



17 November 2017

Grahame O'Leary

Director

Communications Group

Australian Competition and Consumer Commission

BY EMAIL – grahame.oleary@acc.gov.au

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

OPENetworks is pleased to provide its view of the Audit of Telecommunications Infrastructure Assets – Record Keeping Rules Consultation Paper. ACCC has sought responses to the following questions in Blue.

1. Do the definitions set out in the Interpretation section remain appropriate to capture the relevant data for reporting under the Record Keeping Rules (“RKR”)?

- (a) The relevant data that is to be captured under the RKR are as follows:
 - (i) Monitoring the rollout of the NBN and other infrastructure;
 - (ii) Domestic transmission capacity service declaration review;
 - (iii) Mobile markets and regional phone issues; and
 - (iv) Other ACCC purposes.

- (b) OPENetworks believes that the meaning purposes of the RFR, in particular, 1(a)(i) should be to monitor the deployment of superfast networks providing superfast broadband carriage services to **all premises**, not just residential end user consumers. The actual and the continuing uses to which premises may be put is easily and often changeable and indistinguishable to most telecommunications carriers, carriage service providers, network Equipment and Line providers and the industry regulators.

OPENetworks Pty Ltd

ACN 118 525 821

OPENetworks Submission to ACCC
RE - Audit of Telecommunications
Infrastructure Assets - Record
Keeping Rules

Centenary Technology Park,
532 Seventeen Mile Rocks Road,
Sinnamon Park, Brisbane, QLD, 4000

PO Box 717, Indooroopilly,,
Brisbane QLD 4069

www.openetworks.com.au

Phone 07 3171 2222

m.sparksm@openetworks.com.au

- (c) The definitions that have been drafted do not adequately capture and monitor all modes of delivery of superfast broadband carriage services. OPENetworks proposes that the definition of a “*Mobile Site*” includes in-building mobile coverage solutions that consist of distributed antenna systems and 4G/5G micro-cell systems that are deployed in high density residential buildings.
- (d) The definition of “FTTB Equipment” is not suitable to collect the data for purposes described in Section 1(a), because the current drafting of the Rules does not capture all the infrastructure superfast broadband networks that are being deployed by carriers and carriage service provider. OPENetworks proposes that the definition of FTTB Equipment is amended to:
- (i) *“FTTB equipment means the main telecommunications Network Equipment and Lines needed or used to provide, operate or deploy networks capable of delivering superfast broadband services and located on the carrier side of a Network Boundary for premises.”*
- (e) The definition of Network Boundary and Lines must also be included to give effect to the definition of “**FTTB Equipment**”, we propose the following definitions:
- (i) **“Network Boundary”** means the same as Section 22 of the *Telecommunications Act 1997* (Cth).
- (ii) **“Line”** means the same as Section 7 of the *Telecommunications Act 1997* (Cth).

2. Is the updated list of telecommunications infrastructure providers required to report appropriate?

- (a) OPENetworks does not believe the list provided by the ACCC to be a true account of the telecommunications infrastructure providers that must be required to report, which should therefore include at least the following:

- (i) LBN Co Pty Ltd (ACN 073 226 114);
 - (ii) Myport Pty Ltd (ACN 121 129 280);
 - (iii) Fiber Corporation Pty Ltd (ACN 609 081 674);
 - (iv) Elypsys Pty Ltd (ACN 602 650 313);
 - (v) Pivit Pty Ltd (ACN 109 578 752);
 - (vi) Connectivity I.T. Pty Ltd (ACN 128 650 635).
 - (vii) Comverge Networks Pty Ltd (ACN 125 517 553)
 - (viii) Real World Networks Pty Ltd (ACN 604 112 174)
- (b) The above companies should be included in the updated list of telecommunications infrastructure providers as they supply, install and operate superfast broadband networks in a range of premises and building developments.

3. Is it appropriate for the ACCC to include larger SBAS and LBAS providers that meet the regulatory threshold of 12,000 services or more? Could OPENetworks Pty Ltd, OptiComm Co Pty Ltd, and Spirit Telecom be regarded as larger providers? Are there other providers that should be included?

- (a) OPENetworks believes that all providers of superfast carriage services over telecommunications infrastructure should be included to ensure that the ACCC monitors the roll out of infrastructure used to provide superfast broadband to any and all premises and so the ACCC can monitor carrier compliance with Part 7 and Part 8 of the Telecommunications Act 1997 (Cth) and Part XIB of the Competition and Consumer Act 2001 (Cth).
- (b) OPENetworks believe the test should not be whether a provider of superfast carriage services over telecommunications infrastructure is large enough to meet a statutory

threshold, but rather, whether or not they provide superfast carriage services over telecommunications infrastructure to premises.

- (c) For a list of other providers of superfast carriage services over telecommunications infrastructure, see section 2 and section 5.

