



**Australian Government**

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**Department of Broadband,  
Communications and the Digital Economy**

**‘Adequately served’:  
Criteria and assessment process to  
facilitate the rollout of the National  
Broadband Network (NBN)**

*Policy paper*

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Circulated by authority of Senator the Hon. Stephen Conroy, Minister for Broadband,  
Communications and the Digital Economy

## 1. Introduction

On 7 April 2009, the Australian Government announced it would establish a new company, NBN Co Limited (NBN Co), to build and operate a new high-speed, wholesale-only, open-access National Broadband Network (NBN). This will become the single largest infrastructure investment made by an Australian Government and is part of historic reforms to Australia's telecommunications sector.

The NBN will provide access to high-speed broadband to 100 per cent of Australian premises. The government's objective is to connect 93 per cent of Australian premises with fibre-to-the-premises (FTTP) technology providing broadband speeds of up to 100 megabits per second (Mbps), with capability to provide speeds of up to 1 gigabit per second. All remaining premises will be served by a combination of next-generation fixed-wireless and satellite technologies delivering peak speeds of at least 12 Mbps.

On 17 December 2010, the Australian Government issued its Statement of Expectations (SOE) to NBN Co setting out the government's NBN Vision and Objectives. The statement sets out the framework for how the government expects the company will implement the NBN policy objectives. This includes NBN Co's coverage objectives and the premises NBN Co is required to offer a connection to in order to meet these objectives. To support reporting against coverage objectives, the government also expects NBN Co to establish and maintain a publicly-available and regularly-updated coverage register.

The Statement of Expectations sets out that the government does not expect NBN Co to inefficiently duplicate infrastructure that can already support the provision of high-speed broadband in accordance with the government's broader NBN objectives. To this end, the Department of Broadband, Communications and the Digital Economy (the department) will manage a process to determine if premises are adequately served. The process and criteria for determining this will be developed in consultation with NBN Co and the industry generally.

## 2. 'Adequately served'

The 'adequately served' policy is designed to prevent unnecessary duplication of fibre networks (existing as at 1 January 2012<sup>1</sup>) in residential estates that can deliver services that meet the government's NBN objectives.

This paper sets out information for fibre network owners regarding:

1. the criteria network owners will need to meet in order for networks (in existence as at 1 January 2012) in residential estates to be considered 'adequately served', and
2. the process to assess whether networks meet the criteria.

In practice, the 'adequately served' policy set out in this paper gives owners of existing networks the opportunity to demonstrate that their networks in residential estates meet the government's NBN objectives. This will provide NBN Co with guidance on what residential premises are adequately served by high-speed broadband, so that NBN Co does not need to deploy the fibre network in that area to meet its 93 per cent fibre coverage obligation, unless authorised by the shareholder ministers.

Operators can make commercial decisions about whether to roll out networks in competition with NBN Co, noting that these networks will need to comply with the level playing field provisions under Parts 7 and 8 of the *Telecommunications Act 1997* (the Tel Act), unless granted a ministerial exemption from those provisions.

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<sup>1</sup> The Statement of Expectations (SoE) initially outlined that only networks existing as at 1 January 2011 could be declared adequately served. The government recognises it has taken some time since the SoE was released, to consult with industry to inform the finalisation of the adequately served policy. As such, the policy will apply to networks existing as at 1 January 2012.

### 3. Consultation

Within NBN Co's fibre footprint, there are two key market segments which have deployed FTTP networks that may be affected by the 'adequately served' policy—residential estates, and central business districts (CBDs)/business parks. Consequently, fibre network owners in these two market segments were recognised to have an interest in the 'adequately served' concept.

Between October 2011 and March 2012, the department consulted with relevant industry stakeholders, including AAPT, Amcom, Clubcom, The Competitive Carrier's Coalition, Internode, Macquarie Telecom, NBN Co, Nextgen networks, Opticomm, Optus, Pipe Networks, Pivit, Primus, Telstra and TransACT.

The consultation found adequately served was considered a valuable policy to be applied to existing fibre access networks that would deliver the government's NBN objectives in residential estates.

As such, criteria and a process for determining whether fibre access networks in residential estates are adequately served has been designed and is set out in sections three and four of this paper.

In contrast, there was limited support for the 'adequately served' concept to apply in CBDs and business parks.

