

14<sup>th</sup> March 2014

NBN Regulatory Review  
Department of Communications  
GPO Box 2154  
CANBERRA ACT 2601

Dear Committee Members

**Panel conducting a Cost-Benefit Analysis and Review of Regulatory Arrangements for the National Broadband Network  
Regulatory Issues Framing Paper**

It is with pleasure that OptiComm Co Pty Ltd (OptiComm) responds to the panel conducting a cost-benefit analysis and review of the regulatory arrangements for the National Broadband Network. OptiComm is Australia's largest privately owned and operated, Greenfield FTTP carrier with over 180,000 lots under contract across 6 states and territories. OptiComm has been completing in what is generally regarded as an un-level playing field since NBN Co commenced the rollout of "free" FTTP networks to all new developments over 100 lots in their capacity as Infrastructure Provider of Last Resort.

From the figures presented in the NBN Co Strategic Report with regard the current cost per home passed in Greenfield estates, OptiComm can confirm that we currently build greenfield FTTP network at a cost significantly lower than that of NBN Co, with the same service, quality and reliability outcomes as NBN Co. OptiComm has also been one of only two FTTP providers to be granted "Adequately Served" status for networks built prior to 1st January 2012 and OptiComm agreed to a special condition to be placed on its carrier license to being the Infrastructure Provider of Last Resort (IPOLAR) for these estates.

It is also a concern of OptiComm that the status of estates built after 1st January 2012 therefore remain unclear in that there is no process to apply for or gain "Adequately Served" status for these estates and therefore cannot guarantee that they will not be overbuilt by NBN Co.

When a Developer chooses NBN Co as their "Provider of Last Resort", the Developers is required to design and build the pit and pipe infrastructure and then transfer it to NBN Co.

The key issues with this approach are:

1. Developers have no experience or desire to design and build pit and pipe
2. Developers are being charged between \$800 and \$1500 per lot by contractors to design, construct and warrant NBN Co specified pit and pipe
3. Developers don't have the experience or knowledge of designing telecommunication networks
4. Developers have been designing and constructing pit and pipe to the industry approved and accepted G645:2011 guidelines and not to the specific and unique, NBN Co specifications to reduce cost. This has resulted in higher costs to NBN Co as they need to "augment" the pit and pipe to accommodate their network.
5. Developers have to warrant the pit and pipe for 12 months after the transfer of the infrastructure to NBN Co even if damage is caused by third parties like builders or suppliers.
6. The Department of Communications has produced a draft that requires a Ministerial Determination to include mandatory NBN Co pit and pipe specification for Greenfield developers that are contrary to the G645:2011 guidelines developed by Communications Alliance.
7. Mandatory specifications, especially the design that NBN Co have outlined, are significantly more expensive than industry would normally specify due to their (NBN Co) specific network design and product selection requirements and if mandated, would impose on private FTTP providers like OptiComm, greater financial burden and therefore a less competitive environment.

Telecommunications Carriers like Telstra, OptiComm and others have always designed and built the pit and pipe infrastructure in new Estates as they have the experience and knowledge to build infrastructure to suit their current and future needs. OptiComm would therefore recommend a legislative change to change the responsibility for the design and construction of pit and pipe from the Developer to the carrier responsible for the FTTP network. This will have many benefits to the industry and remove the need to change the current Communications Alliance G645:2011 Guideline to a Code of Practice or a Specification.

