COMMUNICATIONS ALLIANCE LTD

National Broadband Network

Regulatory Submission

TABLE OF CONTENTS

COMMUNICATIONS ALLIANCE

Communications Alliance welcomes the opportunity to make a submission to the Australian Government on regulatory issues associated with the National Broadband Network.

Communications Alliance is the peak telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including service providers, vendors, consultants and suppliers as well as business and consumer groups.

Our vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behavior through industry self-governance.

Communications Alliance believes it is in the best interests of all participants, customers and government that the industry takes responsibility for devising practical, self-imposed solutions that are developed by co-operative processes.

In doing so, Communications Alliance seeks to facilitate open, effective and ethical competition between service providers while ensuring efficient, safe operation of networks, the provision of innovative services and the enhancement of consumer outcomes.

INTRODUCTION

The success of Australia as a nation depends on its ability to reach and exceed its economic and social potential. We must create an environment that promotes productivity growth, innovation, competitiveness and wealth creation. We need an environment that ensures that everyone has the opportunity to be included in that prosperity.

Information, communications and technology (ICT) are driving global change at a rapid rate. Economic and social prosperity is increasingly tied to and determined by ICT developments around the world. It is essential that Australia harnesses the benefits of the ICT revolution.

To achieve its potential, Australia must have world class infrastructure. At no point in the history of this country has communications infrastructure and the digital economy been more important and integral to the future prosperity of our nation. Right now, we need fast and ubiquitous broadband infrastructure.

Fixed technologies may not necessarily be the panacea to Australia's digital infrastructure challenges. It may be a mixture of technologies. New technologies will always evolve and they will evolve quickly. We live in an age where business and consumers will continue to demand more bandwidth at higher speeds. The exponential explosion of content means new technologies will have to be developed to handle the growth in data that will increasingly have to be delivered in real time. Broadband is a powerful tool that has the potential to help Australia reach its potential. Fibre to the node is an essential first step.

It is important to maintain a clear focus on the objectives of the deployment of broadband infrastructure. What will broadband deliver for Australians? Will they be able to afford it? We should be striving for the realisation of a time when broadband is as common and easy as turning on the light switch at home. A time where download and upload speeds are irrelevant - it just works. A time where broadband infrastructure is as essential and integrated in the home as electricity, water and gas.

As we embark on this transition to a fully fledged, fully integrated digital economy, getting the regulatory framework for the National Broadband Network right is not only important, it is essential. Failure to do so could have significant ramifications including stifling competition and impeding Australia's economic growth.

Australia is faced with an opportunity that it cannot afford to squander. The Australian Government and the telecommunications industry must work together to realise the objective of fast and ubiquitous broadband infrastructure for the delivery of life-and work-changing applications and services.

EXECUTIVE SUMMARY

1.   Access and Competition

The National Broadband Network should be an 'open access' network. All Australians should have access to affordable, advanced and secure broadband communications services. Communications technologies should be used to expand the accessibility and usability of the services and content available on the network.

It is essential that the regulatory framework facilitates and promotes competition in the provision of content, services and applications. The regulatory framework should also encourage innovation in communications technologies and services.

Access issues often ellicit intense debate amongst the industry members. The regulatory framework for the access model for the National Broadband Network may have significant commercial ramifications for both access providers and access seekers. Additionally, the evolution of the internet from a distribution medium (with asymmetrical lower upload/ higher download access rates) to a communications medium (where upstream or symmetric access rates are of greater importance) highlights the critical nature of access arrangements.

Communications Alliance acknowledges the complexity of the operational, technical and commercial aspects of access to network infrastructure. It is envisaged that implementation of the regulatory framework for access will need to have legislative and co-regulatory elements. Communications Alliance will assist the government and industry in the implementation of any new or amended regulation that deals with access to the National Broadband Network.

Communications Alliance notes that its members have significantly divergent views on the appropriate regulatory framework for access arrangements that should be in place to facilitate the roll out of the National Broadband Network. In that context, Communications Alliance defers to its members to make individual submissions on the detail of what should constitute appropriate access and competition regulation.

