I was delighted to be invited to speak today, not only because I am a great fan of the work Rosemary and her ATUG crew, but also because I think the regional telecommunications story is on the cusp of something big.

In an industry that has been mired with intractable problems decades, the problems faced by regional consumers have been particularly stubborn.

Regional telecommunications has been used as a ransom note in conflicts between Telstra and Government for years.

But as we move toward the NBN there is an opportunity, really for the first time since we began treating telecommunications as a industry, to break the back of the problem.

There is also, though, a chance that things could get very messy and ugly in the short term, and that the NBN won't ever deliver on its promise.

It is no coincidence that throughout the protracted Telstra privatization debate, rural and regional communities were implacably opposed to the sale.

Australians living outside of the cities didn't need explaining to them the conflicted interests that were being created.

One the on hand, there is the public good argument that telecommunications connectedness is so fundamental to everyone's ability to participate as a citizen in this country that it represents a right.

On the other hand, corporatization and privatization gave the message to Telstra that it was expected to act as a profit-maximising business.

It was inevitable that this would become an intractable debate from the moment it was decided that the then Telecom should be sent along the path of corporatization and then privatisation.

A great mountain of carrots and sticks has been piled up by successive governments to get Telstra to be both a profit maximiser and a social service provider.

It might have seemed like a path to a workable compromise when it was first cobbled together.

Experience has shown that it is a recipe for endless conflict.

This conflict reached a nadir in the past couple of years.

As with most issues, the behaviour of the now departed American management of Telstra didn't create the problem of these conflicting interests, but it threw them into stark relief.

It is worth remembering that the original proposal to the Government from Sol Trujillo for the rollout of a new broadband network separated responsibility for regional Australia back on the Government.

This was the so-called Digital Compact that Telstra unveiled at first in secret to the Government in 2005.

Telstra said it was willing to build a broadband network in the cities as long as it did not have to abide by the competition rules.

But it wanted to hive off regional Australia and have the network upgrade there paid for by the Government. Others could bid against Telstra for the right to build it, but there was clearly no prospect that they would win.

Telstra would have owned and run the network, but it would have been the Government's responsibility to pay for the upgrade.

This should have been no surprise. When Trujillo was running USWest, that company got in terrible trouble for its neglect of lower margin-returning regional consumers, ultimately resulting in it being fined hundreds of millions of dollars.

Now, we have all expended plenty of energy complaining about the attitude of the previous Telstra management, they said they were simply determinedly trying to maximize profits ahead of privatisation. And the regions didn't fit in that picture.

The management of Telstra in times past was a bit more subtle about it, but, basically, had much the same attitude to the regions.

Given their drothers, they would all rather not have to invest in these low-margin, high cost customers. Telstra, like all incumbents around the world, has always been looking for every opportunity to line up to ask the Government to pay for the delivery of services to more remote customers.

But if Telstra didn't see great financial value in these regional consumers, it saw another value.

It saw the political sensitivity of the Government to accusations that people outside of the cities as second class citizens.

It, in effect, used them as its ransom note to the Government to try to get competition regulation removed or relaxed.

Most specifically, Telstra tried to force the Government to overrule the regulator and double the price of the unconditioned local loop in denser population areas by saying it would increase line rental prices in the regions if it did not.

Telstra was not forced to do this by financial stress caused by the cost of providing regional services. It banks billions in profits a year, let's remember

It did this because its competitors in city areas were starting to have an impact on its juicy margin thanks to having invested in their own equipment in exchange and beginning to sell ADSL2+.

Doubling the price for using the copper line in those locations would smash this threat to Telstra's margins.

The Government responded first by trying to work out a deal, but in the face of Telstra inflexibility, used the regions as a ransom note of its own. It threatened both legislation to lock in regional retail prices, and funding to build a regional competitor to Telstra.

So, Telstra moved on to use ADSL2+ in the regions as a bargaining chip.

Who can forget the temerity of its refusal to turn on the service until it was given a guarantee that it would not be regulated.

Except of course, it did turn on ADSL2 where customers could buy it from someone else. If you were lucky enough to have a competitor investing in your exchange, Telstra would rush to follow.

