

30 August 2007

The Expert Taskforce
c/- Department of Communications,
Information Technology and the Arts
GPO Box 2154
CANBERRA ACT 2601



Attn: Mr Colin Lyons, Chief General Manager
Expert Taskforce Secretariat

Re: Comments on High Speed Broadband Network Infrastructure Proposals

Please find attached Communications Alliance's submission in response to a request from The Expert Taskforce for comments on the 'Draft Guidelines for High Speed Broadband Network Infrastructure Proposals'.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'A. C. Hurley', with a long, sweeping flourish at the end.

Anne Hurley
Chief Executive Officer
Communications Alliance

COMMUNICATIONS ALLIANCE LIMITED
(ACN 078 026 507)

Submissions Regarding Draft Guidelines of the Expert Taskforce
Appointed by the Minister for Communications

A New Commercial Access High Speed Broadband Network Infrastructure in
Metropolitan Australia and Major Regional Centres

Dated: 30 August 2007

1. BACKGROUND

Pursuant to the terms of reference ("**Terms of Reference**") given to the Expert Taskforce by the Minister for Communications ("**Minister**"), the Expert Taskforce on 11 August 2007 issued draft guidelines ("**Draft Guidelines**") for the assessment of proposals to be called by the Australian Government for a new commercial open access high speed broadband network infrastructure ("**Infrastructure**") in metropolitan Australia and major regional centres ("**Rollout Areas**").

The Draft Guidelines, in accordance with the Terms of Reference, are to address the processes and criteria for assessing proposals for the Infrastructure built in the Rollout Areas that will enable the delivery of high speed broadband services. Expressly, those processes and criteria may include:

- "(I) *proposed network and operational characteristics, including:*
 - (i) *price and non-price terms and conditions of access and interconnection and the mechanism to vary prices over the life of the investment;*
 - (ii) *the timetable for network rollout;*
 - (iii) *the minimum service standards;*
 - (iv) *scalability;*
 - (v) *coverage;*
 - (vi) *capacity;*
 - (vii) *speeds;*
 - (viii) *other characteristics to meet current and future needs;*
- (II) *proposed pricing principles for access to the high speed broadband network including whether there should be a*

contribution towards network losses incurred in rural and remote areas;

- (III) proposed legislative and regulatory measures to facilitate or enable the high speed broadband network and to avoid investment in duplicate networks if they are economically inefficient;*
- (IV) proposed arrangements to provide for appropriate compensation to parties who would be affected by the implementation of the proposed legislative and regulatory measures; and*
- (V) proposed arrangements to provide an open and transparent process, noting that some information provided in submissions or proposals will be commercially sensitive."*

The Expert Taskforce has requested submissions from interested parties in relation to the Proposed Guidelines by Wednesday, 29 August 2007.

It is understood that the Expert Taskforce will, after that date, publish and review submissions in relation to the Proposed Guidelines and report on the proposed final Guidelines to the Minister. The Expert Taskforce will then issue those final Guidelines, invite proposals and conduct the assessment process with a view to maximising outcomes consistent with the Australian Government's objectives, before providing the Minister with a report and recommendations on the proposals received.

In addition to considering submissions, it is understood that the Expert Taskforce is empowered under the Terms of Reference to undertake such other consultations, including industry forums and interviews with key stakeholders, as it considers appropriate.

The considerations to which the Expert Taskforce is to have particular regard, in accordance with the terms of reference, are the following:

"

- *the Government's strong ongoing commitment to robust competition and the long term interests of end users;*
- *the Government's strong ongoing commitment that all people in Australia have access to quality telecommunications services at affordable prices, underpinned by legislation where necessary;*
- *the need for investors in a high-speed broadband network to earn returns on their investment commensurate with the cost of their investment and their risks;*
- *the Government's objective to encourage efficient investment in communications infrastructure;*
- *the Government's view that infrastructure to provide high speed broadband services, particularly in urban areas, can and should be funded by the private sector; and*

- *Australia's international trade commitments relating to telecommunications."*

2. BACKGROUND TO SUBMISSIONS OF THE COMMUNICATIONS ALLIANCE

(a) Purpose of these submissions

The purpose of these submissions is to present to the Expert Taskforce, in a concise manner, **those issues which a broad cross-section of the communications industry, being members of Communications Alliance, generally agree must be addressed** by every proponent in relation to:

- (i) the Objectives set out in Section 3 of the Draft Guidelines;
- (ii) the Assessment Criteria set out in Section 4 of the Draft Guidelines;
- (iii) the Assessment Process and Timing provisions set out in Section 5 of the Draft Guidelines;
- (iv) the Information and Confidentiality provisions set out in Section 6 of the Draft Guidelines; and
- (v) the Preparing and Lodging a Proposal provisions set out in Section 7 of the Draft Guidelines.