2.   Co-regulation

A co-regulatory scheme combines elements of self-regulation (and self-monitoring) and traditional public authority regulation. It establishes a framework under which industry can develop codes and standards that have some force in law. Importantly, one of the key advantages of co-regulation is its abilty to be able to respond to new technological developments and the growth of convergence.

Communications Alliance strongly supports the co-regulatory model for telecommunications regulation in Australia. It is our submission that competitive market forces and industry co-regulation should be the principal means of achieving outcomes for network deployments, network operations, industry behaviour and end-user outcomes.

This statement should not be construed as a call for no legislative intervention or no regulation. It is our view that regulation and legislative intervention, where necessary, should be targeted in circumstances of market failure.

Communications Alliance has been taking a lead role in framing the industry co-regulatory environment since 1997 and will continue to do so. We have worked with all industry stakeholders to facilitate the collaborative development of concrete outputs such as the current suite of co-regulatory codes and standards and agreed inter-operator processes.

In a broadband enabled converged world fuelled by fast-paced technological development, governments will increasingly find it difficult to implement effective regulation. Technological developments will continue to exert pressure on regulators and suffocate their ability to respond.

The Chairman of ACMA, Chris Chapman recently told a European conference that:

> "…key regulatory elements are being conceptually stretched and pulled and the pace of change is accelerating, a sustainable regulatory framework needs to provide for flexible approaches that are responsive to change"[1]

Communications Alliance agrees that a flexible and innovative approach is necessary to ensure that the best possible regulatory framework is in place to protect consumers and create an environment where competition can thrive.

Mr Chapman continued to state that the principle tool they use now and intend to use into the future to respond to the challenge of technological change is co-regulation[2]. We welcome this endorsement of the current model and agree that the co-regulatory model is the best way to tackle the uncertain future of intense technological change.

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[1] The flexibility benefits of Australia's co-regulatory approach, Speech by Chris Chapman to the 14th European Conference of Postal and Telecommunications Administrations (CEPT), Strasbourg, France, 17 April 2008 - http://www.acma.gov.au/webwr/_assets/main/lib310654/cept_second%20day_speech.doc
[2] *ibid.*

Co-regulation in the telecommunications industry has a strong legislative foundation. Section 4 of the *Telecommunications Act 1997* ('the Act') provides that:

> *The Parliament intends that telecommunications be regulated in a manner that:*
>
> > *(a) Promotes the greatest practicable use of industry self-regulation; and*
> >
> > *(b) Does not impose undue financial and administrative burdens on participants in the Australian telecommunications industry;*
>
> *but does not compromise the effectiveness of regulation in achieving the objects mentioned in section 3.*

Section 3 sets out the main object of the Act to provide a regulatory framework that promotes (a) the long-term interests of end-users and (b) the efficiency and international competitiveness of the Australian telecommunications industry.

The Minister in his second reading speech to the Australian Parliament stated that the co-regulatory model is about the industry taking responsibility and it is about flexibility.

It is in the best interests of all participants, customers and government, that the industry takes responsibility for devising practical, self-imposed solutions that are developed by co-operative processes. In the new world of technological development and the National Broadband Network, the principle of industry self-regulation and its underpinning philosophy is just as relevant now as it was when the Act was introduced.

Co-regulation achievements

Significant achievements have been realised through the co-regulatory outcomes of the telecommunications industry in Australia. This includes: inter-operator processes for local and mobile number portability; the development of technical standards for customer equipment; and the development of industry codes for important consumer protections and safeguards.

On 18 May 2008, ACMA announced the registration of the new Telecommunication Consumer Protection Industry Code (the TCP Code)[3]. The TCP Code consolidates consumer protections contained in six existing codes which should enhance consumer protection because it will simplify code compliance and ensure consistency of interpretation. Importantly, it will make it easier for consumers by enshrining multiple protection measures in a single document.