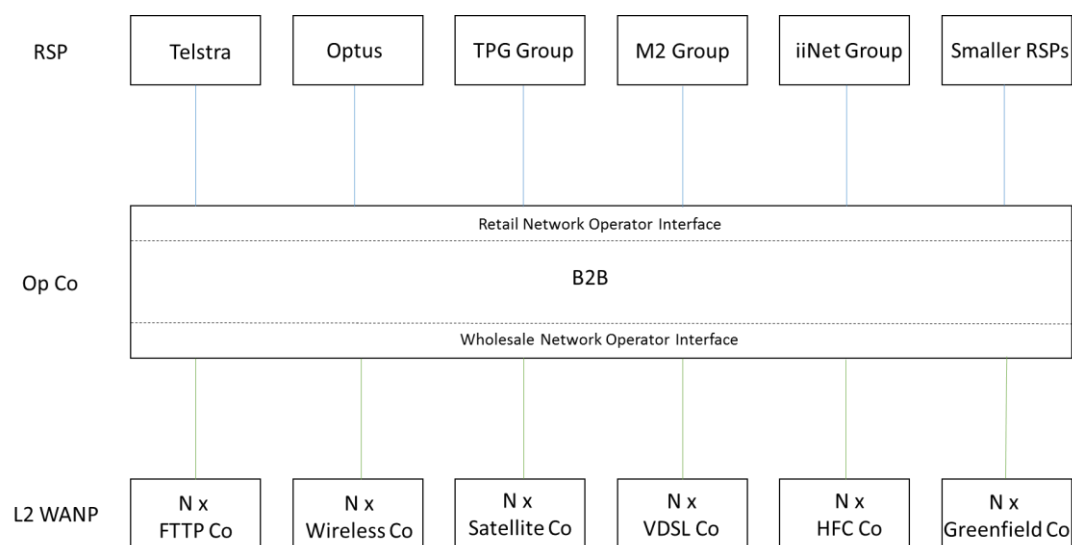
It would be reasonable for NBN Co to levy Developers a cost recovery charge for the design and construction of pit and pipe if they are made responsible for this activity.

OptiComm also believes that NBN Co not charging end-users for a new connection is against past industry practice where Telstra could charge up to \$299.00 for each new line installed into a premises.

OptiComm accept that a brownfield connection charge would probably not be accepted by residents as they may view this work as a technology upgrade to a previously paid for installation which is only now being imposed on them due to the introduction of the NBN, however in Greenfield premises, a new telecommunications connections can and should attract a connection charge as was the practice pre NBN.

The larger Retail Service Providers and alternative FTTP infrastructure providers, like OptiComm, would recommend the establishment of a “carrier-neutral” Business to Business (B2B) solution. The communications Alliance should be the body that defines and maintains industry standards however NBN Co is currently developing their own B2B to manage their interface to the Retail Service Providers. NBN Co is not currently working with the Communications Alliance on the specifications of this B2B and it is locking out use of this B2B by other wholesale infrastructure providers. The Retail Service Providers do not wish to develop multiple B2B interfaces with the various wholesale access providers therefore a “carrier-neutral” solution is required.

One solution is to establish a new “Op Co” as follows:



“Op Co” could also be used to administer standards and customer service guarantee (CSG) service levels.

The establishment of “Op Co” would also require the removal of restrictions placed on Telstra in the Definitive Agreement (DA) with NBN Co that prohibits Telstra seeking access from any other fixed network provider other than NBN Co. This clause in the DA is a major restriction of trade and anti-competitive.

OptiComm would recommend an amendment to the “network extension” provision of the Telecommunications Act that allows carriers to extend networks up to 1km from existing infrastructure to restrict this extension to single customer or end-point

extensions only. If a network extension is to provide multiple customer access, such as a Fibre to the Basement solution using VDSL technology, this should not be exempt from Part 7 and 8 of the Act that prohibits any carrier from using fixed line networks that were built or upgraded after 1 January 2011 to supply carriage services of greater than 24Mb to residential or small business customers unless:

- A Layer 2 bitstream service is available (Part 7) and
- Services are supplied on a wholesale only basis (Part 8).

With respect to the specific questions raised in the “Regulatory Issues Framing Paper dated February 2014, please find below OptiComm’s response:

1. What broader structural model or models for the industry should the panel consider? Why? Should the panel be considering significantly different industry scenarios to those outlined above? If so, what are those scenarios and why should they be considered?

