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The Expert Taskforce
c/- DCITA
GPO Box 2154
Canberra ACT 2601

By email: Expert_Taskforce@dcit.gov.au

Attention: Mr Col Lyons, CGM, Expert Taskforce Secretariat

Dear Col,

Please find attached a submission in response to the invitation to comment on the Draft Guidelines for High Speed Broadband Network Infrastructure Proposals. This letter forms part of the submission.

This submission is made by Havvyatt Associates in its own right. I am not currently acting on behalf of any client on this matter. Clearly I have had some recent involvement in some of the issues related to the draft guidelines.

It is not really a matter for the taskforce to question the task set it by the Minister. However, it remains a fact that the role of the taskforce is a bit odd. It seems that its role is to conduct an auction for public policy between competing interests, whereas it would seem that better policy would be formulated by driving towards a consensus view.

The current position has been described by Jason Ockerby of CECG as an instance of "competition for the market" (see http://www.cecg.com.au/templates/cec/page/page_html_standard.php?seCID=53&riID=1). This is hard to understand because there are no objective criteria for the choice. This is far more like the kind of "beauty parade" under which television and radio licences used to be awarded.

The few brief suggestions in the attached submission are designed to at least partially rectify these flaws in the process. However, they are merely suggestions to make a flawed process slightly less flawed.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D. Havyatt', written in a cursive style.

David Havyatt
Principal

Submission in response to the invitation to comment on “Draft Guideline for High Speed Broadband Network Infrastructure Proposals”

Introduction

1. This submission is made by Havvyatt Associates in response to the invitation to comment on “Draft Guideline for High Speed Broadband Network Infrastructure Proposals” (the **draft**). Havvyatt Associates is not representing any client in preparing this submission.
2. The Government, in seeking proposals for high speed broadband proposals in this way, is acknowledging the view that Australia cannot expect the deployment of competing fixed broadband networks in covering five capital city markets. However this acknowledgement is not well represented in the draft, variously appearing with confusion about whether respondents should be addressing retail or wholesale markets.
3. The draft continues the inadequate policy consideration that the way forward is a choice between one of the two proposals already subject to public discussion, or some new proposal. The draft doesn't provide an incentive to bring the potential users and constructors of the network into productive dialogue. It would seem to be desirable for this dialogue to occur given the position that there will be only one network.

Objectives

4. The objectives while relatively clear they nevertheless build on the vagaries of the existing regime's definitions of long-term interest.
5. There is one specific objective that requires greater explanation. This is the objective in paragraph 3.1(b)(iv) “the ability for the investor to earn a commercial return commensurate with its costs and risks of investment”. This paragraph reflects the prevalent view that there exists, with some kind of separate ontological commitment, an appropriate rate of return for any specific investment. In the real world rates of return are determined by markets, they represent the price investors need to make their funds available. As such, the appropriate return for each proposal is “endogenous” to the proposal; it is a function of the structure of the proposal not a hurdle which the proposal must otherwise meet.
6. As an example, the rate of return expected from a new monopoly infrastructure asset protected from competition and with little competitive threat is different to the rate of return expected from a growth stock in a risky market, or indeed a historic monopoly that has been auctioned off with embedded monopoly rents.
7. Any prospective respondent has access to the same pool of global technology providers. As such the major distinction between potential

proposals will be “deal structure”, not technology. Operating expenses will also be similar. Consequently, the major difference between the cost to consumers of competing proposals will be the cost of capital inherent in them. As a consequence, rather than the investors earning a commercial return commensurate with risk being an objective, the rate of return expected should be one of the major factors for choosing between proposals.

8. The objectives in paragraph 3.8 reflect confusion as to the expected nature of proposals; as it says the proposed infrastructure should provide a range of wholesale access and retail services. The network is supposed to be an open access network – so hopefully the retail services will be provided by more than just the proponents. Requesting details of retail services may artificially advantage a vertically integrated provider.
9. Paragraphs 3.11 and 3.15 both refer to USO matters. It does seem to be problematic that there is a USO review in conjunction with the expert taskforce. It would be preferable that the USO regime be considered part of the rules and regulations being “tendered for”.
10. Paragraphs 3.17 to 3.23 provide a number of requirements about wholesale access that proponents must address. However, all of this is constructed in the manner of a discussion about wholesale access akin to the ACCC’s access undertaking process, that at least allows for consultation with potential access seekers before approval. This deficiency could be addressed in such a way as to create the opportunity for convergence of proposals. This could be achieved by requiring proponents to provide evidence of acceptance of the proposed wholesale regime by expected wholesale customers.
11. Paragraphs 3.24 and 3.25 are again about return on investment. The earlier comments are repeated. The proposal that incurs the lowest cost of capital should be preferred.

Assessment Criteria

12. The assessment criteria at paragraph 4.6 refers to competition assessments in “relevant markets”. Market definition alone can occupy half an ACCC declaration inquiry. If there are relevant markets the taskforce will consider, these should be explicitly defined in the guidelines by the taskforce.
13. The last dot point of paragraph 4.6 asks for comment on the likely impact of proposals on “market concentration”. It is actually to be expected, and desired, that the “winning proposal” will result in a concentration of the market at the infrastructure level. An effective access arrangement should result in greater diversity at the retail level, and asking respondents to demonstrate how their proposal will increase diversity and choice in retail services is reasonable.
14. Paragraphs 4.6 and 4.7 expect proponents to definitively comment on specific outcomes for retail services about what is essentially a wholesale network. These paragraphs should be rewritten to talk

about how the access regime would facilitate retail outcomes, not the actual outcomes.

Assessment Process

15. The expert taskforce is supposed to be a public process to “depoliticise” the decisions about the future network build. As a consequence the proposal at paragraph 5.17 that the release of the final report will be a matter for the Australian Government should be changed to require the Minister table the report in the Parliament within fifteen sitting days of its delivery (similar to the requirement on Productivity Commission reports).

Conclusion

16. The changes to the draft proposed in this submission will not completely rectify a flawed process. They will, however, create some incentive for industry players to talk to each other. There are better ways to achieve this outcome.