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[3] http://www.commsalliance.com.au/documents/codes/C628

3.   Consumer Protections and Safeguards

When formulating the regulatory framework for the National Broadband Network, Communications Alliance agrees it is important to ensure that adequate and appropriate consumer protections and safeguards are in place.

In this regard, Communications Alliance submits that there are two aspects of the consumer safeguards issue which require consideration in the development of the framework:

1. The findings of the Productivity Commission's report on Australia's Consumer Policy Framework.

2. The threshold question of whether legislating particular and unique safeguards for consumers of telecommunications products or services – in particular the USO and the CSG - will be either necessary or appropriate in the broadband environment.

Productivity Commission Report

Communications Alliance broadly supports the Productivity Commission's recommendation that Australian Governments should develop overarching objectives for consumer policy and implement a new national generic consumer law to apply in all jurisdictions[4]. We agree that a national generic consumer law should rationalise and consolidate current national and State and Territory consumer laws.

We further support the Productivity Commission's recommendation to review industry specific consumer regulation[5]. We submit that there is considerable scope to harmonise and streamline current industry specific regulation with a view to the reduction of red tape and elimination of unnecessary costs.

It is our submission that the overarching and guiding generic principles should be supplemented with industry-specific provisions, where necessary and appropriate, in industry codes and standards.

Effective consumer protections and safeguards require effective consumer engagement. Communications Alliance welcomes the leadership of the government to enhance the consumer representative voice. Following the Telecommunications Stakeholder Consumer Forum (the Forum) on 1 May 2008[6], the Department of Broadband, Communications and the Digital Economy (DBDCE) constituted the Consumer Representation Working Group to look at ways to establish a new peak consumer representative body. Communications Alliance supports this process. We look forward to being provided with the opportunity to further contribute to this discussion. Communications Alliance will continue to work with industry, consumer organisations and the government to deliver the best possible outcomes for consumers.

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[4] Recommendation 3.1 & 4.1, Productivity Commission, Inquiry Report No.45, Review of Australia's Consumer Policy Framework, 30 April 2008, p65

[5] Recommendation 5.1, Productivity Commission, Inquiry Report No.45, Review of Australia's Consumer Policy Framework, 30 April 2008, p67

[6] Communications Alliance made a submission to the Forum. See http://www.commsalliance.com.au/__data/page/21650/CommsAlliance_Subsmission_USO_Final2.pdf

Legislating industry-specific consumer safeguards

The *Telecommunications (Consumer Protection and Service Standards) Act 1999* was introduced, among other things, to:

- Establish the Universal Service Obligation regime; and

- Establish the Customer Service Guarantee.

In December 2007, two significant pieces of work were released which, in the submission of Communications Alliance, provide international support for re-assessing whether these legislated consumer protections are appropriate responses to serve the consumer interest in the broadband environment:

- *OECD: Enhancing Competition in Telecommunications: Protection and Empowering Consumers* [7].

- *Report by the UK Better Regulation Executive and National Consumer Council* [8].

The OECD Report makes a number of recommendations, including that

> "Policy makers and regulators should develop a better and fuller understanding of the needs and motivations underlying consumer behaviour in telecommunications markets, especially those of vulnerable consumers (such as those in rural areas, the elderly, minors, disabled, those on low incomes, the unemployed)" [9].

The Report makes the point that regulation of the telecommunications sector has traditionally focussed on the supply side of the market. Even regulation of universal service has to a large extent emphasised the supply side through such requirements as the need to build-out networks making access available at a reasonable price and determining technical requirements to facilitate consumer use (eg. sound quality, access for the hearing impaired).

The Report notes that emphasis on the supply side was appropriate when the task was to facilitate the development of effective competition in former monopoly telecommunication markets. As competition has developed and the number of new entrants in fixed and mobile telecommunications markets has grown, there has been increased attention by some telecommunications regulators on the consumer demand side.