OptiComm would recommend the following:

1. Establishment of a “carrier neutral” B2B solution. This could be a separate company (Op Co) or part of a restructured NBN Co. This would be essential to provide an industry standard B2B for all Retail Service Providers to communicate with all Wholesale Access Providers that will service NBN Co and any private enterprise FTTX, Wireless, Satellite or Greenfield providers.
2. In new developments, change the requirement for the Developer to design and construct pit and pipe to the carrier implementing the FTTP network.
3. Review the Universal Service Obligation (USO) and Customer Service Guarantee (CSG) to include Broadband services and extended times to restore. This later point is in recognition that the next generation of networks. Especially the FTTX solution require a higher level on in-field support that previous “dumb-edge” copper solutions.
4. Recommend that all fixed access providers operate on an open access, wholesale basis only. OptiComm recommends that fixed wholesale access providers or their associated entities should not be allowed to be a retail service provider offering telephony and Internet services to residential and SME customers.
5. OptiComm recommends that the current, grandfather provision allowing carriers to extend networks up to 1km from existing infrastructure should only apply to single customer connections and that a network extension used to provide more than one customer access connection, should only be allowed if operated under an open access, wholesale only business model.

2. Should the panel consider and adopt working assumptions other than the ones outlined on page 5 above? How should the assumptions be prioritised and trade-offs assessed?

- > broadband services providing defined minimum upload and download data rates should be generally available to all end-users, along with such other broadband products as market participants (including NBN Co, in the case of wholesale products) choose to provide. The Government has expressed a policy objective of ensuring universal access to minimum download data rates of 25 Mbps (assuming the NBN Co fixed wireless and satellite programs are delivered as promised). The NBN Co Strategic Review has proposed an approach that would provide 50 Mbps to around 90 per cent of the fixed line footprint by the end of 2019;

OptiComm would recommend a complete review of the USO and CSG to include broadband services. FTTX networks are different to the old copper networks where there is a “smart” core and a “dumb” edge as they have both a “smart” core and a “smart” edge. Because there is a greater requirement for in-field technical support in FTTX networks, the existing CSG for telephone service that require outages to be rectified by “end of the next business day” may need to be reviewed.

- > rollout of the NBN will achieve the structural separation of Telstra in respect of retail fixed network services supplied in the mass market;

Structural separation should be extended to all carriers that operate fixed access networks and should be operated under an open access, wholesale only business model. A fixed access carrier or any of their associated entities should not be a retail service provider.

OptiComm would recommend that the National Broadband Network should not be rolled out by a monopoly company. A monopoly company restricts competition among vendors and contractors as well as stifling network design innovation. A monopoly will always result in higher construction and operational costs. Competitive pressure will reduce costs and provide more innovative network solutions.

The establishment of a “carrier neutral” Business to Business company or solution that will allow all fixed access carriers and all retail service providers to connect via a common interface should be made a priority.

3. Should NBN Co continue to be subject to wholesale-only (structural separation) and open access requirements? If so, to what extent and under what

circumstances, if any, should those obligations apply to other market participants?

OptiComm recommends that **all** fixed access network providers including NBN Co should operate on an open access, wholesale only (structural separated) basis.

4. Should all market participants, including NBN Co, be subject to the same regulations to the greatest possible degree or are specific regulations that do not apply across the board necessary and justifiable in some areas? To the extent to which there should be specific regulations, what is the purpose, nature and scope of the differences?

If NBN Co continues to be a monopoly, greater regulatory restrictions, price control and a requirement to adhere to industry standards will need to apply. In a more competitive environment, less regulation would be required and market pressures should ensure price control with minimal intervention from the ACCC. Industry bodies like Communications Alliance will set and maintain standards for the industry and the new Op Co could be used to police these standards.

5. To what extent should competitive neutrality between NBN Co and other market participants be ensured and if so, how?

OptiComm believes this is a very important issue in FTTP deployment in new developments. The current market place is not a level playing field with private fixed access provider like OptiComm having to “sell” solutions against a Government financed organisation that is providing “free” networks to Developers.

It is OptiComm’s recommendation that NBN CO take on the design and construction of pit and pipe on a cost recovery basis. It is also recommended that NBN Co commence charging connection fees up to \$299.00 per connection for all new premises connections as has been done for many years by Telstra.

