



23 May 2018

Honourable Mitch Fifield

Minister

Department of Communications and the Arts

BY EMAIL – infrastructureandaccess@communications.gov.au

OPENetworks Submission RE Audit of Telecommunications Infrastructure Assets – Record Keeping Rules Consultation Paper

OPENetworks is pleased to provide its view to the proposed extension of Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) (“**CLC**”).

Background

1. The proposed amendments seek to extend the current CLC provisions by a further two-year period.
2. We note that in the explanatory statement, the original purposes of the CLC was to impose obligations on carriers operating designated telecommunications networks supply superfast carriage services or specified broadband services to residential customers. The obligations imposed on specified carriers require that a carrier:

provide wholesale services on a non-discriminatory and equivalent basis during an interim period;

and

in the long term, the specified carrier:

be required to comply with the general separation and supply obligations; and

layer 2 wholesale obligations.

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OPENetworks Submission to
Department of Communications -
Carrier Licence Conditions - 23 May
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3. We further note that explanatory statement provides that due to the nature of the carrier licence conditions in the declaration, the intention is that the Australian Competition and Consumer Commission (“**ACCC**”) would have the lead role in enforcing the obligations in it.

Current Market Climate for Superfast Broadband Provides

4. On 29 September 2017, the Greenfield Operators of Australia (“**GFOA**”) wrote to the Department of Communications and the Arts to raise concerns about Myport Pty Ltd trading as Gigafy, and other carriers (and non-carriers) who employ the same model in the market place providing superfast carriage services to residential customers on a non-wholesale open access basis (“the **Myport Model**”).
5. The Myport Model is to procure a fibre backhaul interconnection to the basement of a high density multi unit apartment complex and redistribute the same through the deployment of cat 6 cabling and network switches in the building (by unlawfully relying upon Schedule 3 carrier powers).
6. There is no doubt that the Myport Model is being used to supply superfast carriage services to residential end users by those carriers not on an open access wholesale only basis.
7. The Myport Model has resulted in the overbuilding of tens’ of thousands of NBN Co connections (and other open access wholesale only carriers) in profitable high density multi-unit apartments.
8. Anthony Klan from the Australian, has written at length of the issues associated with the Myport Model and consumers have grown outraged over the lack of regulatory oversight in the matter.
9. On 29 September 2017, OPENetworks wrote to the Department of Communications and the Arts to inform the Department of the widespread nature of the Myport Model that was harming the open access wholesale only carriers and more specifically, causing financial damage to the NBN Co.

10. Mr Tangri of the Department of Communications and the Arts, contacted OPENetworks to state that the Myport Model is not in breach of the carrier licence conditions because the Myport Model provides those superfast carriage services via customer cabling not Local Access Lines.
11. Mr Tangri further advised OPENetworks that the introduction of the Telecommunications Reform Package will amend the definition of a Local Access Line to prohibit the Myport Model from being deployed from 1 July 2018.
12. Considering that the Minister is a stakeholder of NBN Co, we would have expected that his Department would have been more proactive in protecting its investment from being overbuilt or damaged by the Myport Model.
13. Instead, the Minister considers it more appropriate to introduce legislation to the parliament to levy a tax on open access wholesale only carriers, that are operating within the constraints of the regulatory framework, to fund the Regional Broadband Scheme deployed by NBN Co that was to be funded by highly profitable multi-unit developments.
14. Contrarily, the Minister considers it appropriate to continue to allow carriers and non-carriers to supply superfast carriage services to the residential customers via the Myport Model that interferes with the NBN Co network and significantly impacts NBN Co's revenues which would otherwise be spent servicing regional areas
15. We note that the Telecommunications Reform Package has still not been passed by the legislature and the Telecommunications Reform Package looks unlikely to be supported by the majority in the upper house.
16. By letter dated 18 March 2018, the Australian Communications and Media Authority confirmed that the cat 6 cabling of the Myport Model is considered customer cabling for purposes of section 22 of the Telecommunications Act 1997 (Cth) ("the **Act**") and therefore are not Local Access Lines.

Proposed CLC

17. The proposed CLC seeks to extend the current Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014 (“the **Declaration**”).
18. The definition of a Local Access Line under the Declaration, has the same meaning as in section 141D of the Act.
19. Section 141D of the Act states:

Local Access Line

- (1) For the purposes of this Part, a **local access line** is a line that is part of the infrastructure of a local access network.
 - (2) However, a line does not form part of a **local access line** to the extent that the line is on the customer side of the boundary of a telecommunications network.
 - (3) For the purposes of this section, the **boundary of a telecommunications network** is to be determined in the same manner in which it is determined under section 22 for the purposes of sections 20,21 and 30.
 - (4) For the purposes for this section, **local access network** has the meaning generally accepted within the telecommunications industry.
20. OPENetworks notes that the Telecommunications Reform Package proposes to adopt a new definition of a local access line, being section 158(2) to read:

Local Access Line

- (2) However, a line does not for part of a **local access line** to the extent that the line is on the customer side of the boundary of a telecommunications network.

(2A) Subsection (2) has effect subject to subsection (2B).

(2B) For the purposes of:

(a) section 142C; and

(b) sections 151ZF, 151ZG and 151ZH, to the extent to which they relate to a line to which section 142C applies; and

(c) any other provision of this Part, so far as that provision relates to:

(i) section 142C; or

(ii) section 151ZF, 151ZG and 151ZH, to the extent to which that section relates to a line to which section 142C applies;

if a line in a multi-unit building is used to supply a superfast carriage service to a residential customer living in a unit in the building:

(d) the line is taken to be a **local access line**; and

(e) the line is taken to form part of the infrastructure of a telecommunications network.

21. If the proposed CLC adopted the proposed definition of a Local Access Line in the Telecommunications Reform Package then the Myport Model would be subject to the carrier licence conditions requiring functional separation of layer 2 access services.
22. This change will achieve the purposes set out in the explanatory statement of the original CLC as the current framework is not protecting those open access wholesale only carriers who abide by the current telecommunications legislation and rewards other participants who are operating well outside the spirit of the regulatory framework.



Please see “**Annexure A**” which documents the Myport Model and the premises overbuilt in Brisbane, Queensland.

This ends OPENetworks submissions to the Department of Communications and the Arts.

Yours faithfully

A handwritten signature in black ink, appearing to read 'M. Sparksman', with a long horizontal flourish extending to the right.

Michael Sparksman
Managing Director