Attention on the consumer demand side is said to be timely now because informed consumers who are prepared to exert an ability to choose between competing suppliers are necessary to stimulate firms to innovate, improve quality and compete in terms of price. In making well-informed choices between suppliers, consumers not only benefit from competition, but they initiate and sustain it. For consumers to engage effectively in the market and use their ability to vote with their wallet, they need to be able to move quickly and with the minimum constraint between service providers.

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[7] Enhancing Competition in Telecommunications: Protecting and Empowering consumers, OECD, Committee on Consumer Policy, 2007

[8] Warning: Too much information can harm, A report by the Better Regulation Executive and National Consumer Council, November 2007

[9] Enhancing Competition in Telecommunications: Protecting and Empowering consumers, OECD, Committee on Consumer Policy, 2007, p5

The Report also notes that Government policy has been concerned with minimising detriment to the consumer interest result from a lack of consumer information, or misleading information, or mis-selling, or the 'bounded rationality' of consumer decision-making. However, in the view of the Report's author, demand-side analysis is indicating improved insights into actual consumer behaviour that may exhibit systematic departures from the 'rational' behaviour assumed by conventional (neoclassical) economics. That is, even when presented with full information, consumers may not always be in a position to understand and/or use that information to their advantage.

The Report argues that this demand-side analysis raises questions about whether, and if so, what, different policy or regulatory intervention may be necessary to help consumers adopt decisions in their best interests.

> "Policy makers and regulators should be mindful that the widely expressed purpose of pro-competition is to enhance consumer welfare. Some regulators have made an important and commendable start on work to provide evidence upon which measures to enhance consumer protection and empowerment can be based. As other regulators also begin to focus more attention on demand side analysis, the evidence will improve and deepen. This will help support further developments in competition that will serve the consumer interest." [10]

The Report by the Better Regulation Executive and National Consumer Council is not telecommunications industry-specific. However, in similar vein to the OECD Report, it is concerned with 'regulated consumer information – that is, information which Government requires third parties – such as business – to provide to individuals making a purchase, or using a product or service, in a personal capacity' [11].

The Report notes that recent empirical research in behavioural economics has shown that the factors that influence the way that individuals interpret and act upon information are more diverse and sophisticated than once thought.

The question posed by the Report is whether government regulation requiring the provision of information to consumers genuinely helps the effective working of markets?

The Report recommended that there be a reassessment of regulated information to assess:

- Whether these requirements are helping consumers, achieving desired outcomes and whether the impact on business is proportionate; and

- If there are approaches to the use of information requirements that could be adapted by Government and other stakeholders to improve their value add.

It is the submission of Communications Alliance that it is timely to:

- Consider the application of demand-side analysis to the question of appropriate consumer safeguards in the competitive broadband environment.

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[10] Enhancing Competition in Telecommunications: Protecting and Empowering consumers, OECD, Committee on Consumer Policy, 2007, p5
[11] Warning: Too much information can harm, A report by the Better Regulation Executive and National Consumer Council, November 2007, p4

- Engage research to better inform the needs and motivations of consumer; behaviour in telecommunications in the competitive broadband environment.
- Reassess the approach to regulation of particular consumer safeguards, in particular the USO and the CSG, by asking the question whether this regulation would actually help the consumer interest in the competitive broadband environment?

Universal Service Obligation (USO)

In a broadband enabled world, there is a need to rethink the USO. Communications Alliance agrees with the policy objective that underpins the USO - that all people in Australia, wherever they reside or carry on business, have reasonable access, on an equitable basis, to the standard telephone service and payphones. However, we submit that the current approach to the USO is no longer relevant and fundamental issues need to be resolved.

Recognising the need for reform, the Department of Communications, Information Technology and the Arts (now the Department of Broadband, Communications and the Digital Economy) commenced a review of the USO on 27 June 2007. The review was set up to look at the most effective way to deliver the USO and consider whether the load is being shared equally by industry. Communications Alliance made a submission to that review[12].

The fundamental points of that submission were:

The policy objective of the USO of the provision of reasonable access to basic voice telephony services for all Australians remains a sound objective.

