



Australian Government

**Department of Broadband, Communications
and the Digital Economy**

22 August 2011

Michael Cosgrave
General Manager
Communications Group
Australian Competition and Consumer Commission
Level 35, The Tower
360 Elizabeth Street
MELBOURNE VIC 3000

Dear Mr *Michael* Cosgrave

The model for achieving thorough and far-reaching structural reform of the telecommunications sector embodied in the SSU (the construction of an NBN, decommissioning of the Telstra customer access network and migration of customers to the NBN) is the only viable model for achieving this reform presently available. Its contents have been negotiated under a framework created by the Government and the Parliament, and will deliver important public policy objectives while balancing the commercial interests of NBN Co and Telstra.

We believe the Definitive Agreements, together with the additional policy reforms agreed between Telstra and the Government, should be seen as package where a small number of measures, which in isolation might be perceived to reduce scope for infrastructure-based competition, contribute to an overall outcome which delivers a competitively-neutral network nationally, encouraging unprecedented telecommunications reforms and long term economic benefits. This follows a 20 year period of attempted infrastructure-based competition which, in relation to the fixed-line access network at least, has failed to meet public and industry expectations. The commitment of the Government and the Parliament to this new structural approach is further reflected in the enactment of the NBN legislation, which ensures that NBN Co will operate into the future as a wholesale-only, open access, non-discriminatory carrier subject to ACCC scrutiny.

In the absence of structural separation, as delivered through the Definitive Agreements, the Government would be reliant on its powers to require Telstra to implement functional separation. Functional separation can only ever reduce Telstra's ability and incentive to discriminate against other service providers in the supply of services over its infrastructure – it is only through structural separation that the ability and incentives are removed and a truly competitive telecommunications sector can emerge. Given that functional separation would require unprecedented regulatory intervention, it is unlikely that it could be delivered with the same economic efficiency as structural separation.

As the Commission is aware, the proposed model offers a solution to the main structural and infrastructure problem confronting the sector and has sought to include rather than replace those elements of the current backhaul network where there is effective competition (or the prospect of such).

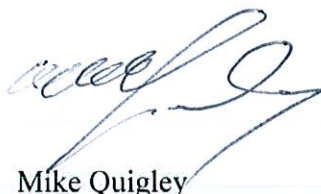
Decommissioning the customer access network, including the HFC component, will deliver structural separation of Telstra and provide competitively neutral access to all retail providers. This has been the main demand of other industry participants, and prospective investors, for more than two decades. We believe it will stimulate the competition, innovation and investment this sector requires to fulfil its potential as one of the primary growth and enabling sectors in the economy. It is essential the HFC networks are included in this process. The continued supply of broadband services over the HFC networks would lead to incomplete structural separation, place other service providers at a significant disadvantage within the HFC footprint and undermine NBN Co's capacity to provide a national service at uniform prices in accordance with the Government's policy.

The HFC network clearly offers the ability to 'cherry pick' high value customers, thereby potentially inhibiting NBN Co's ability to cross subsidise to deliver uniform national wholesale pricing. The Parliament has recently authorised NBN Co to engage in conduct that is reasonably necessary to achieve uniform national wholesale pricing. Decommissioning of the HFC network would further support the achievement of this objective.

An orderly and competitively neutral customer migration process is necessary to protect consumer services and future retail competition. NBN Co will ensure that rollout-related and commercially useful information is not available preferentially to Telstra, and Telstra has agreed to reasonable restrictions on its migration-related marketing activity which could otherwise compromise the neutrality of what we expect to be fierce competition among retailers for future customers in fixed and mobile markets.

The attached submission has been prepared by NBN Co, but is lodged with the support of the Department of Broadband, Communications and the Digital Economy (DBCDE). For clarity, while DBCDE is supportive of the arguments setting out how the Definitive Agreements contribute to the achievement of Government policy and deliver structural reform, it expresses no views in relation to the matters in Part 2 of the attached submission. It considers that the approach that the ACCC takes in deciding whether to accept the SSU is a matter for the ACCC under the legislative framework.

Yours sincerely



Mike Quigley
Chief Executive Officer
NBN Co



Peter Harris
Secretary
Department of Broadband,
Communications and the Digital Economy