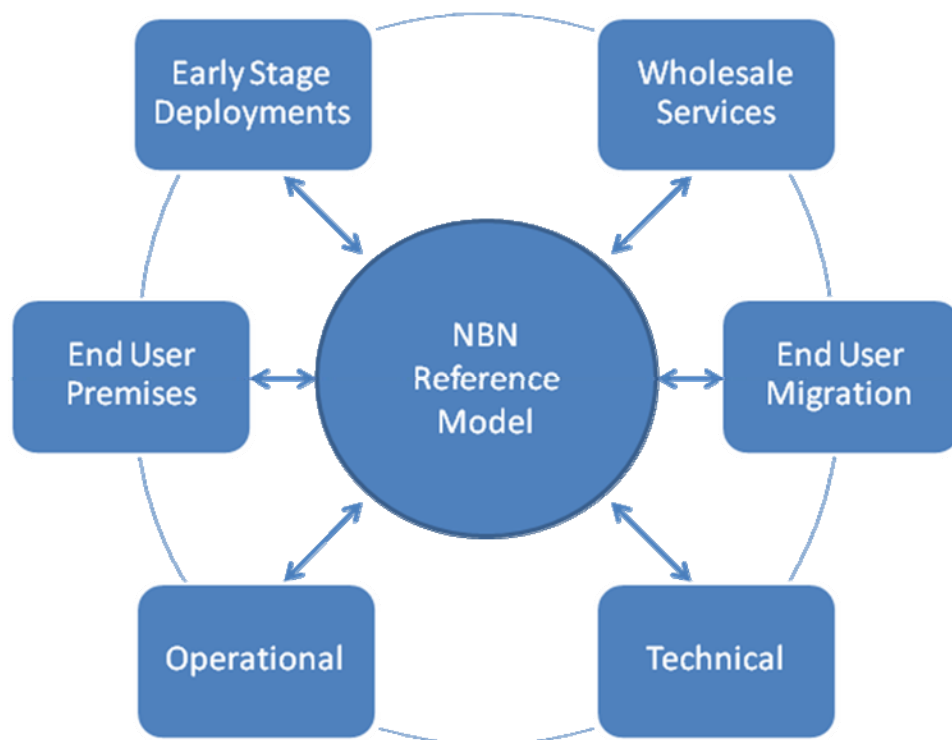
- a) that the future direction of the regulatory arrangements for a broadband-enabled environment is towards a convergence framework; and
- b) the intention for the Government to review its overall approach to regulation in a convergent environment in 2011: *'A key theme in these considerations will be the scope for winding back industry-specific regulation once the National Broadband Network is firmly established as an open access, wholesale-only, national network. This could include the ongoing roles for Part XIB and XIC and wider consumer protection arrangements.*

Communications Alliance has also previously put on record the principles which it has defined as applicable to a converged regulatory framework,

and submits that these should also be considered in the proposed development of the legislative framework for the NBN.

- iii) Not pre-empt, foreclose or make redundant the industry work currently underway through Communications Alliance to more clearly define the NBN environment, including defining the wholesale services,

Communications Alliance has kicked-off its NBN Project. Based on views expressed in response to Discussion Papers and in industry forums, seven work areas have been identified for further discussion and analysis by industry.



The initial priority areas are:

- NBN Reference Model

- Wholesale Services
- Early Stage Deployments.

(a) NBN Reference Model

At the centre of the work going forward is the development of an NBN Reference Model which seeks to define key aspects of the NBN framework, including the following:

- Roles and Responsibilities of Service Providers
- Roles and Responsibilities of NBN Co
- Key Principles related to End Users
- Key Principles related to Services
- Key Principles related to Interconnection of Networks

These key aspects are fundamental concepts that describe and clarify how the different parties involved in the NBN framework interact, transact and co-operate to deliver services to end users.

The NBN Reference Model provides the framework which informs and contributes to the other key areas described below which cover specific aspects of the NBN.