OptiComm believes that NBN Co should not have exclusive access to the government’s heavily discounted loan to build network. This should be made available to all qualified providers of FTTP networks in new developments.

Privately owned and operated FTTP providers should have access to funds for infrastructure build. This could be achieved by restructuring the USO fund to finance FTTP networks in new developments, especially for the more non-commercial backhaul builds in regional areas. The company that is granted Infrastructure Provider of Last Resort (IPOLAR) status in the estate, should be

able to access funds that are levied on all licensed carrier in a similar manner to that used to collect the current USO fund.

One major competitive neutrality issue is a clause in the Definitive Agreement between Telstra and NBN Co, restricting Telstra to only seek access to end users via NBN Co. This clause needs to be removed as it anti-competitive and a restriction of trade for Telstra and place non NBN Co providers at a major disadvantage.

6. Where providers other than NBN Co supply fixed network services, should there be provisions that ensure consumers secure particular outcomes, for instance by comparison to those generally available from NBN Co?

Providers of fixed network services other than NBN Co should be open access, wholesale only and be granted adequately served status. It is reasonable to make this conditional on delivering the same or better product and service outcomes to that of a NBN Co network. With the establishment of a “carrier neutral” B2B solution, the organisation operating this facility could administer and police the product and service standards that have been set and maintained by the Communications Alliance.

7. Where an infrastructure provider other than NBN Co delivers outcomes comparable to those delivered by the NBN, what obligations or restrictions should apply on NBN Co? For example, should NBN Co be preventing from overbuilding that network?

New fixed access networks should not be overbuild by NBN Co and should be granted “Adequately Served” status in a similar way that networks built prior to 1<sup>st</sup> January 2012 were granted this status and an IPOLAR condition placed on the carrier license of the carrier owning and operating that network. OptiComm would recommend that the “My Broadband” Web site would maintain a list of network operators and the areas served by all the IPOLAR providers.

8. Were NBN Co to be restricted in supplying services in areas serviced to a specified standard by other network operators, what undertakings, if any, should those operators be required to give about their ongoing performance? Noting links with question 3 in relation to wholesale-only and open access requirements, would it be sufficient to rely on Part XIC processes to secure access to services on these networks, or on Part XIC processes that were further refined?



As outlined above, fixed access providers should be required to be open access, wholesale only and should be required to meet the guidelines of “Adequately Served”. The non-NBN Co network operator should be required to provide wholesale service on an equitable basis to all access seekers. The establishment of a “carrier neutral” B2B “Op Co” can ensure adherence to product and service outcomes consistent with NBN Co and therefore should address many of the competition and access issues.

9. What are the essential characteristics that service provided over a network other than NBN Co’s should have to meet for those services to be seen as operating on an NBN-comparable basis? For example, should it include the following elements:

i) ability to support certain minimum broadband speeds;

Agreed, this is a minimum requirement.

ii) provision of wholesale services on an open access basis (possibly involving structural separation or some equivalent method of ensuring non-discrimination) and support for retail level competition;

Agreed – OptiComm supports complete structural separation for all fixed access network providers and these carriers should be restricted to an open access, wholesale only business model. Fixed access providers or associated entities should not be allowed to provide retail telecommunications services.

iii) an obligation on at least one provider to service all customers within a service area;

OptiComm would recommend at least 3 top-ten retail service providers be available on the fixed access network provider network. This should be a condition of having an estate declared “Adequately Served” built post 1<sup>st</sup> January 2012 and this should be written into an IPOLAR condition of the provider’s carrier license. There should also be an obligation on a Developer to select a carrier that can achieve “Adequately Served” for their development area. The establishment of a new B2B “Op Co” may be a mechanism to guarantee connection by the Tier one retail service providers. The process to seek and maintain a connection to the B2B would be rigorous to ensure service level and product outcomes.

iv) acceptable performance characteristics – for example in terms of latency, jitter, loss and network availability;

Agreed. OptiComm recommends that industry guidelines, codes of practice, specifications and standards should be developed and maintained by Communications Alliance and declared by the ACMA.



v) price structures and levels that provide affordable access;

All residential wholesale access fees should be declared by ACCC, not just the 25/5Mbps service that was declared last year by the ACCC.

vi) credible, transparent and predictable upgrade paths to higher speeds;

Agreed.

vii) the ability to support voice services and the various legacy services; and

OptiComm recommends that this should be mandatory as part of the “Adequately Served” status and IPOLAR condition of a provider’s carrier license.

viii) clear and reasonable timeframes for connection and service restoration.

