

The changes to NBN Co and the NBN itself (both structurally and operationally) are occurring at a fast pace, and it can be difficult to keep up. This client update provides some background to the NBN policies of the major parties and a brief outline of what is likely to happen next.

With a new government in Canberra, what is the future of the National Broadband Network (NBN), and what does this mean for Australian technology and telecommunications?

Recent Developments

In the month following the federal election, the new Minister for Communications, Malcolm Turnbull, has moved swiftly to implement the Coalition Government's policies for the NBN. As a result, there have been massive changes at NBN Co including:

- The appointment of former Optus and then Telstra CEO, Ziggy Switkowski, as the new NBN Co Chairman and CEO.
- The resignation of the entire NBN Co board, with only two existing members of the board being re-appointed (former Deutsche Bank managing Director, Kerry Schott, and former King & Wood Mallesons partner Alison Lansley).
- Talk of a potential de-merger of the NBN Co to speed up NBN implementation.
- Revelations that a pre-election NBN Co discussion paper predicted risks in using Telstra's copper for the rollout.

The Policies

The big issue in the election campaign really came down to whether fibre optic cables should be connected directly to 93% of households in Australia (Fibre To The Home/Premises, or FTTH/FTTP) or whether the fibre optic cables should be connected to the nearest "node" (Fibre To The Node, or FTTN) with vectored (very-high-bit-rate) digital subscriber line (VDSL) technology used between the nodes and individual premises, unless a business or household chose to bear the cost of having a fibre optic connection between the node and that business or home. The Labor NBN policy had also come under fire in recent months due to the significant time delays in the rollout of the NBN, and concerns over contractor costs and management. These concerns were exacerbated by delays in some areas due to asbestos being found in some Telstra pits being used by NBN Co to install fibre.

The essential arguments were, respectively:

- The previous Labor Government: that FTTH, although more expensive and involving a lengthier rollout timeframe, is best placed to meet all possible future needs and is worth the increased cost.
- The new Coalition Government: that a blend of predominantly FTTN, greater use of wireless and satellite, and consumers still being able to choose (and pay for) an FTTH connection, is faster, cheaper and will still provide speeds beyond what most consumers will ever need.

The ultimate points of difference between the Coalition and Labor NBN policies thus were cost, speed, timeframe and connectivity. With a Coalition Government in Canberra, we are now told we can expect that the NBN will:

- Be delivered earlier, but with predominantly FTTN rather than FTTH/FTTP, with VDSL technology to be used between the nodes and individual premises for most connections.
- Make greater use of wireless and satellite technology for rural and regional connections.
- Provide download speeds four times faster than current highest speeds (up to 100mbps), rather than 40 times faster (up to 1000mbps) as promised by Labor.
- Be more cost efficient to implement, with a capped capital investment of AU\$22 billion, versus the stated Labor budget of AU\$37.4 billion (although some estimates of the capital required to implement the previous government's policies were as high as AU\$94 billion depending on the underlying assumptions used in the calculations).

Reviews

In addition to the policy changes to the NBN rollout as outlined above, the new government plans to conduct three separate reviews into the NBN. In addition to these reviews, there will be a broad audit of the NBN.

The reviews will cover three discrete areas:

1. The first review will be a cost benefit analysis of the NBN. It will consider the costs and benefits to different sections of Australian industry in relation to different technologies. The review is expected to take six months and will inform the technology mix used in the NBN rollout going forward. For the producers and installers of different Internet technologies, this could result in a dramatic increase or decrease in demand for your particular technology.
2. The second review will consider the NBN Co's organisational structures, capabilities, commercial prospects and the economic viability of the NBN Co. It is likely that this review will result in a corporate and organisational restructure of the NBN Co. For any contractors or businesses dealing with the NBN Co, this may involve changes to contractual arrangements and tendering processes, among other matters.
3. The third review will consider policy development and seek to learn "lessons" from some of the recent issues in relation to the NBN rollout. This review is likely to put a great deal of scrutiny on the operations of the NBN Co, and the contractual arrangements and management practices of contractors. This means that now is a good time for a compliance audit for any NBN Co associates and contractors, so that everything is in order before a review looks through these corporate practices with a fine-tooth comb.

Changing Relationship Between NBN Co and Telstra

The relationship between Telstra and NBN Co is also expected to change as a result of the change in government. The government must negotiate with Telstra over access to its copper network if their proposal to alter the NBN from a FTTP network to a predominantly FTTN network is to succeed.

Telstra CEO David Thodey has indicated that any renegotiation with the new government over access to the copper network would involve the government resuming full ownership of the copper network. Telstra expects to retain the AU\$11 billion deal it signed with the Labor to lease ducts and pits, and to transfer customers onto the NBN.

The outcome of negotiations with Telstra, and Telstra's co-operation (or lack thereof) with the government will have a significant impact on the roll out of the new NBN policy.

What Does This Mean For You?

For the technology and telecommunications industry, the NBN is still going ahead, but with less government capital investment, and lower speeds than originally expected. However, speeds will still be higher speeds than we have now, and we should, if all goes according to plan, have the NBN connected sooner than originally anticipated.

For all businesses that will benefit from faster Internet speeds, this is still good news.

For Internet service providers, connecting fibre to the premises will now be the business of the telecommunications industry, not government. Giving thought to the packages that may be offered to consumers to connect them to the system, and the terms and conditions of such packages, will be important in the coming years.

For businesses that are currently involved in the NBN or are contracting with the NBN Co, the upcoming reviews may identify your compliance failures or successes. With this forewarning, now is the best time for a compliance audit, to ensure that your business is put in the best possible light when these reviews make their reports public. The media damage that can be done from being singled out in a government report is well worth insuring against with a comprehensive review of your compliance structures and processes.

The rate of change in this area has been exceptionally fast since the change of government in September. It will continue to be important to watch this space and keep up to date as things change over the coming months and years.

With substantial experience in the technology and telecommunications industry, Squire Sanders is well placed to assist your business with any questions you may have about the NBN and what it means for you.

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