



Response to the NBN Implementation Study

Submission by the Australian Communications Consumer Action Network
to the Department of Broadband, Communications and the Digital Economy



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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.

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Response to NBN Implementation Study

Implementation Study Silent on Consumer Protection

It is greatly concerning that there are no answers in the Implementation Study on key issues of consumer protection.

Given that the NBN establishes a new, complex set of arrangements for delivering broadband to consumers, what is required are measures to guarantee quality of service for consumers.

We need to ensure that there is a clear, effective process for diagnosing faults, and to define whose obligation it is to fix what and within what timeframe. It is essential that consumers are provided with clearly defined lines of responsibility on faults and quality of service such as drop-outs, downtime and speed.

Whose responsibility will it be to deal with consumer complaints? What will be the retailer's responsibility? What will be the responsibility of NBN Co? How can we prevent the kind of delays, buck-passing and blame shifting that makes the consumer experience currently such a poor one?

If the consumer will not be dealing with NBN Co at all, what obligations will be on the retailers, and will NBN Co have to respond in a timely manner to retailers who have customers experiencing a problem?

NBN should be a gatekeeper of customer service standards

ACCAN recommends that NBN Co have a role as a gatekeeper of retailer customer service standards. This can be accomplished by placing conditions on retailers who wish to access NBN Co's facilities. NBN Co should require that all retailers it contracts with have minimum quality of service standards, customer complaint handling procedures, and some minimum accessibility policies.

On the NBN, the interrelationship of wholesale and retail with possibly other intermediate suppliers of IP services in between makes this a hazardous area for consumers and a very important issue to get right.

Shaping the broadband market: creating competition or entrenching existing oligopoly?

(Recommendation 32 and 63)

That NBN Co only provide Layer 2 services; that the Govt request the ACCC to monitor and report annually on the market for Layer 3 services



The first of these recommendations confirms the decision that NBN Co only offer Layer 2 services for the 93 percent of premises covered by fibre. The second of these Recommendations contemplates the failure of this decision to produce a competitive market.

This is not as might first appear a choice about technological standards. This is a strategic decision which is about shaping a market and, indeed, shaping society.

If the Layer 2-only decision is maintained, ACCAN is convinced that in Australia we are unlikely to see many new entrants offering services over broadband. The sophisticated technology that will be required to plug into NBN Co's network is too expensive for all but large companies to afford. Content or application providers who want to be retailers will have to work through existing ISPs who have their own interests, including the natural desire to block competitors from entering the market. The result will be that consumers won't be able to get a niche TV service or a videophone service, unless it is part of, for example, an Optus bundle.

This has the very real potential to prevent consumers being offered new and innovative services that meet their particular needs at affordable prices, and to defeat the entire purpose of the NBN.

**Competitive market needs to be defined;
ACCC must be armed with powers to intervene**

The Implementation Study is premised on the positive idea of encouraging “vibrant retail competition”.¹ However there has been no statement of intent by government on what kind of market we are aiming for. Is it replicating the current market structure which features competition of a limited kind between approximately four big companies? If so, this should be spelled out.

The Layer 2-only recommendation does not treat the needs of all Australians as the benchmark, nor does it explain how the promised competitive market and innovative offerings will materialise.

ACCAN shares the concern expressed in the Implementation Study at the possible failure of the Layer 3 market – i.e. the availability to new entrants of IP services delivered over equipment currently operated only by existing ISPs and telecommunications companies.² Given the history of oligopolies in the Australian market, this is a real possibility.

The Study notes that a Layer 3 market may be slow to emerge meaning that new services like home health monitoring may not be offered for a long while, and if there are one or two national providers, there may well be little or no meaningful competition in the services and prices offered to consumers.³

The Study warns that NBN Co's provision of a competitive wholesale only service “does not preclude the development of suboptimal downstream market structures”. We strongly endorse the Study's point that “[a] suite of measures will be required to pre-emptively mitigate the risk of these outcomes”.⁴

ACCAN recommends the Minister or the ACCC to be given the power to require NBN Co to deliver Layer 3 services if the market does not work sufficiently well for consumers judged by comparison to what is offered in the leading broadband countries like Korea and Japan.

¹ p.461

² P. 427-29

³ P.428

⁴ P.432



We also strongly support the Study's recommendation that the ACCC monitor the market and that the Government be prepared to intervene through regulations to, for example, oblige telcos to offer Layer 3 service which can support applications deemed important to the public interest.

ACCAN urges the Government to take seriously the word "pre-emptively" in this Study and that the Government act now to arm the ACCC with appropriate powers to engage in speedy, active, ongoing intervention as regulators in countries like Korea and Japan have done. This means being prepared to upset the telcos and existing ISPs in creating a market that works for consumers.

Retail prices matter

Recommendation number 23

That NBN Co be directed to set wholesale prices and offer migration incentives to achieve take-up targets

ACCAN welcomes wholesale price regulation. But we note that the wholesale pricing target may be insufficient. There is too much faith being placed in too many assumptions about how people will behave and how the market will function.