The central question to be addressed is how best to achieve that policy objective in an environment of competing networks and technologies and in the context of existing Government-funded programmes to provide universal telephony services as well as access to broadband infrastructure and services.

For the purpose of considering how best to achieve the policy objective of universal access in the contemporary and future environment and context, the focus of the core policy objective be on access as a consumer right rather than on the obligation of one or more service providers.

Re-framing the issue to focus on the right of consumer access to a service should assist in considering the way forward. It requires some deep and fundamental considerations as to who will provide services if the market fails to meet the basic needs of customers. Notwithstanding this, if it can be achieved, it has the potential to minimise many legacy issues that surround the universal service regime.

The fundamental policy objective in the broadband-enabled environment is the provision of consumer access to a 'voice safety net.'

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[12] http://www.commsalliance.com.au/__data/page/21650/CommsAlliance_Subsmission_USO_Final.pdf

CA members support the following basic principles in designing policies around universal communications access:

1. Australians should have the right to access a basic telecommunications service at a reasonable price which ensures a minimum standard of service that reflects modern community standards. As far as possible, the definition of the basic telecommunications service should be technology neutral and not carrier specific.

2. It is critical to identify the specific objectives underlying Government intervention to ensure access to communications and then to assess the best means of meeting those objectives. A universal service obligation is but one method of promoting universal access to communications.

3. The funding of universal access policies should be targeted, reasonable, equitable and efficient.

At the heart of defining the delivery mechanism for provision of access to the voice safety net service is the scope of the service. At present the standard telephone service (STS) regulates the baseline for the basic voice telephony service that consumers receive under the universal service regime.

An open and transparent discussion around the definition and scope of the voice safety net service is required, in particular:

- the application and relevance of current features of the STS;

- existing Government-funded programmes providing access to broadband infrastructure and services;

- geographic scope;

- technological change and changing use of communications services;

- the voice quality required for a basic telephony service emergency services and national security requirements; and

- affordability;

Communiations Alliance does not support the extension of the USO beyond voice. A universal service obligation covering broadband is likely to be costly and distort competition. Whilst broadband penetration is increasing, there is not clear public policy rationale to ensure universal supply of broadband services. Measures to support broadband networks in rural areas are likely to increase the availability of service to rural users. These more targeted programs, which often include a contestable element, are likely to be significantly less distorting then expanding the USO to include broadband.

The appropriate scope of the USO should be determined on the basis of an evaluation of the merits and costs of the range of policy options available to meet the Government's universal access goals. When defining the scope of the universal service goal, policymakers need to have regard to the cost of meeting the objective and the value to users of expanding the universal service features.

The issue of who should provide the service needs to take into account a potential range of alternative models, including contestability models.

The cost of providing access to a basic voice service is a question that needs to be considered in light of the scope which has been defined. It should also be noted that there is not unanimous support among the members for the proposition that there is a net cost from delivery of the USO.

The funding mechanism for delivery of the USO is currently by industry fund. On the basis that the cost, governance and transparency of the universal service is reviewed and appropriately defined there is majority support from Communications Alliance members that the delivery of the policy objective of the provision of reasonable access to telecommunications services should be funded by Government. The submissions of individual members provide detail on this aspect.

With the rollout of the National Broadband Network, it is important to determine the scope of the USO.

We submit that the USO issue cannot be ignored as we move towards the realisation of the National Broadband Network. We believe that the National Broadband Network provides an important opportunity to look constructively and innovatively at the provision of consumer access to a voice safety net.

Customer Service Guarantee (CSG)

ACMA describes the CSG as a 'standard designed to encourage service improvement and guard against poor service. Phone companies must meet minimum performance requirements for specified services and compensate customers when these are not met.'[13]

Given changes in customer use of communications devices since the legislation of the CSG, and in light of the information in the two international reports cited above, Communications Alliance submits that it would be timely for the Government to initiate a review of the CSG as has been done for the USO. The review should consider whether mandating the making of performance standards to be complied with the carrier service providers in relation to customer service is necessary or desirable in an environment of competitive networks, multi-provider, competitive services.