It is understood by Communications Alliance and its members that nothing in these submissions is intended to limit the ability of any member of Communications Alliance to make a separate submission on any matter the subject of these submissions, or matters in addition to these submissions which may be in the interests of that member.

(b) Process for arriving at those submissions

The process for arriving at those submissions was as follows:

- (i) A number of initial round table discussions were held between a cross section of members of Communications Alliance
- (ii) As a result of the round table discussions, Communications Alliance called for nominees from the round table participants to sit on a steering committee to prepare these submissions ("**Steering Committee**");
- (iii) The Steering Committee, consisting of 6 members from a cross section of the industry, generated a working draft of the submissions;
- (iv) Those Draft Submissions were then circulated to all members of Communications Alliance (and selected others) on Thursday, 23 August 2007, seeking comment;
- (v) The Steering Committee then reviewed all resulting comments to synthesise into these submissions those views which can

reasonably be presented as a Communications Alliance members' view.

(c) Communications Alliance

Communications Alliance was formed in 2006 to provide a unified voice for the Australian communications industry and to lead it into the next generation of converging networks, technologies and services.

Although Communications Alliance has its genesis in the merger of the Australian Communications Industry Forum ("ACIF") and the Service Providers' Association Inc ("SPAN"), it is a new organisation created specifically to drive the industry into the future with confidence, vitality and strength of purpose.

By providing leadership on new trends and directions, Communications Alliance provides a unifying role on behalf of the industry and its members, particularly in areas of competition, innovation and industry development.

The prime mission of Communications Alliance is to promote the growth of the Australian Communications industry and the protection of the consumers' interests by fostering the highest standard of business ethics and behavior through industry self-governance.

Membership of Communications Alliance is drawn from a wide cross-section of the communications industry, including service providers, vendors, consultants and suppliers as well as business and consumer groups.

Members benefit from having the opportunity to making a meaningful contribution to the future direction of the industry and to participate in governing its operations.

3. SUBMISSIONS

(a) Submissions in relation to the Objectives contained in Section 3 of the Draft Guidelines

It is the submission of Communications Alliance that Part 3 Objectives of the final Guidelines require that all proponents provide adequate detail on the following issues regarding their proposed Infrastructure and provides the following comments:

- (i) In addition to the requirements set out in clause 3.9 that the network infrastructure has sufficient capacity to meet current and foreseeable needs and be scalable as technology develops and consumer demand and preferences change over time, proponents should also be required to consider and describe the extent to which the technology the proponent proposes to deploy will be expandable and adaptable to support future applications and technologies that are reasonably likely to become available in the medium term. Further the proponent should also describe whether, and, if so,

to what extent the network may be expanded over time in capacity, coverage and speed terms;

- (ii) In relation to clause 3.10, the Expert Taskforce should advise proponents that various potential outcomes of the current universal service obligation (“**USO**”) review may be factored into the responses of that proponent, and that it is understood that a start date for the rollout will necessarily be impacted by the timing and outcome of that review;
- (iii) In relation to clause 3.12, please add reference to improved coverage within the Rollout Areas as a beneficial outcome;
- (iv) In relation to clause 3.15, the Expert Taskforce may wish to repeat the observations regarding clause 3.10 as referred to above;
- (v) In relation to clause 3.16, the Expert Taskforce should also request the proponent’s view of the services that the proponent proposes to provide. In this regard, the proponent should be required to provide evidence or information that the Infrastructure’s characteristics, capacity, speeds, coverage, availability and pricing structure, are that which the market is reasonably likely to require both now and in the future;
- (vi) In relation to clauses 3.19 and 3.20, proponents should be required to advise of the details of their understanding of the expression “*open and non discriminatory access*”, providing examples to illustrate same;
- (vii) In relation to the requirements contained in clause 3.21, proponents should advise how they will ensure that other industry participants have adequate notice, in terms of both time and detail, of the proponent’s network rollout to enable informed decision making by other industry participants;
- (viii) At clauses 3.30 and 3.31, while it is anticipated that changes to the legislation may be required to facilitate this investment, if a proponent does propose that one or more of the services to be carried on the Infrastructure will not be subject (by way of declaration or special access undertaking) to the standard access obligations and ancillary obligations set out in Part XIC of the *Trade Practices Act 1997* (“**TPA**”), it should advise why, and detail the proposed alternate access regime and required legislation and regulation changes and how this alternate regulatory regime meets the long-term interests of end-users. If the existing regime will be implemented, details of any proposed declaration or special access undertaking should be provided;
- (ix) In relation to clause 3.34, if the proponent’s proposal requires exclusivity or has an impact on existing infrastructure owned by industry participants, proponents should detail what compensation regime (if any) should apply to those industry

participants and, if so, who should pay compensation (for example, the Government); and

- (x) In relation to clause 3.36, in addition to providing details as to the proposed geographic scope of the proponent's rollout of the Infrastructure, proponents should provide details of precise boundaries of the urban areas and major regional centres the subject of the proposal, network coverage within those boundaries (including coverage maps), and any differentiation in service available within those areas.

