

National Broadband Network Panel of Experts
Department of Broadband, Communications and the Digital Economy
GPO Box 2154
CANBERRA ACT 2601

Via email: nationalbroadbandnetwork@dbcde.gov.au

June 2008

Re: National Broadband Network Regulatory Issues

Thank you for the opportunity to provide input to the regulatory issues pertaining to the national broadband network. The scope of this consultation is only very loosely defined, so we offer the following broad comments for consideration.

About CTN

The Consumers' Telecommunications Network (CTN) is a national peak body of consumer and community organisations, and of individuals representing community interests, who participate in developing national telecommunications policy. CTN's members are national and state organisations representing consumers from non-English speaking backgrounds, deaf consumers, indigenous people, low income consumers, people with disabilities, young people including children, pensioners and superannuants, rural and remote consumers, women and consumers in general.

Introductory comments

We are pleased that a commitment to the protection of competitive principles has already been made. Infrastructure providers must not be given regulatory exemptions that create effective monopolies; we strongly believe barriers to investment can be addressed in alternative ways. Regulation should be consistent industry wide, and will need to cover pricing arrangements if we are to ensure affordable and equitable access for all.

Given this, our comments herein pertain mainly to consumer protection issues relating to the NBN roll out. CTN is happy to provide further comment on the issues raised herein or in an additional consultation.

Consumer protections much be a fundamental part of the network proposals

The consumer protection principles that underlie the Standard Telephone Service must be adapted to reflect the fact broadband is providing essential services such as voice telephony or equivalent services. This means that the principles of universal

access to all people where they live or work, and minimum service and repair guarantees are in place and reported to the regulator on an ongoing basis. The following is a non-exhaustive list of protections that need to be incorporated:

- Universal Service Obligation
- Customer Service Guarantee
- Price controls
- Network Reliability Framework
- Priority Assistance
- Complaint escalation and resolution at TIO
- Emergency call service access
- Low-income measures
- Disability/Assistive equipment program
- 'Utility' approach to disconnections

The NBN should fit within an expanded Universal Service framework

In our submission to the (then) DCITA as part of the USO Review in November 2007, CTN outlined 3 key elements of a user-centric universal communications access regime, underpinned by a legislated right to access basic services. Our recommendations were:

1. Legislate the Australian Broadband Guarantee

CTN believes there is an opportunity for the ABG to be made into a legislative obligation. The function of the guarantee means that, effectively, all Australians will be able to access a metro-comparable broadband service with a financial incentive payable to the service provider if necessary to ensure access. This is an excellent policy initiative that recognises the importance of internet access and seeks to ensure people take up broadband services. Clearly there will be issues around when a provider should be eligible for the subsidy, but this should be considered as part of a consultative process.

2. Create an Australian Voice* and Text Telecommunications Guarantee (*or voice equivalent) which hands Choice back to Consumers.

This would mean that all consumers, regardless of their location, could nominate their preferred any-to-any service type and provider that allows for voice or voice equivalent communication.

3. Establish An Australian Communications Social Safety Net

We envisage a number of aspects to a Communications Safety Net that recognises the ongoing need to support consumers who would have difficulty accessing their basic service without ongoing assistance. This needs to be considered as part of the wider affordability investigation.

Regulatory and legislative change must be subject to consultation

The network infrastructure proposal must not adjust or remove elements of the regulatory regime to encourage investment without a thorough public consultation

and consideration of the long- term interests of end users. It needs to be recognised it is not appropriate for business to decide its own regulatory framework, given the potential for any new network to be a natural monopoly.

Any *specific* proposals need to be subject to public consultation. It is important that there be public scrutiny of any changes to the regulatory environment with a reasonable period of time to assess the consequences.

Retail Pricing and Affordability

Given the contentious nature of pricing at the wholesale level for other telecommunications infrastructure, it would be sensible to ensure the ACCC had some role, at least initially, in ensuring prices were controlled under a regime similar to the current price controls regime that applies to a suite of basic Telstra services. The critical issue is to ensure that pricing does not preclude consumers from being able to afford broadband.