We would like to know what the government intends to do to oversee the prices charged to consumers. Will there be a price fixed for a basic broadband service to ensure that there is at least one entry level service that most Australians can easily afford? Will consumers have a choice of paying a low monthly rate for a more modest speed service if that is what they prefer? Once the take up targets are achieved, will the prices start to go up?

If we continue to have a market with just a small number of big companies, ACCAN believes retail price regulation is required.

ACCAN contends that NBN Co should have a duty to work with retailers to deliver specific services for low income consumers and other classes of consumers for whom the market alone may not deliver adequate or appropriate services. It may be necessary to expressly legislate for a class of access that is in fulfillment of a USO obligation (see response below to Recommendation 30).

Broadband is an essential service

Recommendation number 30:

That a review be undertaken to determine how the universal service regime and other carrier and service provider obligations may apply to NBN Co – to be completed by end of 2011.

ACCAN welcomes the recommendation on reviewing the Universal Service Obligation (USO). The three options proposed on the future delivery mechanism of the USO are also welcome starting points for the discussion.

However this is only half the story. ACCAN would argue such a review must re-imagine what the USO should be in a broadband-connected digital society. Online services are already a practical necessity



in everyday life because there are so many basic transactions that are exclusively or preferentially performed online. Access to the internet is already a matter of social inclusion.

If the NBN is going to transform the way we learn, the way we work, the way government services are delivered, and indeed save governments money in the delivery of services, then it becomes all the more a matter for a newly legislated USO in which NBN Co, or others, will have obligations to low income and other consumers.

Places to plug: consumer choice at home

Recommendation number 38

That the network access point at end-user premises be required to provide a sufficient number of physical ports to enable multiple providers to offer services to each premises.

ACCAN strongly supports this recommendation. It is indeed essential to enable competition in premises. As the Study says, without adequate provision of ports in premises, a single retailer can effectively “capture” the premises and restrict consumer choice,⁵ especially for niche applications and devices such as those used by the disabled.

Consumers should be able to choose, for example, a TV service from one retailer and a phone service from another retailer – they should not be locked into a single provider.

Ensuring the phone is plugged in

Recommendation number 26:

That NBN Co be required to provide for a PSTN emulation (regular phone connection) and bear the associated network costs

ACCAN strongly supports this recommendation. The onus must be on NBN Co to provide a seamless transition. The question that must always be at the forefront in this process is: are we ensuring that people will have ongoing access to a phone service? The Digital TV Switchover Taskforce provides a good example of how in-home assistance to those people who require it can be provided (see Recommendation 31 below).

Use the existing Digital TV Switchover Taskforce

Recommendation number 31

That NBN Co be directed to develop a Charter that outlines how it will conduct its affairs to best meet the needs of stakeholder groups.

ACCAN welcomes the recognition of a need for a Charter. But this type of consultation is insufficient.

⁵ p.463



ACCAN believes the Charter should encompass an obligation on the Government to provide information to the public and household assistance for those who need it to ensure a seamless migration of their phone service.

The Government's Digital TV Switchover Taskforce has been a successful example of this type of work. ACCAN recommends this Taskforce simply be renamed the Digital Switchover Taskforce and given the role of coordinating and overseeing Australia's transition to the NBN.

There needs to be a firm commitment to implement what is in the Charter and a mechanism to hold NBN Co accountable to the Charter. ACCAN would suggest a plan with specific goals defining consumer needs that should be fulfilled and a requirement that NBN Co report back annually on its progress in meeting those goals.

Public information is welcome

Recommendation number 19

That a public register be maintained of all premises in Australia showing the coverage status of each premises.

ACCAN supports the recommendation for a coverage register so long as it contains meaningful information for the public.

Service standards to be better defined

Recommendation 39

That an entry level wholesale bitstream service for NBN Co's fibre network be defined that would be the minimum acceptable service for residential broadband use, offering at least a 20 Mbps peak download speed. This entry level speed to be reviewed over time.

ACCAN would like to see some additional service standards such as latency defined. Regardless of how a minimum speed is set, it should be continually reviewed and set at a level so that all households have the minimum level of service that can be reasonably expected for social inclusion.

We are also keen to ensure that symmetrical speeds are included in the minimum service obligations.

Back-up batteries and emergency call capabilities

Recommendation number 27:

That Government subsidise the provision of back-up batteries to end users the Govt identifies as requiring lifeline services

ACCAN believes this recommendation is misconceived. Providing back-up batteries only for selected end users who are deemed to require lifeline services is not feasible. Such selective provision is ineffective because people are not always located at their residence. The categories of people who



require lifeline services are potentially unlimited and any decision on deserving and undeserving groups will be arbitrary. The universal provision of back-up batteries must be built in to NBN Co's roll-out and the cost factored in. We don't believe many Australians would be against the small extra cost for back-up batteries so that phones will function during a power outage.

Recommendation number 28:

Enabling emergency call location information

ACCAN strongly supports the recommendation that the NBN be required to support emergency call location information.