The review should seek to explore changes in customer use of communications devices in current converged environment as basis for change in policy drivers of the CSG. The review could also examine how marketplace behaviours and customer acceptance of those arrangements can give rise to a policy outcome that contemplates a staged reduction of the CSG in a National Broadband Network environment.

Fundamentally, the review should not consider an expansion of the CSG.

We submit that the review should consider a number of issues including:

- What is the purpose of the CSG?

- If it is to minimise consumer detriment, what is the evidence that it has achieved that objective?

- Is the CSG meeting the objectives of s 3 of the *Telecommunications Act 1997*, ie is it still an 'appropriate community safeguard?

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[13] http://www.acma.gov.au/WEB/STANDARD/pc=PC_1782#what%20is

- Is it actually hampering consumer responses which might otherwise respond by switching to another provider, thus enhancing competition?

4. Regulatory Reporting Requirements

The National Broadband Network regulatory framework should not impose excessive cost and time burdens on industry. We submit that there is significant scope to reduce red tape and streamline regulatory compliance while still implementing an effective and efficient regulatory regime. Importantly, the roll out of the National Broadband Network presents the government with an opportunity to work with industry to review and revise unnecessary and outdated regulation.

Regulatory compliance costs can readily and easily grow in the absence of regular review of their necessity. There is concern amongst our members that there is a tendency for the government to create more regulation without adequate assessment of the usefulness and effectiveness of current regulation. We submit that government should adopt a policy of minimisation of compliance costs and burdens wherever possible.

Over time, the focus on creation of more regulation rather than getting the implementation of current regulation right, has led to multiple layers of regulation and increased complexity. This problem is compounded by irrelevant or outdated regulation not being revised or repealed.

Our members agree that some form of co-regulation could be the more efficient and effective way forward and is more likely to result in a lower overall regulatory burden on industry.

We consider that some areas of regulatory impost and red tape where possible savings could be made are:

- Excessive reporting requirements under section 105.
- Unduly high cost of compliance with interception capability requirements.

5. Security and Privacy

The success of the National Broadband Network will depend on the establishment of adequate security and privacy protections. The regulatory framework must ensure **consumer security** and **national security** to the greatest extent possible. Fundamentally, consumers must have confidence in the integrity of the network to ensure widespread take-up and the National Broadband Network must be protected as a critical piece of infrastructure.

Consumer Security

Consumer security affects all end users. The National Broadband Network should create a secure and trusted electronic operating environment for everyone. Our increased reliance on ICT in everyday life means that the security of personal or commercially sensitive information is more important now than it has ever been. The issue cannot be resolved solely by government regulation. It will require the close cooperation of consumers, industry and governments. Further, the digital world is not constrained by national borders. Therefore, international cooperation is also an essential component of e-security preparation.

Communications Alliance commends the work already done by the government and industry to promote confidence amongst Australian consumers when they interact with the digital economy. We encourage the government to continue to work closely with industry to develop responses to consumer security issues.

Cyber safety

The telecommunications industry shares the community's concern about the dangers for children in a digital world and will continue to work with parents and the government to create a safer environment for children online. Law enforcement and regulatory initiatives can only go so far. A responsible and effective response to cyber safety will need the cooperation of industry and the active engagement of parents.

Education is important. Parents as users and guardians must be aware of the tools available to protect their children from harmful material online. Industry has a vital role to play in helping parents to understand the online world and in providing easy access to the tools needed to create a safer environment.

We note the significant issues associated with the various types of filtering currently being considered by the Australian Government. We submit that the case for mandatory network level filtering has not been made. Legitimate concerns remain about the effectiveness of this approach and the potential substantial impact on network performance.

We submit that user empowerment through a combination of education, parental supervision and home based filters will produce better and more lasting outcomes in the creation of a safer digital environment for children in Australia.