Retail pricing of services is a critical area that will heavily impact on the uptake of services when they become available. We believe there is a need to ensure all Australians have access to a basic broadband service. This could be achieved in a number of ways, for example the creation of a basic package within a price control regime, or through discounts or rebate schemes.

Affordability of services is a critical consideration -there is little purpose investing in a network that provides services that are unaffordable for people on low incomes, as it effectively reinforces the digital divide. Whilst the price controls regime currently applies to only Telstra, it seems sensible to have some kind of affordability benchmarking apply industry wide as an important principle of treating all industry players equally.

Another key way to address affordability and uptake is to consider the creation of a specific Communications Allowance. This would allow consumers to maintain their choice of provider and service, rather than simply subsidise the provider for an unknown benefit to unknown parties. It would empower the consumer to choose the best service for their needs and support competition. Again, the level of subsidy would need to be decided through a consultative process. We look forward to considering specific affordability measures in the affordability review flagged for later this year.

Finally, CTN would like to see some regulatory arrangements that ensure that consumer access is not artificially constrained through service offerings, such as artificial download constraints or restrictive bundling contracts. Download limits are resulting in 'bill shock' for consumers, and regulatory arrangements need to ensure that service offerings are fair to end users and don't expose them to unnecessary financial risks when they use more than their usage quotas.

Quality of Service

Legislation service quality benchmarks should be embraced as a way to avoid future problems, particularly as we move quickly toward future generation networks providing essential telephony services. Quality of Service parameters need to be created to ensure that services meet acceptable standards that can be adjusted over time, and that can be benchmarked and subsequently reported against. This should not be left to a self-regulatory body, which has failed to make any concrete requirements for service providers.

It will be critical that public reporting and accountability measures are built in to the process for building the network.

Service offerings need to be guaranteed to meet the minimum advertised standards, rather than the current theoretical maximum, as is currently the industry practice. This will allow consumer to make real choices to ensure the service they buy can actually meet their needs.

Investment in Training and Equipment Support

Specific attention must be paid to developing appropriate programs to support education and training. We have ongoing concerns that many consumers are not taking up broadband because they don't have the skills and know-how to get started. Without complementary programs, disadvantaged consumers will remain without access to basic services and will miss out. It is critical that funding and programs are made available on a continuing basis to encourage hardware and skills training to use services to the greatest utility.

CTN calls for the establishment of an independently run assistive/disability equipment program, co-funded by industry and government, that can recommend appropriate technology for users with particular needs; an expert consumer committee will be integral to the decision of appropriate equipment. This will ensure consumers have a choice of the type of equipment available to them, and address a long-standing issue consumers have had with the limitations on available products and the lack of choice of service provider that results.

We also think there's a pressing need for greater e-security awareness training and resources for consumers who wish to learn these skills. Without the necessary information, consumer confidence and uptake could be negatively impacted upon. It is critical that training and education programs are not seen as 'extras', but rather integral components of a well-planned and considered program to ensure all Australians call access the NBN.

Accessible Broadband project

In April 2008, CTN launched a joint project "Accessible Broadband for All Australians" with Media Access Australia and the Australian Communication Exchange.

The paper discussed the importance of having a strategic plan to ensure broadband can be, and is, accessible for all Australians. It identifies the benchmark areas that must be addressed, namely: universal availability; technology quality of service; regulatory arrangements; affordability; service offerings; equipment; support programs and training; and content accessibility. Importantly, it outlines the practical individual policy steps that government can take in order to achieve the outcome of accessible broadband for all. We have attached the summary benchmarks in the Appendix, and the full report is available on the CTN website.

Should you wish to discuss this submission in more detail, please contact myself or Sarah Wilson at the Consumers' Telecommunications Network on 02 9572 6007 or at ctn@ctn.org.au.

Yours sincerely,

A handwritten signature in black ink that reads "Teresa Corbin". The signature is written in a cursive style with a prominent underline at the end.

