



ATUG submission
Expert Taskforce
Guidelines for High Speed Broadband Network
Infrastructure Proposals

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Expert Taskforce – Draft Guidelines

ATUG's views are based on the needs and views of business, government and community users who rely on communications technologies to achieve their goals.

ATUG is keen to see continued co-operation between Federal, State and Local Governments and between government and industry in the development of Australia's communications capability. A number of State and Local Governments are advanced in strategies and plans to encourage the development of high-speed broadband networks for their communities and agencies. The Guidelines should provide opportunities for a number of proposals to emerge.

A number of Federal agencies – DoHA, DEST, AGIMO are examples – are also focused on plans for future service delivery which rely on fast broadband. The Taskforce Guidelines should build on this work.

BACKGROUND AND CONTEXT

1.5 In undertaking the assessment process, the Terms of Reference require the Taskforce is to have particular regard to:

- **the Government's strong ongoing commitment to robust competition and the long term interests of end-users;**

ATUG welcomes the continued commitment in the Terms of Reference to a central position for the key policy which has driven decision in the telecommunications sector to date - the long-term interests of end users, and competition as the key mechanism to achieve this policy objective.

Policy choices which limit choice for end users, reduce competition, or result in unaffordable services will mean that Australia's telecommunications services will not be up to world parity with consequences for economic and social development.

ATUG sees the development of an open, non-discriminatory high-speed broadband network as critical in achieving an appropriate market structure for the communications sector. Proposals for commercially separated infrastructure should be given great weight in the assessment process, as they are the most likely to achieve a competitive market structure for the communications industry. Existing infrastructure owners will be more effective participants if the issue of market dominance is addressed with market based rather than regulatory outcomes. Based on overseas experience ATUG expects infrastructure only companies, utility companies to see the opportunity provided to enter the market as a wholesale only provider. This would foster the services and applications sector in the communications industry for the benefit of end users.

- **the Government's strong ongoing commitment that all people in Australia have access to quality telecommunications services at affordable prices, underpinned by legislation where necessary;**

ATUG welcomes this continued commitment to universal access to affordable services. The benefits of new communications platforms require that all Australians are able to connect to the networks and can afford the services.

- **the need for investors in a high speed broadband network to earn returns on their investment commensurate with the cost of their investment and their risks;**

ATUG supports commercial returns for investors in new networks – ongoing innovation is a key concern of end users.

However, ATUG is concerned that the current Guidelines focus on capital cities and regional centres because of the requirement for no taxpayer funding.

Mobile networks have in the main been built on commercial principles without intrusive policy or regulation, and have required government support to extend the rollout into regional and rural areas.

In the same way, the Australian Broadband Guarantee delivers government funding for uneconomic markets.

For end users ubiquitous high-speed broadband is the true goal. Government must see a role for itself in explicitly funding deployment in uneconomic and therefore underserved markets to achieve any-to-any connectivity over high-speed broadband networks.

Regulation for certainty of investment returns may need to be part of the telecommunications future but should take account of the long-term interests of end users and affordability criteria as well as guaranteed returns for investors. ATUG believes Part XIC s152AB (7), which explicitly requires the ACCC to have regard to: "...the risks involved in new investment" provides a suitable mechanism to achieve a balanced outcome.

- **the Government's objective to encourage efficient investment in communications infrastructure;**

ATUG supports the objective of efficient investment but questions how inefficient investments can be handled in a policy sense. If companies choose to make inefficient investments it is important that end users are not required to fund such choices through guaranteed rates of return.

Optic fibre rings in capital cities has been a point in case in the past – while companies may wish to build multiple unique infrastructures, users should not see price rises as the way of ensuring returns for inefficient investments.

Cable over-build for Pay TV deliver is another case where concern with efficiency was overtaken by concern for market dominance.

- **the Government's view that investment to provide high speed broadband services, particularly in urban areas, can and should be funded by the private sector; and**

ATUG supports commercial investment from private sector sources where this delivers the communications infrastructure that Australia needs. However, in our view there is a role for government in extending and accelerating

infrastructure development in markets where commercial indicators do not support investment that is needed for economic and social benefit.

The Government could also consider the use of tax mechanisms (as with the film industry) or accelerated depreciation as mechanisms to encourage the deployment of infrastructure with reasonable returns for investors. It may be appropriate in this context to require the claiming entity to be a structurally separated company.

- **Australia's international trade commitments relating to telecommunications.**

ATUG supports this approach which not only encompasses bi-lateral Free Trade Agreements and commitments to tendering processes but also the multi-lateral WTO commitments in the Telecommunication Reference Paper in regard to interconnection and access. Cost oriented access prices, transparency of decision-making and independence of regulators are key commitments.

1.6 The Terms of Reference also require the Expert Taskforce to consider proposed:

network and operational characteristics

ATUG's Future Forum on Demand characteristics agreed that future communications services must be symmetric, highly reliable, delivering to stated performance characteristics, ubiquitously available (for business needs as well as social needs) and affordable. The core demand driver is the ability to provide communications service platforms capable of handling image based communications anywhere and for all sectors – retail, banking, mining, construction, property. In some sectors extremely high bandwidth is required at certain places – health, education. In other sectors low bandwidth but ubiquitous availability is key – energy, water management are examples.

pricing principles for access to the high-speed broadband network including whether there should be a contribution towards network losses incurred in rural and remote areas;

ATUG has called for an open process to review claims that there are remaining network losses in rural and remote areas. With increases in line rentals, contributions from Government funding to accelerate and extend access to mobile and broadband services and continued high margins on fixed network call services, ATUG remains sceptical about claims for losses in rural areas. There may be other mechanisms to handle any losses legitimately identified. These will be identified during the course of the USO review and final decisions on this element should not be made until that review has been completed. ATUG is not sure how the Australian Competition Tribunal decision in support of the ACCC on the cost elements of ULL pricing may impact on this Term of Reference.