(b) Submissions in relation to the Assessment Criteria contained in Section 4 of the Draft Guidelines

It is the submission of Communications Alliance that the assessment criteria of the final Guidelines require that all proponents provide adequate detail in relation to the following:

- (i) If the proponent proposes exclusive rights, when assessing proposals against Criterion 1, the Expert Taskforce may have regard to the proponent's precise details of those existing network units and other network elements which the proponent considers may impinge on its proposed exclusive rights in relation to the Infrastructure and, based on technology known to the proponent to date, which other network units and associated network elements may be considered by it to be over build of the Infrastructure;
- (ii) In relation to Criterion 4, in the event that legislative or other regulatory changes are necessary to facilitate the proposal, the proponent must identify the basis on which it has formed its view, what alternative access regime is proposed to apply to the use of the Infrastructure and how will same promote the long term interests of end users (as that expression is defined in section 152AB(2) of the TPA);
- (iii) In relation to Criterion 4, the proponent should identify those parts of the Infrastructure (if any) proposed to be the subject of the facilities access regime in Parts 3, 4 and 5 of Schedule 1 of the *Telecommunications Act 1997*.
- (iv) In relation to those parts of the Infrastructure which will not be the subject of same, the Expert Taskforce may consider the basis on which the proponent holds that view, whether alternative facilities access regime is proposed to apply to the Infrastructure, and whether any facilities access regime will promote the long term interests of end users (as that expression is defined in section 17(3) of Schedule 1 of the *Telecommunications Act 1997*);
- (v) When addressing Criterion 4, the proposal should detail the extent to which the proponent will require access to the powers and immunities referred to in Schedule 3 of the *Telecommunications Act 1997*, the *Telecommunications Code of*

Practice 1997 and the Telecommunications (Low Impact Facilities) Determination 1997, and precisely what variations will be required to that regime to reasonably accommodate the roll out of the Infrastructure.

- (vi) While it is anticipated that changes to the legislation may be required to facilitate this investment, if a proponent does propose that the access regime set out in Part XIC of the *Trade Practices Act 1974 (Cth)* (in relation to access to services) will apply, when applying Criterion 4 the Expert Taskforce may consider:
 - (A) Whether the proponent anticipates that the limitations set out in section 152AR(4) or (9), or an exemption referred to in sections 152AS and following, will apply;
 - (B) Without limiting the ACCC's right to make a determination, the proponent's detailed information in relation to the pricing principles it proposes should apply to making access available to other participants;
 - (C) The proponent's details of the non-price terms and conditions it would require for others to gain access to services the subject of the Infrastructure, including for instance whether the ACCC's *Model Non Price Terms and Conditions* will apply;
 - (D) Without limiting the above, whether it is proposed that a special access undertaking will be lodged in relation to the Infrastructure.
- (vii) While it is anticipated that changes to the legislation may be required to facilitate this investment, if a proponent does propose that the facilities access regime set out of Schedule 1 of the *Telecommunications Act 1997 (Cth)* (in relation to access to Infrastructure) will apply, when applying Criterion 4 the Expert Taskforce may consider:
 - (A) Without limiting the Minister's right to make a pricing determination, the proponent's detailed information in relation to the pricing principles it proposes should apply to making access available to other participants;
 - (B) The proponent's detailed information of the non-price terms and conditions it would require for others to gain access the Infrastructure, and describe the variation in same when compared to the terms of the ACCC's *Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities*.
- (viii) When addressing Criterion 4, proponent's should indicate how the USO will apply in relation to the Infrastructure, having regard to the current review of same, and whether the proponent

wishes to have the right to vary its proposal once the outcome of that current review is known; and

- (ix) In assessing proposals against Criterion 4, the Expert Taskforce should consider whether, if the proponent proposes legislative intervention to ensure exclusivity in any element of the services it provides, what are the economic and policy justifications for this requirement?

(c) Submissions in relation to the Assessment Process and Timing provisions contained in Section 5 of the Draft Guidelines

- (i) In relation to clauses 5.3, 5.19 and 5.20, further clarification should be provided as to whether the time for the submission of the proposals will be extended by a period equivalent to that period from the date the election is called until the first business day after polling day;
- (ii) In relation to clauses 5.9, 5.10, and 5.14, please clarify whether all proponent presentations, requests for clarification by the Expert Panel and the responses to same, and proposal revisions, will be made public subject to the confidentiality provisions

(d) Submissions in relation to Attachment B to the Draft Guidelines

It is the submission of Communications Alliance that corresponding changes be made to Attachment B to reflect the additional matters referred to above.

4. FURTHER INDUSTRY PARTICIPANTS

As anticipated in the Terms of Reference, Communications Alliance and its members would welcome further participation in consultation regarding the settling of the Guidelines to proponents.

The relevant Communications Alliance contact is:

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