Teresa Corbin
CTN Chief Executive Officer

This submission was prepared by Teresa Corbin, CTN Chief Executive Officer, and Sarah Wilson, CTN Policy Advisor. It has been approved out of session by the CTN Board.

Appendix

In April 2008, CTN, Media Access Australia and the Australian Communications Exchange published the policy paper “Accessible Broadband for All Australians”.

The paper discusses the importance of having a strategic plan to ensure broadband can be, and is, accessible for all Australians. It identifies the benchmark areas that must be addressed, namely: universal availability; technology quality of service; regulatory arrangements; affordability; service offerings; equipment; support programs and training; and content accessibility. Importantly, it outlines the practical individual policy steps that government can take in order to achieve the outcome of accessible broadband for all. The specific recommendations are outlined below:

Summary Benchmarks

1. *Universal availability*

- a) Develop a National Broadband Plan with a blueprint for achieving 100% coverage, with funding preferences to subsidise coverage in un-serviced areas, and regular auditing of existing availability compared with the blueprint;
- b) Department of Broadband, Communications and the Digital Economy (DBCDE) to create a reference group which includes consumer experts to consider applications for funding to achieve universal coverage;
- c) Use the Communications Fund revenue to pay for broadband roll-out; this was derived from the sale of Telstra and should be re-invested in future communications services.

2. *Technology Quality of Service*

- a) Mandate quality of service levels for broadband services, including minimum speed levels through industry standards, to support minimum essential communications services;
- b) Create a standing expert committee which should include consumer representatives to provide guidance on technology issues.

3. *Regulatory Arrangements*

- a) Mandate access to broadband as an essential service by extending the Universal Service Obligation or an equivalent regulatory mechanism to cover broadband services, for example through legislating a Broadband Guarantee;
- b) Develop a self-regulatory Code to address net neutrality to ensure equal access of communications over broadband networks;
- c) Ensure any publicly funded (or party publicly funded) network is subject to structural separation to ensure wholesale competition that will allow consumers to have a choice;

- d) Require community impact statements that ensure all broadband infrastructure roll-outs are accessible. This can be implemented in the same way as regulatory impact statements.

4. *Affordability*

- a) Create a communications allowance or rebate to enable affordable services, available to all who are recipients of government benefits;
- b) Allowance/rebate be available to users who require premium services to meet basic communications needs (e.g. access to Video Relay Service);
- c) ACCC to have price controls over new high-speed broadband networks;
- d) Protect against the ongoing issue of unexpected high bills resulting from usage of supposedly 'unlimited' services;
- e) Introduce equipment rebates or vouchers for low-income consumers for start up costs and users of assistive equipment.

5. *Service offerings*

- a) Create a model contract for broadband services, incorporating existing state unfair contract legislative protections, and including protection against restrictive bundling practices;
- b) Establish an independent advisory service that can suggest a suitable provider and plan particularly for vulnerable consumers;
- c) ACCC to police misleading advertising of broadband speeds and unlimited services.

6. *Equipment*

- a) Establish an independently run assistive/disability equipment program, co-funded by industry and government, that can recommend appropriate technology for users with particular needs; an expert consumer committee will be integral to the decision of appropriate equipment;
- b) Inclusive design principles incorporated in Australian and international customer equipment Standards.

7. *Support programs and training*

- a) Use the Communications Fund to create a funding program for ongoing training programs for community educators with sufficient resources to deal with long-term skills creation;
- b) Ensure ongoing skills training so that community educators are up to date.

8. *Content Accessibility*

- a) Audit government websites to ensure they conform with W3C standards;
- b) Ensure that all Internet content that is created by any level of government, or is created using government funds, should have mandatory accessibility provisions, captions and audio description, as well as W3C compliance;

- c)
- d) Ensure that material from television (vodcasts, etc) originally presented with closed captions should also be offered on the net with an option for captions (open or closed);
- e) Encourage projects and pilots of innovative information provision, eg Auslan podcasts and captioning of video information, especially for government websites;
- f) Fund accessibility training;
- g) Recognise and promote best practice exponents via regular awards;
- h) Initiate accessibility incentive schemes for content providers.