E-Security

There is considerable scope for expansion of the digital economy in Australia. To reach its potential, users must have trust and confidence in the online environment and the network. E-security poses one of the most significant threats to the pick up of new technologies and the success of the National Broadband Network.

Communications Alliance acknowledges the work currently being done by the Australian Government and industry to combat e-security threats. We agree that an integrated approach is necessary to cast a wide net and limit vulnerabilities. Law enforcement and the development of technical response mechanisms are important. Effective education and research programs should also be key priorities. Industry has demonstrated its willingness to cooperate and collaborate with government on e-security issues and will continue to do so.

National Security

Data Retention

Communications Alliance's members remain opposed to the introduction of a data retention regime. Our members are of the view that current data retention practices are sufficient to service the needs of law enforcement agencies. They argue that the case has not been made for the introduction of a data retention regime and any move to do so would be premature and based on bad public policy.

Nevertheless, if the Australian Government did decide to try to establish a data retention regime in Australia, Communications Alliance's members are willing to engage in the debate and be as cooperative as possible.

There are significant fundamental issues that remain unresolved. The key threshold question is whether the case has been adequately made based on clear evidence that must be a data retention regime is necessary in Australia.

Other issues that need to be resolved include:

- Cost - who will pay for setting up the scheme and subsequent use?

- Privacy – legitimate concerns about customer privacy will have to be addressed

- Data set – what needs to be retained?

- Retention period – how long does the data need to be retained?

This list is not intended to be exhaustive but rather demonstrates the gravity of the issues that remain to be determined. We submit that the Australian Government should give careful consideration to whether or a data retention regime is necessary in Australia. Rather, careful consultation with industry may lead to an alternative outcome that will satisfy the needs of law enforcement agencies.

Privacy

Communications Alliance and the telecommunications industry recognise the need for privacy regulation and the importance of consumer confidence in the protection of their personal information. The importance of adequate privacy protections is particularly relevant as consumers increasingly take up new generation technologies and services which will be delivered over the National Broadband Network.

The telecommunications industry handles large amounts of detailed personal information belonging to their customers, including financial and personal communication information. As a result, the industry has historically operated under extensive regulation relating to the privacy and security of customer information. Our members have played an important leadership role in developing some of the earliest and most comprehensive privacy compliance programs in Australia.

Privacy in telecommunications is protected by the *Privacy Act 1988*, the *Telecommunications Act 1997* and various other industry specific regulatory and co-regulatory instruments.

The regulatory framework needs to get the balance right between the protection of the privacy of consumers and the cost of compliance to industry. As mentioned in Chapter Four, legislative compliance requirements should not be unnecessarily burdensome and costly for business. We submit that there is scope to streamline privacy reporting requirements whilst maintaining appropriate protection for consumers.

The Australian Law Reform Commission (ALRC) has considered privacy protection in the telecommunications industry in detail in its comprehensive *Review of Australian Privacy Law.* The ALRC was due to deliver its final report to the Special Minister of State on 30 May 2008. The report will be made publicly available when it is tabled in the Australian Parliament. Communications Alliance made two submissions to the ALRC during its review[14]. We do not propose to reproduce the points made in these submissions in this paper.

We submit that the Australian Government should be mindful of the significant privacy protections that already exist in the telecommunications industry when considering any possible amendments to the privacy regulatory framework associated with the National Broadband Network. Any further discussion about privacy protections should be informed by the ALRC's Final Report. If amendments are proposed, it is essential that the telecommunications industry is included in the process through extensive consultation.

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[14] http://www.commsalliance.com.au/__data/page/21650/ALRC_Final_submission_16_Feb_07.pdf
http://www.commsalliance.com.au/__data/page/21650/Privacy_submission_with_cover_ltr_Nov_07.pdf

6.   Migration Arrangements

Achieving a seamless transition to the National Broadband Network will require industry cooperation and leadership. It will require collaboration with other stakeholders particularly the ACCC and ACMA. It will require sober and pragmatic consideration of often controversial inter-operator arrangements.