legislative and regulatory measures to facilitate or enable the high-speed broadband network and to avoid investment in duplicate networks if they are economically inefficient;

ATUG believes there should be a further opportunity for interested stakeholders to comment on any proposals put forward by industry

during the assessment process. The opportunity to comment on the Draft Guidelines while appreciated is not an opportunity to comment through public consultation on proposed regulatory or legislative changes as these have not been made yet. These proposals may have significant public interest implications and commitment to an open and transparent process should provide an opportunity for comment on the legislative and regulatory change proposals once the investment proposals are understood. The four weeks proposed in 5.5 is not sufficient time.

arrangements to provide any appropriate compensation to parties who would be affected by the implementation of the proposed legislative and regulatory measures; and

ATUG is not sure how this Term of Reference fits with the November High Court hearing on the access regime which deals with arguments about “compulsory acquisition” and “reasonable compensation” given that proposed regulatory measures and pricing/compensation principles would most likely find their legislative home in the Trade Practices Act.

OBJECTIVES

From ATUG’s perspective the over-arching objective should be the delivery of high-speed broadband access to all Australians. The focus of the Expert Taskforce project is on how to do this in commercial markets without taxpayer funding.

In particular ATUG supports objective (b) ...the long-term interests of end users as the proper policy basis for the Taskforce’s deliberations consistent with the wider objectives outlined and in particular supports the inclusion of access at competitive prices for consumers in rural and remote areas. ATUG interprets “consumers” as end users of services keeping in mind the needs of small business, educational and health and community organisations in these areas.

The recognition in 3.12 of the importance of improved choice as beneficial outcome for consumers is welcomed.

ATUG would hope that proposals emerge which are not reliant on existing network infrastructure (3.18) and believes the Taskforce should put emphasis on such proposals. Over many years Australia’s telecommunications sector has struggled with the need for regulated access to fixed services. A number of opportunities were missed to create structurally separated entities (network co/services co), to use cable as a competing infrastructure (overbuild permitted), to allow leverage from fixed market dominance into the mobile and Pay TV markets. The best outcome for end users would be to have choice between fixed copper network access, cable access, wireless, mobile and fibre access. This opportunity has arisen once more for infrastructure competition – the Taskforce must see this as a key element in its decision-making.

In regard to open and non-discriminatory access (3.19) ATUG sees no evidence of the degree of industry co-operation required to support such arrangements which are at any rate a “second-best” option as discussed

above. The Taskforce may need to take further time to explore the reality of "equivalent" access to inputs such as underpins the BT Openreach model as part of preparation for the assessment task. The work DCITA has done with the OPEL agreement, the WA Government with its State Broadband Network, the NSW Government with its contract with Soul which requires open access, TransAct's experience as a 'born wholesale' operator, Brisbane City Council's VISTA project, Albury Wodonga City Council's wireless mesh project provide local experiences (among others) of the reality of newer access arrangements. These experiences could inform the Taskforce's consideration of access arrangements.

ATUG understands that recently KPN in the Netherlands has agreed to provide access to its fibre network to competitors and that the City of Amsterdam has also had relevant experience in securing open access high speed broadband infrastructure for its residents. These examples should also be reviewed in more detail.

In regard to 3.20 ATUG would prefer the working assumption to be that the new high-speed broadband network operator is not operating in the downstream market.

3.22 Looks to ATUG like a Special Access Undertaking as provided for currently in Part XIC of the Trade Practices Act

3.23 ATUG prefers the use of existing dispute settling arrangements in the Trade Practices Act where there are known processes and precedents to guide outcomes. Creating a completely new approach to the settling of telecommunications infrastructure access disputes create great uncertainty and removes such disputes from the central policy objective – "the long-term interests of end users."

3.26 In regard to Private Funding ATUG would like to see consideration given to tax or depreciation measures to encourage faster, more widespread deployment.

3.30 ATUG is concerned at the assumption that Part XIB and XIC of the Trade Practices Act will not apply to the new network and that an alternative regulatory scheme would apply. In ATUG's view the current provisions around access and anti-competitive conduct should apply to the new infrastructure. The specific requirement to take account of risk in investment contemplates the type of new investment contemplated by the proposed network. As far as ATUG understands there is no precedent in other industries for new investment to be exempted in this way from the Trade Practices Act. Given the experience in developing the applications of Parts XIC and XIB, (an ongoing task), a new scheme would create a greater deal of uncertainty than using the existing provisions for Special Access Undertaking and the acceptance of risk in pricing principles (should such be needed given that commercial negotiation is the preferred mechanism for pricing decisions). The reference in 4.8 to assessment of regulatory or legislative changes including "whether the proposal could be reasonably implemented ...without proposed legislative or other regulatory changes" seems to ATUG to be at odds with the previously discussed assumption that the new network is exempt.

3.34 Given the increased level of legal activity in the sector recently ATUG is unconvinced that this provision will provide the certainty the Commonwealth is seeking.

5 ASSESSMENT PROCESS AND TIMING

ATUG regards the timetable proposed as too ambitious given the importance of the objectives, the proposals and the assessment. From ATUG's perspective the real focus is Australia's communications infrastructure for the coming decades. Given experience in other jurisdictions, it seems to ATUG that 17 weeks to develop proposals with only 4 weeks to comment on important regulatory considerations is too short. Experience by WA, NSW and DCITA with the BCIP project would suggest longer timeframes are appropriate.

5.14 ATUG supports the opportunity for a number of proposals to be the optimal outcome of the assessment process. Work already done by a number of State and Local Government should be considered at an early stage.