OptiComm recommends that this should be part of a revised Customer Service Guarantee (CSG) that includes both telephony and broadband services. The current telephony only CSG conditions need to be reviewed with the timeframes to restore extended due to the greater need for in-field technical support due to the “smart edge” topology of new fixed access networks.

10. To what extent should the provision of non-commercial services by NBN Co be funded through cross-subsidies, and if so, what safeguards, if any, should apply to those cross-subsidies?

OptiComm would recommend a complete overhaul of the existing Universal Service Obligation (USO) funding model to assist fixed access providers build and operate infrastructure such as backhaul links in regional areas. Industry generated funding of non-NBN Co fixed access providers in regional or metro-fringe areas would enhance competition and reduce the reliance on government financed NBN Co networks. Non-commercial services should not be cross subsidised, they should be funded through an industry generated funding mechanism.

11. Were it not feasible or sustainable in a competitive market for NBN Co to earn sufficient revenue to enable it to cross-subsidise uneconomic customers, how should services to those customers be provided and funded?

OptiComm recommends a USO style funding model rather than cross-subsidies. See OptiComm’s response to Question 10 above.

12. What approach should be taken in new developments? Do they raise particular structural regulatory issues?

The following recommendations are required for new developments:

1. That all FTTP providers including NBN Co should be responsible to the design and construction of pit and pipe. The current requirement for a Developer to design and construct pit and pipe and transfer ownership to NBN Co should be removed from the Telecommunications Act.
2. NBN Co should recover the cost of the design of the pit and pipe on a cost recovery basis.
3. NBN Co should commence charging a connection fee to all new premises connected in new development areas. Telstra's fee for new line connection was restricted by legislation to \$299.00 per new line connection.
4. FTTP Providers, including NBN Co in new development need to gain "Adequately Served" status and have an IPOLAR condition placed on their carrier license.
5. A condition of granting a Development Application over a development area should include the selection of a FTTP provider that has the capability of obtaining "Adequately Served" status and willing to take on an IPOLAR condition on their carrier license.
6. A new funding model be established to finance non-commercial new developments in regional and metro-fringe areas to alleviate the need for NBN Co to be the default Infrastructure Provider of Last Resort. The financing could be either accessing the low interest rate loans from the Government, similar to the funding model for NBN Co, and/or via an industry generated fund, similar to the current USO funding model.

OptiComm would recommend that NBN Co investigate reopening tenders for build-operate-transfer (BOT) partners to facilitate a more cost effective and timely delivery of network in new developments. NBN Co has on a number of occasions, expressed that their involvement in new developments is a distraction from their core role to deliver high speed broadband networks to all existing dwellings. The engagement of proven private FTTP providers will deliver a more cost effective solution in the timeframes that developers demand.

An essential part of ensuring all non-NBN Co FTTP providers in new developments provide equitable product and service outcomes would be through the establishment of a Op Co to operate and administer a "carrier neutral" B2B that in turn will monitor and maintain service levels with RSPs.

13. Should responsibility for the economic regulation of telecommunications remain with the ACCC?

OptiComm recommends that the ACCC should to be responsible for the maintenance and enforcement of both economic and consumer protection aspects of the Telecommunications Act.

Please do not hesitate to contact me if you have any questions or need for clarification on this response.

Yours faithfully,  
For and on behalf of OptiComm Co Pty Ltd



Phil Smith  
Chief Regulatory Officer  
M: 0414 478 996  
E: [psmith@opticomm.net.au](mailto:psmith@opticomm.net.au)