Communications Alliance acknowledges that there is scope for industry division on aspects of the migration arrangements to the broadband network environment.

A considerable amount of pro-active work has been undertaken by industry members at Communications Alliance over the last 5 years to prepare for migration to the National Broadband Network[15].

Industry driven co-regulation solutions will play a vital role in the migration. Indicative of some of the matters requiring industry collaboration and consensus are:

Interconnection

As mentioned in Chapter two, the framework for access to broadband networks will have an impact on both access providers and access seekers. To meet the objects of the *Telecommunications Act 1997*, it will be necessary to establish an appropriate interconnection framework. Industry will need to develop a clear understanding about what protocols or specifications are supported or not supported. There will also need to be a common understanding about capacity that is available.

Interoperability

Processes between operators will need to be established to assist with the creation/transfer/cancellation of services. Effective fault management processes will need to be established to ensure the best service to consumers.

Standards based implementations can improve the efficiency of industry operations with flow on benefits for end-users. It is important to ensure that Australian implementations of networks and services are aligned with international developments in a timely manner.

Quality of Service

The growth in available bandwidth and increased intelligence of terminal equipment has led to a growth in the available services being carried over the one network. Some services are delay sensitive - voice, video, some are not - file transfer. The difference in sensitivity means there is an issue of providing end-to-end quality of service (QoS) arrangements.

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[15] see *Transition to a National Broadband Network* at
http://www.commsalliance.com.au/__data/page/21774/Transition_to_a_NBN.pdf

Communications Alliance has published technical recommendations for interconnecting equipment and networks in order to maintain QoS[16]. Standard terms or conditions for interconnection to maintain QoS may need to be developed and included in bilateral agreements.

VDSL2

VDSL2 is the best technology available at this time for a fibre to the node network. Communications Alliance is currently working with industry to develop arrangements for the deployment of VDSL2 services.

Communications Alliance will continue to work with its members and industry stakeholders to facilitate the development and implementation of appropriate migration arrangements.

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[16] http://www.commsalliance.com.au/documents/guidelines/G632
http://www.commsalliance.com.au/documents/guidelines/G633
http://www.commsalliance.com.au/documents/guidelines/G634
http://www.commsalliance.com.au/documents/guidelines/G635

7. Convergence Framework

With the rollout of broadband infrastructure to nearly all Australians, now is the time to develop a policy framework for the broadband-enabled environment of converged network, technologies and services.

Communications Alliance's Board has endorsed some fundamental principles to guide the development of the convergence framework. They are:

Ubiquity
- Ubiquitous national coverage of broadband network infrastructure.

Access
- Broadband access networks should be 'open access' networks.
- All Australians should have access to affordable, advanced and secure broadband communications services.
- Communications technologies should expand the accessibility and usability of communications networks and services by people with disabilities.

Technology
- Broadband deployment policies should be technology-neutral.
- Technology neutral spectrum policies to promote competitive wireless services and technologies.

End-user
- Promotion of broadband take-up and provision of end-user education about the full potential of broadband applications.
- Delivery of social and economic benefits to all end-users.

Competition and innovation
- Competition in the provision of converged content, services and applications should be fostered and facilitated.
- Foster innovation in communications technologies and services.

Regulation and industry co-regulation
- Competitive market forces and industry co-regulation should be the principal means of achieving outcomes for network deployments, network operations, industry behaviours and end-user outcomes.
- Regulation, where necessary, should be targeted and applied in circumstances of market failure.
- Regulation of content/services/applications, where necessary or appropriate, should be consistent across all delivery mediums.

Privacy and Security
- Provisions relating to security and privacy of communications so as to increase consumer confidence should be appropriate and applicable to broadband communications.

Stakeholder collaboration
- Technical solutions for security, privacy, content regulation, law enforcement should be developed in collaboration with industry.

Communications Alliance submits that the deployment of the National Broadband Network provides the opportunity for the comprehensive review of regulatory arrangements in telecommunications and media, and for the implementation of a convergence framework.