



Knowledge Influence Support

CHAMBER OF COMMERCE AND INDUSTRY
WESTERN AUSTRALIA

25 June 2008

regulatory@dbcde.gov.au
Department of Broadband, Communications and the Digital Economy

Dear Sir/ Madam

REGULATION OF NATIONAL BROADBAND NETWORK

The Chamber of Commerce and Industry of WA (CCI) is pleased to make this submission to the Department of Broadband, Communications and the Digital Economy (DBCDE's) consultation about the regulation of 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 5,200 organisations in all sectors, including information and communication technology, food and beverage, 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.

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.

CCI considers 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.

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;

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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.

CCI understands that telecommunications legislation has not been reviewed for almost a decade. The combination of technological change and the application of competition policy to the converging information technology, broadcasting and telecommunications sectors have led to dramatic changes in a relatively short period of time. Given the significance of these changes CCI believes a full review of telecommunications legislation in Australia is warranted.

The Government's commitment to implementing the NBN has created an opportunity for the Commonwealth to address some of 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 economic theory and the evidence of the past decade confirm 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 ought to be the government's overriding objective in its policies regarding the telecommunications sector.

CCI understands that the NBN will be a monopoly optical fibre network in Australia that will supersede the current copper access network. We are concerned that the introduction of poor regulation may put at risk competition, lower prices, choice and product innovation in the telecommunications sector.

In this regard, the Commonwealth's commitment to construct the NBN as an open access network and implement regulatory reform necessary to facilitate this investment is welcomed. However, the Chamber does not believe that an open access network goes far enough to promoting vigorous competition and reducing industry regulation because the incumbent has an inherent conflict of interest.

Structural separation of wholesale and retail infrastructure

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

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

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

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.”

In this regard, CCI strongly urges Government to ensure that the NBN has structural separation between the access provider and any or all access seekers to prevent a conflict of interest and reduce the need for government regulation.

Open access network

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.

However, we understand there are a number of shortcomings in the current 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 that Government address the shortcomings in the telecommunications regulations and arbitration process as noted above, prior to awarding the NBN.

CCI believes there is 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 communications over the network. CCI recommends that Government, through the ACCC investigate the value of providing open access to the inter-exchange network through a service declaration.

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

Black-spots and under-serviced areas

Given the significant amount of Government funding being contributed to the NBN, CCI contends that it is reasonable for the Government to direct this funding to black-spots and

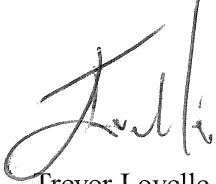
assess National Broadband Network Proposals and the Minister for Broadband, Communications and the Digital Economic.

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under-serviced centres in the metropolitan and regional areas. CCI recommends the Government ensure that black-spot and under serviced areas are the first priority for the roll out of the NBN.

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

A handwritten signature in black ink, appearing to read 'Trevor Lovelle', written in a cursive style.

Trevor Lovelle
Executive Director, Industry Policy