



14 November 2014

The Honourable, The Minister for Communications  
Malcolm Turnbull MP  
Parliament House  
Canberra ACT 2600

By Email [infrastructureandaccess@communications.gov.au](mailto:infrastructureandaccess@communications.gov.au)

Dear Minister

### **OPENetworks Response to Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014**

We refer to your and thank you for the invitation to respond to the above Draft Carrier Licence Conditions.

#### **GENERAL COMMENTS**

1. OPENetworks supports the intent and general drafting of the CLC.
2. OPENetworks recommends that the Minister declare that the Department of Communications or ACMA maintain a public register of wholesale only open access carriers that satisfy the requirements for supplying Superfast Carriage Services to Residential and Small Business Customers.

This will enable building owners, developers and end users to identify what carriers are wholesale only and open access. The price and non-price terms of access, network locational areas, points of interconnection and service products should be publically available for government and access seekers to readily ascertain. It may further assist a mechanism for promoting the sharing of backhaul and transit networks by wholesale carriers/operators and for future planning purposes needed by local, State and Federal Government, Developers and retail service providers.

3. OPENetworks is concerned that attempts to distinguish which fixed line networks will be regulated to ensure proper and effective retail competition in residential and/or small business buildings, are too complex, clumsy or uncertain to be easily, affordably and sensibly maintained and supervised by the regulatory authorities and to deliver general compliance by provider/carriers with any certainty that they are complying with the law.

OPENetworks therefore suggests a simpler more easily identifiable criteria be established to identify carriers operating fixed line networks supplying Superfast Carriage Services to Residential and Small Business premises, namely that of **"Qualified Wholesale Providers"**:

*A carrier would be a Qualified Wholesale Provider if that carrier is a "wholesale only and open access" broadband provider of Superfast Carriage Services or, if not "wholesale only" then, an "open access" provider offering the same (**not just equivalent**) Price and Non-Price terms for access to all other retailers and is structurally, functionally, commercially and operationally separate from their retailer **or** not offering any retail services on any local area network for which it is the wholesale broadband provider.*

4. The Separation Obligations of Section 6 of the CLC are otherwise satisfactory.

#### **OPENetworks Pty Ltd**

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OPENetworks response to the Carrier  
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## SPECIFIC COMMENTS

5. In the definition of “**designated telecommunications network**” in Section 4, sub-section (c)(iii)(C) and (D) the contains concepts of:
  - a. network extensions of up to 1 kilometre from existing infrastructure; and
  - b. 0.05% of the total number of customers serviced by the network at any time,These are examples of the difficult and vague drafting that makes any determining of compliance uncertain and therefore largely useless or impracticable. The better test is that which is recommended in comment 3 above.

Indeed, the definition of “**designated telecommunications network**” in Section 4, sub-section (c)(iii)(E) suffers from uncertainty because only the operator of a network, certainly not the government and other providers and interested parties, do not know precisely where networks existing before 1 January 2011 are located.

If you require any explanation or further details please do not hesitate to contact the writer.

Yours faithfully



**Michael Sparksman**  
Director