While in these areas there are significant fibre assets serving predominantly large corporate customers, there is also a significant amount of copper serving small business and residential customers within these areas.

Although NBN-comparable services may be available to larger enterprise and the corporate market over existing fibre networks, feedback from industry to the department highlighted that these networks cannot be readily leveraged to become a fibre-access network to replicate the copper network and deliver the government's NBN objectives to residential and small business customers.

Further, to ensure no premises is without access to a FTTP connection in CBDs or business parks, adequately served CBD networks would need to take on an infrastructure provider of last resort (IPOLAR) role. Because existing CBD fibre networks were built to support the corporate market and cannot be readily leveraged to support a fibre-access network, industry indicated it could not identify a business case to take on such a role.

Finally, industry broadly supported the view that a single wholesale-only platform (the NBN), was seen as more efficient and effective for access seekers as it prefers to deal

with one wholesale player to deliver products to consumers and business and it would need to invest in new systems and processes to access non-NBN networks with limited coverage footprints.

As a result, NBN Co will roll out in CBDs, passing all street addresses within CBDs, but will only enter a building in a CBD when a service is requested from a retail service provider (RSP). This approach is in line with the way fibre is deployed in CBDs currently. Industry practice is that many CBD buildings are passed with multiple fibre networks and it is only once a service is requested that these networks are connected to a building. NBN Co will be one of the networks passing a CBD building and will only enter on request. Industry broadly supported this outcome.

## 4. Criteria to determine adequately-served networks in residential estates

A network in a residential estate may be considered to meet the ‘adequately served’ criteria if the network was in existence at 1 January 2012<sup>2</sup> and has all of the following characteristics.

1. The network is a FTTP network capable of delivering broadband download speeds of 100 megabits per second and upload speeds of 40 megabits per second to end users.
2. The network is capable of keeping up with NBN technology over time, particularly in relation to speeds, described in NBN Co’s Corporate Plan 2011–13 (available at [www.nbnco.com.au/about-us/corporate-plan.html](http://www.nbnco.com.au/about-us/corporate-plan.html)).
3. The network supports the delivery of standard telephone services<sup>3</sup> to the equivalent of the quality provided over the NBN<sup>4</sup>, and features a battery backup capability.
4. Where the network is not subject to the level playing field provisions under Parts 7 and 8 of the Tel Act, the network must provide a layer-2 wholesale service on a open-access and non-discriminatory basis.
5. Where the network is not subject to the level playing field provisions under Parts 7 and 8 of the Tel Act, the network must provide wholesale service prices equivalent to NBN Co’s prices for comparable services.
6. The carrier commits to becoming the infrastructure provider of last resort (IPOLAR)—that is, the carrier commits to offer a connection for services to all customer premises in its nominated footprint.

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<sup>2</sup> The ‘adequately served’ criteria will not apply to networks built after the 1 January 2012.

<sup>3</sup> As defined in Section 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. In general terms, the standard telephone service may be defined as a carriage service for the purpose of voice telephony communication (or an equivalent form of communication for an end user with a disability) between end users supplied with the same service, whether or not the end users are connected to the same telecommunications network.

<sup>4</sup> This includes meeting the ongoing performance standards under the Telecommunications (Customer Service Guarantee) Standard 2011.

7. For example, for a suburb to be adequately served by a third-party access network, all residential premises within the footprint must be able to be readily connected to the network, unless there is a legal impediment preventing connection. The carrier will get the opportunity to extend its network to cover any gaps in the coverage footprint or, alternatively, prove that those premises cannot be connected due to a legal impediment<sup>5</sup>.

Fibre network owners in residential estates will be allowed to make minor alterations to their existing networks to meet the criteria. For example, the owner/operator will be given the opportunity to extend its access network to cover any gaps in its coverage footprint.

For the purposes of ascertaining whether a particular third-party network should be considered to adequately serve a residential area, the minister will not take into consideration whether a ministerial exemption was obtained for the relevant network, local access line or owner in respect of the obligations under Part 7 and/or Part 8 of the Tel Act (the level playing field rules).

The decision is at the minister's sole discretion, and if the minister is satisfied the criteria is met, the network will be considered 'adequately served'.

