

ATUG's Focus this week is on the current NBN work which calls for views on the legislation covering the access regime for the NBN and the operations, ownership and control of the NBN Company.

ATUG will be discussing these issues at the second Future Forum on the Digital Economy in Melbourne. For details Click Here <http://www.atug.com.au/futureforum/melb240709.pdf>

The focus of the Forum is on Security – Integrity and Assurance and our aim is to identify the Key Factors for a successful transition to a fully functioning Digital Economy enabled by the NBN.

The call for input on the NBN Company covers many issues:

- The optimal access regime for the National Broadband Network, including, for example:
 - the legislative obligations that should be required to ensure the National Broadband Network company operates on a wholesale-only, open access basis,
 - the process for identifying services to be offered,
 - how the prices and non-price terms and conditions of those services should be set, and for how long, and
 - the role of the Australian Competition and Consumer Commission.
- The appropriate equivalence obligation for the company and the services it offers, and how this would operate in practice.
- The nature of ownership restrictions applied to private sector investors to protect the Government's equivalence objective for the wholesale-only network.
- Arrangements for the Government to sell its stake in the network.
- Any other rights and obligations to be conferred on the company.

In working through our response ATUG is looking at the original objectives for the NBN outlined by the Government on 7 April:

This new National Broadband Network will:

- Connect 90 percent of all Australian homes, schools and workplaces with broadband services with speeds up to 100 megabits per second 100 times faster than those currently used by many households and businesses
- Connect all other premises in Australia with next generation wireless and satellite technologies that will deliver broadband speeds of 12 megabits per second
- Directly support up to 25,000 local jobs every year, on average, over the 8 year life of the project.

Under the Rudd Government's new national broadband network every house, school and business in Australia will get access to affordable fast broadband.

OWNERSHIP AND FINANCING

The Rudd Government's National Broadband Network will be built and operated by a new company specifically established by the Australian Government to carry out this project.

The Government will be the majority shareholder of this company, but significant private sector investment in the company is anticipated.

The Government will make an initial investment in this company but intends to sell down its interest in the company within 5 years after the network is built and fully operational, consistent with market conditions, and national and identity security considerations.

This company jointly owned by the Government and the private sector will invest up to \$43 billion over 8 years to build the national broadband network.

During the media conference on the NBN on the 7th April, the Minister provided some detail on the question of ownership:

Well the figure that I referred to before which is that the National Broadband Network Corporation will invest up to \$43 billion, is a significant investment.

We have also indicated very plainly that we wish to do this in partnership with the private sector.

The Government proposes that it would have some, it would welcome private sector participation up to 49 per cent. We have also indicated that once this National Broadband Network Corporation is up and running for a period of five years, that we would then sell it.

So individual companies, there will be caps, we will be having an implementation study over the next eight to nine months to work through all of those sorts of issues in terms of the cap sizes.

ZDNet reported on 11 June

Conroy added that Telstra's stake in the NBN Co would be limited to somewhere between 15 to 20 per cent, not 49 per cent as suggested in recent media reports. "But that could be from a number of companies," he said. "We're very much committed to ensuring that anyone who was to come in couldn't dominate."

Hansard reported on 26th May at pg 93

Senator Conroy—Let me reassure you that we will not re-create the old problem. If we have our network competing with any of the incumbent networks, by definition, there is still competition. If one company, let us call it XYZ Proprietary Limited, decide they want to vend in their assets, the maximum stake that we have indicated that a collective of companies can take is 49 per cent. If the company was a vertically integrated supplier there would be a cap on the amount of shares that they would be entitled to if they vended their assets in. There have been figures quoted, though there is no final decision and the implementation study is examining these very issues. Let us say the sort of figure that is being kicked around is 15 to 20 per cent. If XYZ company was a vertically integrated monopoly or former monopoly and it wanted to vend in, in its current structure, then it would be allowed 15 to 20 per cent. If, in the future, any company changed its structure then it is possible that we could consider a changed set of circumstances—possible. All of this is subject to ongoing discussion and an implementation study. What would not be allowed to happen in the future is that a retail arm would be allowed to buy into the company when we sold the other 51 per cent.