4. Is it appropriate to include utility providers such as AusNet Services Ltd, Ausgrid Pty Limited and Queensland Electricity Transmission Corporation Limited that provide communication services over their infrastructure? If not, why not?

- (a) OPENetworks does not believe it is appropriate to include those utility providers mentioned in Section 4 unless they are providing superfast carriage services to residential end users over their telecommunications infrastructure.

5. Are there additional entities or infrastructure owners that should be included on the list of record-keepers?

- (a) OPENetworks believes that all telecommunications infrastructure owners that supply superfast carriage services to residential end users should be included on the list of record-keepers.
- (b) The listing of additional entities or infrastructure owners information will assist the ACCC in monitoring the telecommunications infrastructure roll out throughout Australia and assist the ACCC in performing its other purposes.
- (c) OPENetworks believes that entities deploying telecommunications infrastructure in new developments to supply superfast carriage services to end users, such as the following companies, should be included to report details of their telecommunications infrastructure:
 - (i) OC Energy Pty Ltd (ACN 144 655 514), through its subsidiary business OC Ultranet;
 - (ii) Macquarie Bank Limited (ACN 008 583 542) owns and leases telecommunications infrastructure in new developments that supplies superfast carriage services to end users;

- (iii) Song Properties Pty Ltd (ACN 600 168 876);
 - (iv) Mirvac Limited (ACN 003 280 699) is deploying telecommunications infrastructure in new developments to supply superfast carriage services to end users; and
 - (v) Oaks Hotels & Resorts Limited (ACN 113 972 366) is also deploying telecommunications infrastructure in new developments to supply superfast carriage services to end users.
- (d) If the ACCC requires these entities to detail their telecommunications infrastructure then the ACCC will find that these entities are providing superfast carriage services to end users in violation of Part 7 and Part 8 of the Telecommunications Act 1997 (Cth).

6. Are there any impediments to the provision of information of mobile operators?

- (a) Regardless of any impediment for the provision of information by mobile operators, mobile operators should provide information pertaining to provision of superfast carriage services to end users.

7. Should additional information be provided regarding mobile sites? Such as the Site Code (i.e. ACMA) or Site ID number (i.e. RFNSA)?

- (a) OPENetworks has no submissions in relation to section 7.

8. In addition to mobile site location, technology type and spectrum used at each site, is there any other information on mobile network infrastructure that could should be provided to the ACCC to assist with this assessment of competition in markets?

- (a) OPENetworks proposes that the definition of a “*Mobile Site*” should be expanded to include “in-building mobile coverage solutions” that consist of distributed antenna systems as well as 4G/5G micro-cell systems that can be deployed in premises (including high density residential buildings).
- (b) This will allow the ACCC to ascertain the level of competition and market forces between 4G/5G mobile networks and fixed line fibre connections in buildings and generally as those

are comparable and fast growing competing networks for the delivery of superfast broadband.

9. How should the location of the FTTB equipment be provided? Should only the location of the main FTTB equipment (e.g.) cabinet be specified for each site?

- (a) OPENetworks suggests that the most appropriate way to address the information requirements would be to describe all the telecommunications equipment on the carrier side of the Network Boundary for all premises.
- (b) The Network Boundary would be defined pursuant to section 22 of the Telecommunications Act 1997 (Cth).
- (c) As most suggested providers that provide superfast carriage services to residential end users receive a backhaul connection for CVC to the infrastructure site, section 22(4)(a) of the Telecommunications Act does not apply because the carriage service is not supplied to the end user by means of a line that enters the building.
- (d) The line supplying the carriage service is already within the building when the suggested provider begins to supply the carriage service to the residential end user.
- (e) Section 22(4)(c) of the Telecommunications Act does apply and as such, the network boundary would be the outer surface of the fixed facility nearest to the end user, where the facility is used, installed ready for use or intended for use to supply the carriage service.
- (f) By adopting this interpretation of the Network Boundary definition the ACCC will be able to sufficiently meet its purposes for the Rules to accurately determine the ownership and technology type of the infrastructure providing superfast carriage services to end user consumers that has been that has been deployed at multi dwelling units or multi premise sites throughout Australia.

10. Should NBN Co and Telstra be required to provide more detailed geographic information on the extent of CAN assets that includes SAM and ESA boundary information?

- (a) OPENetworks cannot properly advise the ACCC on this matter as it does not have access to the subject information at this time.

11. Do you have any additional comments on the proposed changes to the Infrastructure RKR as marked-up in the attached draft instrument? Are there other changes that should be made to the RKR?

- (a) OPENetworks would consider it useful for there to be a more complete audit operators and providers of FTTP, FTTB, FTTN and other superfast network Equipment and Lines in Australia for RKR purposes.

This ends OPENetworks submissions to the Australian Competition and Consumer Commission.

Yours faithfully



Michael Sparksman
Managing Director

