



Government of South Australia

Department of Further Education,
Employment, Science and Technology

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Department of Broadband,
Communications and the Digital Economy
GPO Box 2154
CANBERRA ACT 2601

VIA EMAIL: regulatory@dbcde.gov.au

Dear Sir/Madam

**SOUTH AUSTRALIAN GOVERNMENT SUBMISSION ON REGULATORY ISSUES
ASSOCIATED WITH THE NATIONAL BROADBAND NETWORK**

In accordance with an invitation by Senator Conroy, Minister for Broadband, Communications and the Digital Economy please find attached the South Australian Government submission regarding regulatory matters associated with the National Broadband Network.

We would be pleased to clarify or elaborate further on any aspect of this submission should you require.

Yours sincerely


Carolyn Anderson
DIRECTOR

broadbandsa

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Table of Contents

1. BACKGROUND	1
2. KEY ISSUES	1
2.1. CONSUMER PROTECTION	1
2.2. COMPETITION	2
2.3. NBN MUST BE OPEN ACCESS	2
2.3.1. <i>Single Operator</i>	2
2.3.2. <i>Network Neutrality</i>	2
2.3.3. <i>Transparency between wholesale and retail operations</i>	2
2.3.4. <i>Non-price terms of access</i>	2
2.3.5. <i>Orderly transition, preserving competitive assets</i>	3
2.4. NATIONAL UNIFORM PRICING	3
2.5. INDUSTRY REGULATION	3
2.6. GREENFIELD SITES	3
2.7. UNIVERSAL SERVICE OBLIGATION	3

1. Background

The Commonwealth Government has announced an intention to facilitate the deployment of a National Broadband Network (NBN) and is providing funding of up to \$4.7 billion for the roll-out of an open access, high-speed, fibre-based national network that will provide access speeds of at least 12 megabits per second to 98% of Australian homes and businesses.

On the 11 April 2008 the Minister for Broadband, Communications and the Digital Economy announced:

1. the release of the NBN Request for Proposal (RFP) seeking industry proposals
2. an invitation to industry and public interest groups seeking submissions on possible regulatory reforms to be implemented with the NBN (closing 25 June 2008); and
3. a call for submissions on policy and funding initiatives to provide enhanced Broadband to rural and remote areas (closing 30 June 2008).

This submission deals with item 2 above. A separate submission will be made to the Regional Telecommunications Independent Review Committee (RTIRC) policy and funding measures (item 3) relating to the provision of enhanced broadband to rural and remote areas, falling outside of the NBN.

An earlier submission¹ (copy attached) made to the NBN Panel of Experts should also be considered with this submission.

2. Key Issues

In determining the regulatory context for a future NBN, the South Australian Government believes that the following key issues should be considered:

- Consumer protection issues
- Customer choice and innovation through competition
- A single, unified national open access network
- National uniform pricing
- Independent industry regulator
- Incorporating the NBN into the new USO

2.1. *Consumer Protection*

The “long-term interests of end users” should remain a key tenet of telecommunications policy in Australia.

The NBN must be affordable to all Australians and be priced according to needs of consumers in terms of monthly access fees (preferably with low cost entry-level packages), appropriate monthly download caps (with speed throttling rather than excess data charges) and contract terms not being overly restrictive.

¹ SA Government submission to Panel of Experts, April 2008

Pricing should reflect real costs of construction and a fair return for private investors commensurate with the risks.

It remains unclear how the Commonwealth's contribution of up to \$4.7 billion will be used, whether it will be provided as debt or equity. The South Australian government believes that the Commonwealth funding investment made in a NBN must at the minimum facilitate equitable broadband services in uneconomic areas, and ensure that it does not result in an increase in broadband prices in effect, as a hidden tax on consumers.

Consumer protection provisions currently legislated in the Telecommunications Act 1997 must not be reduced in any way.

Services – voice, internet and entertainment - should be available on an unbundled basis, to allow consumer choice.

2.2. Competition

Where possible, infrastructure-based competition is preferred, but where it is not, service competition must be available. Monopoly networks should not be allowed at any level unless viable competition from other networks is available.

A critical aspect will be definition of interconnect points for retail competitors. Where these points of access occur within the NBN and the terms and conditions of access will be critical to ensuring equity for all retailers to define and differentiate their own products/services.

2.3. NBN must be Open Access

2.3.1. Single Operator

The NBN should be a single national network managed by one provider to ensure consistency of technical standards, interoperability and a coordinated approach to network expansion.

2.3.2. Network Neutrality

Where 'bitstream' services are to be provided on the NBN, wholesale 'bitstream' services should be provided on a non-discriminatory or service equivalence basis to all retail providers

2.3.3. Transparency between wholesale and retail operations

Where the NBN owner/operator is vertically integrated across wholesale and retail operations, complete transparency should be evident on price and non-price terms and conditions.

2.3.4. Non-price terms of access

Regulations should include specific non-price terms and conditions

2.3.5. Orderly transition, preserving competitive assets

An orderly transition or migration to the NBN should be coordinated by an independent oversight body representing the interests of the industry, government and consumers.

Infrastructure-based competition has been a core part of the Australian telecommunications landscape for over a decade, and has facilitated the development of highly competitive and innovative broadband service providers, many of which are based in South Australia. Unless carefully managed, the NBN has the potential to adversely affect these businesses and lessen the benefits of competition.

Existing competitor's assets left stranded by the NBN (eg DSLAMs) should be allowed to be phased out over a period of time to allow competitors sufficient time to adequately recoup substantial investment in those assets.

Alternatively, that a mechanism be implemented in order to compensate providers for stranded assets.

2.4. National Uniform pricing

All aspects of NBN pricing should be uniform across the entire NBN coverage footprint, regardless of location.

All retail access seekers should have access to wholesale services at uniform regulated prices and conditions to ensure a healthy and competitive retail market.

2.5. Industry Regulation

Regulatory responsibility should be maintained by an independent industry regulator, retaining the specific provisions in the Trade Practices Act. Compliance with industry rules should be monitored independently and enforced by the industry regulator.

Consideration should be given to the establishment of an oversight body charged with NBN-specific responsibilities, including migration issues associated with the rollout and cut-over of all broadband users.

2.6. Greenfield Sites

New estates should ideally be provided with Fibre-to-the-Premises, with responsibility (and cost) assigned to the NBN provider.

The role of the primary Universal Service Provider and the NBN provider must be resolved to determine the responsibility for providing the FTTP network. As for other elements of the NBN (FTTN), FTTP customer access networks should be provided on an open access basis.

2.7. Universal Service Obligation

Existing regulatory uncertainties associated with the Universal Service Obligation (USO) need to be addressed, particularly the definition of the Standard Telephone Service and developments in FTTP networks into new Greenfield residential developments.

The South Australian Government submission to the recent USO Review² suggested that, with the convergence of voice and data in an IP-centric network platform, the USO could be recast as a Next Generation Network able to deliver voice (using VoIP) and broadband capability.

With the advent of the NBN, there is now an opportunity for the Commonwealth to simplify arrangements by using convergence and improving consistency from the consumers perspective, in a new USO.

² DFEEST Submission to the Universal Service Obligation Review, 1 November 2007, http://www.informationeconomy.sa.gov.au/_data/assets/pdf_file/0003/10668/Att.2_USO_Review_SA_Gov_Submission_FINAL.pdf