The 7th April announcement continued:

The new investment is also the biggest reform in telecommunications in two decades because it delivers separation between the infrastructure provider and retail service

providers. This means better and fairer infrastructure access for service providers, greater retail competition, and better services for families and businesses.....

SPECIFICATIONS

The new superfast network will:

- connect homes, schools and workplaces with optical fibre (fibre to the premises or 'FTTP'), providing broadband services to Australians in urban and regional towns with speeds of 100 megabits per second - 100 times faster than those currently used by most people extending to towns with a population of around 1,000 or more people
- use next generation wireless and satellite technologies that will be able to deliver 12 megabits per second or more to people living in more remote parts of rural Australia
- provide fibre optic transmission links connecting cities, major regional centres and rural towns
- be Australia's first national wholesale-only, open access broadband network
- be built and operated on a commercial basis by a company established at arm's length from Government and involve private sector investment
- be expected to be rolled-out, simultaneously, in metropolitan, regional, and rural areas.

The Government's objective is to achieve 90 per cent coverage of the FTTP network, and remaining coverage to be delivered through wireless and satellite technologies, within this funding envelope. Initial advice to the Government is that this objective is achievable, but this estimate will be subject to an implementation study.

The Government will seek private investment in the company to draw on private sector capacity and expertise. However, ownership restrictions will be established to protect the Government's objective of a wholesale open-access network.

PLAN OF ACTION as announced on 7 April 2009

To turn its vision into action the Government will immediately:

- Commence an implementation study to determine the operating arrangements, detailed network design, ways to attract private sector investment for roll-out early 2010, and ways to provide procurement opportunities for local businesses
- Fast-track negotiations with the Tasmanian Government, as recommended by the Panel of Experts, to build upon its NBN proposal to begin the rollout of a FTTP network and next generation wireless services in Tasmania as early as July an immediate start on a nation-wide investment.
- Implement measures to address 'black spots' through the timely rollout of fibre optic transmission links connecting cities, major regional centres and rural towns - delivering improvements to telecommunication services in the short term.
- Progress legislative changes that will govern the national broadband network company and facilitate the rollout of fibre networks, including requiring greenfields developments to use FTTP technology from 1 July 2010.
- Make an initial investment in the network of \$4.7 billion.
- Commence a consultative process on necessary changes to the existing telecommunications regulatory regime.

Role of the ACCC

The ACCC has provided also some guidance on its preferred approach to a Regulatory Framework for the NBN in the appendices <http://www.atug.com.au/Focus/fs220709/accc.pdf> to its submission on 21st Century Broadband Regulatory Reform, from pg 125. The issues canvassed over 250 pages include:

- Valuating the sunk network
- Cost of Capital
- Pricing flexibility
- Funding uneconomic Services
- Structural arrangements and equivalence
- Service Description
- Key non-price terms and conditions
- Transition and migration

ATUG's objectives for the NBN have always been:

- The **Policy** objective for the NBN regulatory framework must remain, the Long-term Interests of End Users.
- **Affordability** is key to take-up. Regulation should support cost effective build. Competition is the strongest tool for delivering affordable prices. An entry level "safety-net" package should be developed.
- **Choice** – network topology is central to competition and choice. Designs that foreclose competition should not be accepted. When infrastructure competition is not possible, service competition based on open access and equivalence must be possible.
- **Equivalence** in practice – can only be assured by a new and independent body, NBN Australia, with the task of implementing the Open Access and Equivalence Frameworks for Australia's NBN
- **Customer Experience** in the NBN environment must be managed for success, from the initial migration through service contracting to service switching and repair experiences. Service quality and security standards must reflect the key role of the NBN in the lives of all Australians.
- **Ubiquity** – all Australians must be connected to the NBN. Ubiquity is not only about network availability but also about affordability and accessibility. When all Australians are connected to the NBN, the real potential of this capability for productivity, growth and innovation will be open to end users in all parts of the economy and community, and in all regions of Australia.

ATUG will be responding to the request for views on NBN Co legislation on the basis of these objectives. Members' views are welcome – email rosemary.sinclair@atug.org.au