



Broadband Today Alliance (Broadband Alliance Inc.)
PO BOX 288
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Manager, Spectrum Policy
Department of Communications
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Dear Sir / Madam,

Re: Consultation on draft Direction to use 3.5GHz band spectrum for the NBN Spectrum gap

The Broadband Today Alliance welcomes the opportunity to make a submission to the Department of Communications in response to the draft Direction to use 3.5GHz band spectrum for the NBN spectrum gap.

The Broadband Today Alliance (BTA) understands that NBN Co does not currently hold spectrum rights in urban fringe areas around Canberra and the five Mainland capital cities. This current gap in spectrum is the missing pre-cursor to the urgently required deployment of NBN fixed wireless infrastructure to an area covering approximately 80,000 premises nationally.

Whilst fixed line NBN infrastructure would be the optimal broadband solution for residential and business premises within the affected area, **the BTA strongly supports the direction by the Australian Government to the Australian Communications and Media Authority (ACMA) to create the required licences to service the spectrum gap.** The urban fringe areas that form the spectrum gap are in many outer metropolitan and regional Council and Regional Development Australia (RDA) areas that are BTA members and where provision of NBN broadband infrastructure is urgently required.

Further, the BTA also urges ACMA to ensure any new apparatus licencing for the NBN Spectrum gap caters for optimal security of service, interference protection and deployment flexibility to enable delivery of high capacity broadband infrastructure in these urban fringe areas.

Thank you for the opportunity to provide this submission. If the Department of Communications wishes to discuss any of these matters further please do not hesitate to contact me.

Yours faithfully

A handwritten signature in black ink, appearing to read "Michael Whereat".

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About the Broadband Today Alliance:

The Broadband Today Alliance (BTA) is a collaborative alliance of local government, RDA and Regional Organisations of Councils' (ROCs) built on the premise of sharing information and advocating for the resources to assist the localised transition to a digital economy. Over 135 local governments are represented with over 8 million Australians represented across all states and Territories.

The BTA is an incorporated organisation and, in its current form, has been in existence for over two years and prior to that for a further 2 years as the South East Queensland Broadband and Digital Economy Working Group aligned under the Council of Mayors SEQ. In response to interest from other local governments and regional organisations such as RDA's, the group has grown to become a national organisation with members from all states and territories.

BTA Submission NBN Regulatory Review

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?

The BTA acknowledges the complexities around access to network infrastructure. Any regulatory framework will need to have appropriate legislative and regulatory elements. The BTA supports any structural model that provides for the principles outlined above.

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?

Additional working assumptions the Panel should consider include:

- Rollout of the NBN will facilitate increased coverage, competition and capacity of mobile network services supplied in the mass market
- There should be no restrictions on NBN Co providing direct services to Utilities and Governments for the provision of non-commercial services for Wide Area Network and Public Safety connectivity (including CCTV monitoring, Street Lighting and Traffic Lights).
- Mandate access to broadband as an essential service by extending the Universal Service Obligation to cover broadband services, for example through legislating a broadband guarantee.
- Implementation of a self-regulating code to address net neutrality to ensure transparent priority of communication over broadband networks.
- Ensure any public funded (or partly publicly funded) network is subject to structural separation to ensure full separation of wholesale and retail services.

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?

Yes. Other market participants who operate monopoly networks should be subjected to the same requirements under an appropriate criteria agreed by industry.

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?

The BTA suggests that all market participants should be subject to the same regulations as a general principle.

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

The BTA is not in a position to provide useful comment to this question.

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?

The BTA believes that any provisions to ensure customers secure particular outcomes is applied only when a non-NBN provider is operating in a monopoly environment i.e. There is no competing network choices available to the customer.

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?

The BTA supports the objective of no overbuild by NBN Co over appropriate and comparable network infrastructure. However consideration should be made as to controls over situations where Consumers are offer less choice of competing Retail Service Providers operating over non-NBN Co wholesale networks.

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 whole-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?

The BTA is concerned that existing Part XIC processes will not be sufficient as an efficient and effective means of securing access to services on these networks. This position is based on current published industry examples of the failure of the Negotiate / Arbitrate model.

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;
- 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;
- iii) an obligation on at least one provider to service all customers within a service area;
- iv) acceptable performance characteristics – for example in terms of latency, jitter, loss and network availability;
- v) price structures and levels that provide affordable access;
- vi) credible, transparent and predictable upgrade paths to higher speeds;
- vii) the ability to support voice services and the various legacy services; and
- viii) clear and reasonable timeframes for connection and service restoration.

The BTA supports the elements outlined. A suggested addition would be the clarification of element i) as per the following:

i) ability to support certain minimum download and upload broadband speeds

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?

The BTA supports the concept of cross subsidies to fund non-commercially via les areas by NBN Co. The BTA is not in a position to provide useful comment regarding appropriate safeguards.

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?

Perhaps the funds raised annually by Carrier Levies and Charges (including the Telecommunications Industry Levy and Annual Carrier Licence Charge) could be utilised to cross subsidise non-economic customers. This may require changes to certain legislation including the current Telecommunications Universal Service Management regime.

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

The BTA supports the continuation of mandatory rollout of fibre to the premise networks in new developments. Any greater private sector involvement should take into account how these networks would interconnect with the NBN network to ensure that end users are able to access the full range of competitive Retail Service Provider services available at NBN Co Points of Interconnect.

Consideration should also be given to opportunities where additional supply of Pit and Pipe infrastructure by a Developer or Third Party as a contribution towards Backhaul costs for new developments in non-NBN fibre footprint areas and or small Developments (under 100 lots over 3 years) can help aid viability of fibre to the premise network investment.

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

The BTA is not in a position to provide useful comment on this issue.