Issues for consideration include how multiple retail service providers will deliver NBN services to one customer using the access supplied by NBN Co. Will there be a concept of a "Prime Retail Service Provider" that has the responsibility for the underlying access service and Network Termination Unit (NTU) required to support the multiple services? Or will there be a framework that allows each retail service provider to take responsibility for only its service provision and there are other mechanisms to ensure that the underlying access service is supplied and supported?

Other similar questions will arise at the interworking point for NBN Co and upstream service providers. Will each upstream service provider need to connect its own network equipment to the NBN Co network directly? Or can an upstream service provider connect to NBN Co services in a “virtual” sense through third party networks? Will such third party network services be delivered as transmission type “point-to-point” services or can they be provided using layer 2 or 3 network services. The output from this work area would be a document that captures the key aspects described above in a clear and concise manner in much the same way that the ACIF Interconnect Model described the competitive framework for long-distance telephony in the mid-to-late 1990s.

(b) Wholesale Services

This work area would focus on the development and description of the key wholesale services that would be supplied in under the “open-access wholesale only” policy proposed by the Government.

Of particular importance will be the discussion and definition of the passive, active and resaleable wholesale services¹ necessary to support a competitive market place for the ultimate provision of services to end users.

¹ See NBN Industry Connection – Discussion Paper No. 1 available at www.commsalliance.com.au



The scope of the services should cover access and transmission (or backhaul) services and cover technologies based on fibre, wireless and satellite technologies.

An initial focus of the work will be on the wholesale services that NBN Co should supply to other service providers in the market. Further work may also be necessary on the wholesale services that other service providers may supply to enable the development of a competitive market for retail and wholesale services.

The description and definition of the wholesale services to be delivered by an “open-access wholesale only” NBN Co are seen as critical in allowing other Service Providers to plan and manage their respective business plans incorporating the NBN.

Clarity on how the geographic (metro, regional, rural) and end user markets (consumer, small business, large business) effect the types of wholesale services to be supplied will be important in establishing baselines for further investment by service providers in networks, systems and products.

The output from this work area would include service definitions and descriptions that form a basis for the technical, operational and commercial arrangements necessary to facilitate inter-working of networks in the NBN framework. Issues such as quality of service, security, numbering, addressing and inter-working requirements with customer and network equipment are likely to be covered as part of this process.

(c) Early Stage Deployments

The “Early State Deployment” work area would provide a forum to focus on the initial early deployments of NBN type networks in the Australian market- FTTP networks in Tasmania and the deployment of FTTP in new Greenfield estates from 1 July 2010.

Key learnings from these Early Stage Deployments could be collated and evaluated in order to inform developments in other work areas as appropriate. Questions have been raised about what type of network architecture and services will be required in order to comply with the policy. It is important that industry and the various stakeholders (local government, developers, contractors, equipment suppliers) commence discussion and analysis of the issues.

The output would, where possible, be guidelines that are developed to assist key parties involved in the Early Stage Deployments such as councils, developers, network builders, equipment suppliers etc.

(d) End User Migration

The migration or transfer of end users to, from and within the NBN will require planning, co-ordination and agreed processes in order to be both efficient and effective (ie. avoid service disruptions).

The Australian industry has over 10 years of experience in a competitive environment which has seen the development of processes that enable end users to move between service providers on existing networks.

This work area will focus on which existing processes can be re-used and which new processes will need to be developed to enable end users to migrate to and from the NBN as well between different service providers within the NBN.

The output would focus on guidelines and specifications that describe the processes and IT system that are involved in End User Migration.

(e) End User Premises

The delivery of services using the NBN to end users will require the installation of new customer premises equipment (CPE) and possibly new or upgraded cabling (external and internal) in residential, business and multi-dwelling environments. These new CPE and cabling requirements will require the definition of new technical standards, training arrangements and installation practices.

The roles and responsibilities of NBN Co and Service Providers with respect to CPE will need to be clarified and defined, including any review of the definition of the network boundary point.

