Senate Committee Inquiry into the National Broadband Network Companies Bill 2010; and Telecommunications Legislation Amendment (National Broadband Network Measures - Access Arrangements) Bill 2010

Submission by the Australian Communications Consumer Action Network

February 2011

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will activate its broad and diverse membership base to campaign to get a better deal for all communications consumers.

Contact:
Jonathan Gadir, Senior Policy Adviser

Suite 402, Level 4
55 Mountain Street
Ultimo NSW, 2007

Introduction

ACCAN welcomes the opportunity to comment on the National Broadband Network Companies Bill 2010 and the Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Bill 2010. We are pleased to see that these Bills are aimed at ensuring that NBN Co will remain wholesale-only and at allowing retail-level competition to flourish.

Our response is informed by the four guiding principles we have adopted on broadband policy.

- High quality, affordable broadband for all Australians.
- No consumer should be worse off during the transition and following the implementation of the NBN.
- Robust consumer protection rules must be built-in to the NBN regulatory framework.
- The broadband services market should be competitive and fair.

On the whole, ACCAN supports the speedy passage of these Bills. It desirable that NBN Co operate within a strong regulatory framework such as these Bills provide, and that this framework be in place before regular services to consumers start to be delivered over the NBN beyond first and second release sites. However there are some concerns on privatisation, FOI and level playing field arrangements.

Safeguards for a competitive retail market are welcome

Overall these Bills provide welcome safeguards of a competitive retail market for communications services. ACCAN particularly welcomes the wholesale-only supply obligations and the line of business restrictions on NBN Co which will help to ensure healthy retail competition.

We also support the provisions which allow the Minister to require NBN Co to supply a specified telecommunications service (Clause 41, Companies Bill) and those provisions which allow the ACCC to declare a service and thereby have NBN Co supply a service that would be in the long-term interests of end-users (Item 41, Access Bill).

Exemptions for utilities are welcome

ACCAN supports exemptions to the wholesale-only supply obligation which allow utilities to have direct and ready access to the NBN for 'smart' services. This may be important if it

assists utilities in supplying essential services which are in the public interest. By helping to keep the prices paid by utilities for network services down, these provisions may encourage new and innovative uses of the NBN in the utility and public services arena.

Our view is that this exemption to the wholesale-only supply obligation will not adversely affect the competitiveness of the retail market in communications services.

Concerns about privatisation

ACCAN supports the range of safeguards (Clauses 47-50, Companies Bill) which are required to be met before privatisation is triggered, including the Productivity Commission inquiry.

We also acknowledge that there are other measures which might protect the interests of consumers after privatisation, including the ability for the Minister to make carrier licence conditions about services to be supplied and not supplied (Clauses 41-42, Companies Bill).

However, it is better that market dysfunction which requires this type of intervention be prevented from arising at all. Once an effective monopoly such as NBN Co has passed into private ownership, there exists inevitable and powerful profit incentives for it to concentrate its energy and resources into finding ways to stretch the legislative and regulatory framework and convince governments to allow such stretching, for example to ease the line of business restrictions.

We are concerned that the Bills embed NBN Co's privatisation. As the consumer detriment which could result from the existence of such a powerful privately-owned monopoly is so great, ACCAN believes privatisation should be approached with great caution.

ACCAN believes that the object of the Companies Bill – "to provide a regulatory framework for NBN corporations that promotes the long-term interests of end-users of carriage services or of services provided by means of carriage services" – may not be served by the privatisation provisions as they currently stand.

Unacceptable private ownership or control

We also note the dangers warned of in the Explanatory Memorandum that existing industry players could invest in NBN Co with a view to gaining control of it and favouring their downstream business (EM, p.7). However, the measures in the Bill to handle such a situation are weak. The definition of an "unacceptable private ownership or control situation" (Clause 69, Companies Bill) is left to regulations, which can be easily and swiftly modified under pressure from industry.

After considering the numerous pitfalls of privatisation, the McKinsey-KPMG Implementation Study argued that "Government should preserve flexibility in both the timing and nature of privatisation" (pp.343; 384).

ACCAN therefore recommends that if the privatisation arrangements remain, there should be full flexibility for Government. Part 3 of the Companies Bill should allow either the

Communications Minister or the Finance Minister the discretion to declare that conditions are **unsuitable** for privatisation at any stage, and thereby halt the privatisation process.

Freedom of Information

As NBN Co is a public utility, ACCAN supports the proposed amendment to the Companies Bill which would make NBN Co subject to the Freedom of Information Act.

Level playing field arrangements

As the Regulation Impact Statement (EM, p.55) indicates, the service choices available to consumers could be limited by the requirements on carriers of superfast access networks to meet particular technical specifications (Access Bill, items 12-16; 86-88).

Similarly the open access requirement on such networks (Access Bill, items 89-114) could potentially reduce consumer choices by making it commercially unattractive to invest in new networks and preventing facilities-based competition.

At the same time, ACCAN recognises that the sustainability of the NBN will be a major benefit to consumers, especially in delivering universal high-speed broadband at an affordable price, and that such level playing field arrangements are required if NBN Co is to deliver for all Australians in a cost-effective way.

ACCAN understands from industry experts that there are no alternatives on the horizon in the realm of fixed-line superfast network technology which might be stifled by the level playing field arrangements. On balance, we therefore support the provisions. Nevertheless these arrangements should be regularly reviewed to ensure that consumer choices are not being limited.