The policy is that the NBN Co fibre network will not overbuild residential premises passed by a third-party network that is assessed by the minister as meeting the 'adequately served' criteria for residential networks, except in circumstances where not overbuilding a particular area will have a significant impact on NBN Co's ability to efficiently roll out the network. In such circumstances, NBN Co may seek permission from the minister to overbuild those premises. If permission is granted, overbuild may occur, notwithstanding that the network met the 'adequately served' criteria.

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<sup>5</sup> For example, where there has been a refusal to allow access to land/premises to enable the installation of the relevant network facilities.

The residential premises served by the third-party network would be added to NBN Co's coverage register<sup>6</sup> as passed by a third-party network, and will contribute towards NBN Co's 93 per cent coverage objective for its FTTP network.

## **5. Process for determining residential networks are adequately served**

To provide certainty for NBN Co in planning its fibre rollout, owner/operators of networks existing as at 1 January 2012 in residential estates, who consider their networks meet the 'adequately served' criteria, must apply to the minister to have their networks assessed as adequately served (for a particular residential area) by 30 September 2012.

Applicants should demonstrate how their networks meet the criteria (as set out in section 3 above) and provide all necessary supporting documentation and evidence to support their claims. Examples of the kind of information that may be appropriate include:

1. A detailed description of the applicants' access network architecture and technologies.
2. Information on ONTs and NTUs/CPEs and PON split ratios.
3. Information on backhaul dimensioning and ability to access/upgrade to increase backhaul capacity.
4. Information on the applicants' wholesale arrangements.
5. The technical mechanisms used/proposed for distinguishing and routing RSP data and interconnecting with RSPs.
6. Current and forward price commitments and commitments to non-discriminatory pricing.

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<sup>6</sup> To ensure transparency and support reporting against coverage obligations, the government expects NBN Co to establish and maintain a coverage register, publicly available on its website, once the volume rollout commences.

7. The number of existing access seekers offering services over the network.
8. Policies on providing and maintaining backup power sources and information on the performance of the backup power solution with the customer premises equipment.
9. Information on nominated footprint and distribution/coverage of network elements within that footprint and procedures, time frames and charges for connecting new subscribers within that footprint.

The examples are provided to be indicative only and are not exhaustive; applicants should form their own views as to what information and evidence should be provided to demonstrate their networks meet the criteria. Where an applicant has not provided adequate information, the minister reserves the right to seek further information from the applicant.

Determinations will be made by the minister in response to applications made by network owners and where required, the minister may consult with Australian Government agencies (such as the Australian Communications and Media Authority and the Australian Competition and Consumers Commission) and may seek advice from consultants or other sources as required.

If the network is found to have met the 'adequately served' criteria, it is intended that the IPOLAR commitment (in relation to the fibre network which meets the 'adequately served' criteria) would be implemented by way of a carrier licence condition under section 63(2) of the Tel Act applying to the relevant carrier.

Should a network meet the 'adequately served' criteria, the minister will write to NBN Co advising that the network meets the criteria and all residential premises passed by the third-party network should not be passed by NBN Co as part of its fibre network rollout unless the minister agrees following the process outlined earlier in this paper. NBN Co will then be required to publicly identify those residential premises as adequately served on its coverage register.

## 6. Making an application

Please direct applications to the minister, in writing, to:

The Minister for Broadband, Communications and the Digital Economy  
Parliament House  
Canberra ACT 2600

If submitting an application by email, please email to **minister@dbcde.gov.au**

An information copy should also be emailed to the department at  
**nationalbroadbandnetwork@dbcde.gov.au**

All applications must be received by 5.00 pm AEST on 30 September 2012.

Please include all matters and necessary evidence in the application considered relevant to demonstrating how the network meets the criteria set out in this policy paper.

Applicants should identify any information contained in their application which they want the Australian Government to treat as confidential. As the minister may consult with other Australian Government agencies (such as the ACMA and the ACCC) and may seek advice from consultants or other sources as required, details of the application may need to be provided. Applicants should also note that the department, the minister, the ACCC and the ACMA are subject to a range of legal requirements which govern the use and disclosure of information provided.

Please note that the information provided above is not intended as substitute for legal advice. Applicants are encouraged to read the relevant legislation and extrinsic material and to seek their own independent legal advice when making an application.