So, if you were in a location where someone else exercised their rights under competition law and invested in an ADSL2+ network, Telstra would respond by offering to also sell it to you as well.

But if you were in a location where there was no competitor, bad luck.

You would only get it, Telstra said, if the Government guaranteed that Telstra would be protected from competition law.

The self same laws and regulations that meant that competitive ADSL2+ was becoming available in the first place from others.

Only a monopolist could follow the logic of that regulatory formula, but there it was, right until after the Federal election when Telstra decided it had played its hand out and turned on the service.

People in regional Australia are constantly in a game of telecommunications catch up, it seems.

They live with an effective monopolist network owner and retailer that has an incentive to invest money only where competitors are located.

That is, not in the bush.

An effective monopolist who sees the pressure for better services in regions as leverage for either more money in subsidies, greater regulatory advantage, or both.

And Australians in the regions have lived with Government policy that wanted to step back from the business of telecommunications, yet was faced with an increasing sense in the community that

communications services were a necessity and should therefore be a right of citizenship, not an option consumer item.

But away from the headlines and lost in all of this political toing and froing was that the ACCC was bent on pursuing a regulatory philosophy that was looking increasingly as though it could never be made to work satisfactorily in the bush.

The gap between the city and the bush was being exacerbated by the ACCC's commitment to the so-called ladder of investment.

This is a regulatory model has captured the imaginations of regulators around the world in recent years. And there is no doubt that there is some merit to it.

It is the idea that as we move from publicly owned monopoly toward truly competitive communications markets, competitors need to be able to enter the industry with graduated investment.

They start as resellers of the incumbents' products – little more than putting their name on a bill.

They climb up to be wholesalers, where there is investment in higher level network switching,

And finally they invest right down in the exchanges, installing their own DSLAMs and renting only the bare copper line from the incumbent.

The problem is that in a country such as Australia, there are plenty of places where it might not be possible for many – or any – competitors to climb ALL the rungs in the ladder.

In locations where there are simply too few customers connected to an exchange to support multiple investments, for example.

The ACCC acknowledged this a few of years ago in a discussion paper it released on regulatory philosophy.

It argued that some places in the city could be so competitive that it would be possible to wind back regulation.

But some places in the bush might actually need more regulation.

Specifically, it hinted that ADSL might have to be directly regulated so that Telstra had to make available a wholesale service, because competitors would never find it viable build their own network equipment in exchanges.

Unfortunately, what happened in subsequent years suggests that the ACCC's attraction to the ladder of investment philosophy became a dangerously one sided obsession.

It has spent an enormous amount of effort responding to Telstra's demands that services in the cities are deregulated, but refused to countenance arguments from competitors that broadband in regional areas needed regulation.

Now, you might find this history amusing, bemusing or boring – if so, forgive me – but I have run through it because it very directly frames what will happen next in regional Australia.

The Government's first cab off the rank in the suite of measures announced on April 7 is the backhaul blackspots initiative.

This a response to concerns raised for many years by many people – including CCC members – that broadband competitors are locked out of regional markets because the price just to get to many towns is prohibitive.

And, the reason it is prohibitive is that the transmission links to these places, or backhaul, was provided by Telstra and only Telstra.

There's one road in to town, and Telstra sets the toll.

The Government has set aside $250 million to inject into fixing that problem by building transmission links independent of Telstra – in effect breaking its monopoly. A direct response to an immediate problem, you might think.

But the big question now is "after that, what next?". If we are not careful, the answer might be "not much".

This is where I fear we could fall right into the hole dug by the failed regulatory experiment of trying to force the ladder of investment to work without regard to the evidence that is it is bound to fail in some places.

Once the backhaul is in place, we need broadband services providers to use it to expand into new regional markets with retail products.

In the places where competitive broadband is in place today, companies – most of whom are CCC members, BTW – entered the market via the ladder of investment.

That is, first selling wholesale ADLS services and then converting to their own DSLAM-based services exchange by exchange as they built their customer base.

So, it might be expected that the same thing will happen in towns where the backhaul monopoly is broken.

But it is no certainty.