The installation, management and support (remote and on-site) of CPE will be important in ensuring that services can be efficiently and effectively delivered using a combination of intelligent and passive devices on end user premises.

The output from this work area should involve development of standards, guidelines and work practices for use across the industry in the NBN environment.

(f) Operational

The operational requirements under an NBN framework will require investigation, analysis and development of processes and procedures to enable:

- Service Ordering
- Service Provisioning
- Service Assurance
- Service Billing

Much of the above will require close co-ordination between service providers in an NBN environment where wholesale services from NBN Co are integral to the delivery of services to end users.

The IT systems and interfaces deployed to enable the processes and procedures outlined above will be critical to the efficient and effective management of services in an NBN.

By sharing information, developing common processes and procedures and guiding the development of IT systems contributors to this work area will be able to develop a shared operational framework for the NBN.

The output in this work area will include guidelines, protocols, schemas and other definitions that can be used to guide the development of processes, procedures and IT systems in the NBN environment.

(g) Technical

The "Technical" work area will focus on the development of specifications, standards and guidelines using internationally accepted work wherever possible to develop the technical aspects for the interworking of networks and the implementation of wholesale services.

The development of these technical aspects will involve input from equipment suppliers, service providers and other relevant parties that implement the wholesale services to be supplied by the NBN Co and used by service providers to deliver end user services.

It is anticipated that the technical aspects of passive, active and resaleable wholesale services will be defined where relevant and cover

such issues as quality of service, security, numbering, addressing and interworking requirements.

The output of the work area will include specifications, standards, guidelines and other documents as required to define the necessary technical aspects.

The scope, timing and outcomes of the Communications Alliance NBN Project can be seen at www.commsalliance.com.au/Activities/national-broadband-network

In specific response to the issue identified in paragraph 1(b) in the Media Release – that is, the process for identifying services to be offered – Communications Alliance submits that it is absolutely critical that the proposed legislation not undermine or make redundant the work currently underway at Communications Alliance to define the wholesale services market in the NBN environment

- iv) Ensure maximum industry consultation is maintained throughout the process of deploying the National Broadband Network and developing the appropriate regulatory framework. .

Communications Alliance submits that, in recognition of the critical role of the industry in defining the technical and operating environment for the NBN, and developing the operating arrangements in the form of standards, codes, guidelines or other appropriate outcome, there must be extensive consultation with industry as the NBN project proceeds.

Communications Alliance is committed to facilitating consultation and looks forward to taking a pro-active role in ensuring discussion and alignment of industry activities to ensure that the Government's objectives relating to the NBN are met.

We also submit that consultation is essential in respect of any outcomes which are sought requiring technical solutions, and that no technical solutions are imposed but are developed in collaboration with industry.

- vii) Be consistent with the Government's overall approach to regulation – in particular by adopting the principles of good regulatory process as recommended by the Productivity Commission in its 2006 paper *'Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business'*.

Communications Alliance reinforces the point made in its submission to the Regulatory Reforms for the 21st Century paper – that the recommendations of the PC's principles of good regulatory process should be adopted, and the role of Regulation Impact Statements in the case of likely material impacts on business from new regulations.

- viii) Be aligned with the policy initiatives and directions in *'Powering Ideas: An Innovation Agenda for the 21st Century'* and the *'Australia's Digital Economy: Future Directions'*.

The deployment of the National Broadband Network underpins the policy initiatives directed at Australia's transition to a Digital Economy and the goal of making Australia more productive and competitive through investment in Australia's innovation system.

Communications Alliance submits that legislative framework for the National Broadband Network must therefore be consistent with and aligned to achieving the outcomes of those initiatives.

4. CONCLUSION

Communications Alliance submits that the development of legislation governing the National Broadband Network must ensure maximum industry consultation

and recognition of the work currently underway through Communications Alliance to more clearly define the NBN operating environment.



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