



Policy Position: NBN fibre opt-out

Note

The installation process discussed here is about making premises “NBN-ready” via the installation of a fibre cable to the premises and in some cases the installation of a Network Termination Unit (NTU). It does not refer to connection to any particular phone or internet service.

Issue

In some of its publications NBN Co has said that communications service providers (Access Seekers) must obtain authorisation from the “End User” to allow NBN Co to access their premises and install and connect NBN equipment.

Therefore, according to NBN Co, “[A]ccess Seekers should note that as a result of these requirements, they may need to ensure a contract is in place with the applicable End User (for an Access Seeker Product) before or at the same time that an order for an Access Product is submitted to NBN Co.”¹

This statement appears to place all obligations for arranging NBN installation with service providers. However other statements from NBN Co have indicated that there will be direct communication by NBN Co with property owners to seek permission for installation irrespective of whether occupants of premises have signed up for services.

Currently in first release sites, NBN Co is seeking written permission via consent forms from property owners. NBN Co reports an average consent figure across the first release sites of 77 percent.² The average hides lower figures in some locales.

An alternative “opt-out” approach has been taken in Tasmania. The State Government has enacted legislation which provides for notification by NBN Co of intention to install, with an option for owners to “opt-out” in writing, presumably via a simple form. If owners do nothing

¹ NBN Co Consultation Paper: Connecting to the National Broadband Network (Fibre Network), p.18
<http://www.nbnco.com.au/wps/wcm/connect/9d43058044799af9a280abc72ea64545/Connecting+to+the+Fibre+Network.pdf?MOD=AJPERES&CACHEID=9d43058044799af9a280abc72ea64545>

² High numbers of locals in First Release Sites sign up to get “NBN ready”, 20 October 2010
<http://www.nbnco.com.au/wps/wcmconnect/main/site-base/main-areas/publications-and-announcements/latest-announcements/high-numbers-of-locals-in-first-release-sites-sign-up-to-get-nbn-ready>



or cannot be found, they “are taken to have consented to the installation of a connection cable to the premises”.³

There are a number of reasons why ACCAN strongly argues for an opt-out approach to be implemented at the Commonwealth level.

NBN as a public utility and phone network

ACCAN believes the current procedures outside Tasmania are not appropriate for a public utility that will become the phone network as the copper wire network is decommissioned.

Policy on NBN installation must take as a starting point that the NBN is the replacement phone network. ACCAN has been on the record arguing for broadband to be seen as a utility akin to water, energy and gas. However, arguments around the importance of broadband are secondary here. Ensuring availability of phone services alone will require an opt-out approach to the rollout.

Australia’s elaborate legislative guarantees of phone service availability are evidence of the broad consensus that a phone service is a universal right and an essential feature of an advanced industrialised society. It would be unfortunate if the construction of a new access network designed to enhance Australia’s technological prowess in the digital age were to have the result of reducing the number of Australians with a basic phone service.

An additional concern is that NBN Co has offered installation free upon the initial rollout but it may be that end users will have to pay for installation if they opt-in at a later date.

Default choices matter

Psychological research indicates that default policy settings, particularly where the individual is required to consider an unfamiliar question, can skew outcomes. This is demonstrated in areas such as organ donation.⁴ Jurisdictions with a “presumed consent” (opt-out) approach to organ donation have considerably higher donation rates compared with jurisdictions where individuals are required to opt-in.⁵

Dangers of opt-in

Those who stand to be most disadvantaged by the current approach to the NBN rollout (except in Tasmania) are: tenants in all types of residential and business premises; owners

³ s 15(2)(a) NATIONAL BROADBAND NETWORK (TASMANIA) ACT 2010

⁴ Craig R.M. McKenzie et. al., ‘Recommendations Implicit in Policy Defaults’ *Psychological Science (Wiley-Blackwell)*, May 2006, Vol. 17 Issue 5, p414-420.

⁵ Dan Ariely, *Predictably Irrational: The Hidden Forces that Shape Our Decisions*. HarperCollins, 2008.



in strata schemes; the poor; the elderly; people of non-English speaking background; and people with disabilities. The Government has recognised this in the somewhat comparable situation involving the switch-over to digital television and has seen the need for a switch-over taskforce to handle this challenge.

The current approach underestimates the practical problems with seeking consent in the complex housing market which prevails in Australia today.

Property owners who are non-resident landlords may be difficult or impossible to contact or have little incentive to respond. Landlords may live overseas and have no adequate means of receiving and/or responding to consent forms from either NBN Co, strata managers or their tenants who wish to be connected to the NBN.

The fastest-growing form of residential housing in Australia is medium and high density which is almost entirely strata and community title.⁶ There are currently around 2 million premises which are part of strata schemes nation-wide.⁷ For NBN Co, contacting strata schemes to seek consent under an opt-in regime will be unwieldy and time-consuming. Strata managers do not have the authority to approve installations without at least resolutions from executive committees and often not without properly convened general meetings of body corporates.

Many owners do not participate in their strata decision-making process and may not be well informed. Furthermore, as some schemes are occupied largely by tenants, there may be few or no residents involved in the decision-making.

Body corporates may not act or may opt not to have installation done. This would effectively lock out of NBN installation those owners who wish to be connected but who unfortunately find themselves in a minority within their strata.

What needs to be done

The Government needs to connect the maximum number of premises while providing the opportunity for individuals to opt-out and also minimize the inconvenience and expense to consumers in the rollout process.

The National Broadband Network (Tasmania) Act 2010 provides a laudable model for opt-out policy. It strikes a prudent balance between allowing individuals the opportunity to opt-out if they so choose while at the same time ensuring that the NBN is a tool of social inclusion. This approach will ensure against a skewed rollout which disadvantages large numbers of people.

⁶ Mark Lever, "Building Approvals", NCTI National Community Titles News, no.41, 2010, p.5, http://www.ncti.org.au/docs/newsletter_2010_41.pdf

⁷ <http://www.ncti.org.au/institute.html#fastfacts>



ACCAN is agnostic on which statutory or regulatory mechanisms at the Commonwealth level are used to enable an opt-out NBN installation process. However, a single Commonwealth approach, rather than state-by-state legislation is preferable in order to achieve a uniform national rollout.

Since around 25 percent of premises could be connected by NBN Co using overhead or aerial cables⁸, there will need to be measures, including perhaps a change to the Low-impact Facilities Determination, to allow these premises to be handled with an identical opt-out process to that used for premises receiving underground cabling.⁹ There will also need to be a provision for an efficient, streamlined notification procedure for NBN Co to follow with strata schemes.

Requirements currently on carriers to do as little damage as practicable, to restore land, and to act in accordance with good engineering practice when connecting premises should all continue to apply to NBN Co.¹⁰

What we're doing

ACCAN has consulted with the National Community Titles Institute (NCTI) and the Tenants Union. These organizations share our concerns and have been supportive of the opt-out approach.

⁸ NBN Co Corporate Plan 2011-2013, p. 23

⁹ The NBN Co Corporate Plan also lists as a key assumption that it "will be granted adequate powers and immunities, including to allow the Company to maximise aerial deployment coverage", p.47.

¹⁰ Chapter 3, Part 2 Telecommunications Code of Practice 1997 (Ministerial Code of Practice).