Firstly, remember that ADSL has never been regulated directly.

Telstra was forced to sell ADSL1 to wholesale customers not because it was declared, but because the ACCC determined in 1999 that it was anti-competitive for Telstra to delay providing a wholesale service until after it had launched a retail service.

ADSL2 has never been the subject of any regulation.

After holding its breath until it went blue, Telstra did finally announce in 2008 that it would sell ADSL2+ to wholesale customers on a voluntary basis.

But it is understood that Telstra has been trying to include a tricky little clause in contracts for ADSL2+ wholesale contracts that would prevent their competitors from expanding their network footprint.

Basically, if you buy Telstra's ADSL2+ service to enter a market, Telstra wants you to agree to conditions that mean you can never upgrade to install your own, competitive broadband network.

Which means you can't continue up the ladder of investment.

It is without doubt a targeted and deliberate strategy on Telstra's part to limit the spread of competition in regional areas by chopping off the top rungs of the ladder of investment.

That same ladder in which the ACCC has invested so much reliance.

Alternatively, we might hope that competitors just leap-frog the wholesale rung, and go straight to investing in their own DSLAMs, once competitive backhaul is available.

There is a good chance that might happen. I know that there are member companies of the CCC that have pent up demand to get out into regional towns.

However, there are reasons why we might not get the speed, breadth and depth of investment that we need.

Firstly, the approaching NBN raises a question about the future of DSLAM investment generally.

Over the next couple of years, every broadband provider needs to sits back and ask how long it makes sense for their business to continue to invest in DSLAMs that use the old copper network when a new fibre, wireless and satellite network is coming along.

Everyone will likely have a different answer.

There is now some certainty that in the cities, the existing DSLAM investment will be in place long enough to pay for itself.

Some competitors also feel there is enough certainty to expand their capacity.

But where?

It is more expensive to move into new locations. In fact, Telstra has gone out of its way to raise the hurdle for entry into new exchanges, wherever they are located.

My members report waiting literally for years to be able to install their equipment in some places.

You might be aware that the ACCC has launched a legal action claiming Telstra has engaged in misleading and deceptive conduct

by telling competitors that there was no room for them to place their equipment in certain exchanges when there was space.

On the basis of experience to date, if Telstra decides to play hard ball, it could take two years for a new DSLAM investment to get switched on.

So, if you were looking for bang for your investment buck today, would you bet on putting a DSLAM in a never before accessed exchange, in a market where you have no wholesale customers to provide initial payback, and where it is most likely Telstra will be able to disrupt you?

The CCC believes that this raises a potentially serious problem for the Government.

There is a very real risk that the $250 million set aside for building new regional backhaul could be building white elephants unless the Government also acts to plug the regulatory gap that the ACCC has so far ignored.

Specifically, the Government needs to consider how, consistent with the future NBN, it can stimulate retail competition at the end of the wholesale backhaul networks when there is a gaping hole in the form of wholesale access services on competitive price, terms and conditions.

The CCC believes the way to do this is for the Government to direct the ACCC to begin work immediately on defining and declaring a bitstream service in regional areas. This service should be able available for interconnection in central locations or at the regional exchange or equivalent, in order to gain full advantage of the investment in backhaul competition.

It is clear that the Government envisages that a bitstream product will be the basic wholesale service provided to retailers so they can sell over the NBN when it is operational, and into the foreseeable future.

There is also a clear case that there is presently unregulated market power in regional broadband markets on today's network.

Telstra's actions in trying to bind competitors to its ADSL2+ wholesale service is the clearest indication one could imagine demonstrating that it feels that it has market power in regional locations. It is also the clearest evidence of its determination to hold on to it.

The NBN, the regulatory review process and the backhaul blackspots program all point in one direction – the Government wants to end Telstra's market power across the country. It wants to do it to stimulate more competition and better prices.

The first test for the Government will be whether it can see the interconnectedness of the various factors at play in the regions and deliver the backhaul blackspots program inside a workable regulatory package.

We watch and wait with interest to see how well it can navigate a way out of the policy and regulatory blind alley ways that have brought undone previous, equally well-motivated initiatives.

Thank you