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Dear Ms Chia

**INTERCONNECTION OFFER FOR THE PROVISION OF SERVICES ON
THE NEXT GENERATION NATIONWIDE BROADBAND NETWORK –
NETWORK COMPANY**

**PROPOSED MODIFICATIONS TO OPENNET'S OBLIGATION TO TEST
OPTICAL PERFORMANCE OF FIBRE CONNECTIONS**

1. We refer to above Consultation Paper, circulated by the Authority on 5-May 2011. StarHub Ltd ("StarHub") appreciates the opportunity to comment on this important issue.

BACKGROUND:

2. StarHub is an OpenNet Qualifying Person ("QP"), and also takes service via Nucleus Connect. We fully support the objectives of the Next Generation Nationwide Broadband Network (the "Next-Gen NBN").

3. As the Authority will be aware, StarHub is concerned with the high levels of faults we have experienced with the End-User Connections provided by OpenNet. StarHub supports any moves by the Authority to ensure OpenNet's services are provided in a robust and reliable manner.

4. In summary, StarHub is concerned by the proposal to remove from OpenNet the obligation to test its Connection to the first Termination Point ("TP"); and by the suggestion that OpenNet only has to use "*commercially reasonable efforts*" to arrive at a Residential Premise within one hour of a request from the Requesting Licensee ("RL"). We are concerned that these obligations will undermine the Quality of Service provided by OpenNet, and will lead to further delays in the restoration of Faults.

5. StarHub's detailed comments are set out below.

Clause 6.7:

6. OpenNet has proposed deleting, in its entirety, Clause 6.7. This Clause requires OpenNet to test the Connection to the first TP, to ensure that the Connection falls within the specified optical performance. We understand that this deletion has been proposed on the grounds that: (i) the majority of Connections are in a working condition; and (ii) it is inconvenient. StarHub respectfully disagrees with the proposed deletion.

7. As the Authority will be aware, a significant number of Residential End-User Connections are being provisioned by OpenNet with installation faults. The level of these faults has required the Authority to propose Quality of Service standards on OpenNet in respect to the percentage of working lines delivered to RLs, and the time taken to repair installation-related faults. While it is statistically correct that the majority of OpenNet's Residential End-User Connections are being provisioned without installation faults, the seriousness of OpenNet's Quality of Service issues cannot be overlooked. The number of such faults is a significant issue for End-Users and for RSPs seeking to deliver Next-Gen NBN Services.

8. It is unclear how the deletion of Clause 6.7 would benefit the Next-Gen NBN ecosystem or how it would improve the Quality of Service delivered by OpenNet. On the contrary, we are concerned that the deletion of Clause 6.7, and removing the obligation on OpenNet to test, could worsen existing Quality of Service issues. We therefore respectfully submit that Clause 6.7 should be retained.

Clause 6.10(e)

9. OpenNet has proposed adding this Clause, which would mean that OpenNet has no obligation to compensate RLs if the service activation date is delayed due to the RL discovering a fault. However, Clause 6.10 is intended to cover those matters that are genuinely outside of OpenNet's control (such as a delay in permission from the building owner). Installation faults caused by OpenNet are entirely within OpenNet's control. If OpenNet installs a Connection with a fault, and that fault is discovered during the RL's initial installation of its equipment, it is entirely fair and reasonable for OpenNet to compensate the RL.

10. StarHub would be concerned by a regime in which OpenNet provisions its services with a large number of installation faults, and RLs are then unable to seek compensation for the resulting delay in service activation. Given that RLs (and their customers) will be adversely affected by OpenNet's installation faults, it is unclear why OpenNet should have no obligation to compensate RLs. StarHub would therefore submit that Clause 6.10(e) should be deleted.

Clause 6A.1:

11. OpenNet has proposed in Clauses 6A.1(b) and (c) that RLs must use “*approved test gear*” and “*approved cleaning kit*”. It is unclear who would approve the test gear and cleaning kits, and why this measure is needed. StarHub is concerned that the additional clauses set out in Clause 6A.1 appear to have the objective of imposing additional obligations on RLs and removing obligations from OpenNet.

12. We would also note that, if OpenNet can set an on-site charge for those cases where the fault is found to have been caused by the RL, this already sets a sufficient incentive on RLs to check their own networks. Imposing additional obligations on RLs would be unreasonable and could impair the delivery of Next-Gen NBN services. StarHub therefore submits that Clauses 6A.1(b) to (f) – inclusive – should not be included in OpenNet’s ICO.

13. StarHub would also propose to delete the “*For avoidance of doubt*” statement at the end of Clause 6A.1. The speed with which a RL can install its equipment in the End-User’s home will depend on the End-User’s availability. RLs cannot mandate that End-Users must give them access within 2 Business Days of OpenNet’s handover. And there is no reason why OpenNet’s Connection should suffer increased Quality of Service issues if the RL’s installation of its equipment takes place later than 2 Business Days from handover.

14. The proposed “*For avoidance of doubt*” statement simply creates the opportunity for OpenNet to disclaim responsibility for its installation errors. RLs already have the incentive to install their equipment as soon as possible (so that they can start providing their services to customers). We therefore strongly submit that the “*For avoidance of doubt*” statement should be deleted.

Clause 6A.2:

15. Under this Clause, OpenNet has suggested that should a joint investigation be required, OpenNet will only be obliged to use “*commercially reasonable efforts*” to ensure that its representative shall arrive at the Residential Premise within one hour of the receipt of the RL’s request. This wording creates significant concerns for StarHub, and we would note the following points:

- The use of the term “*commercially reasonable efforts*” creates uncertainty and ambiguity as to when (or if) OpenNet representatives will arrive. It is also unclear who would assess whether OpenNet’s efforts have been “*commercially reasonable*”, or how that term would be defined.
- This Clause is contrary to the Quality of Service obligations the Authority is proposing for OpenNet, which require OpenNet to restore 90% of installation faults within two hours of notification.

- ➔ It is unfair and unreasonable to expect RLs to have their representatives and customers waiting at the Residential Premise on the hope that OpenNet finds it “*commercially reasonable*” to attend.

16. Given the importance of the Next-Gen NBN, and OpenNet’s role in the heart of that network, it is not acceptable for OpenNet to only arrive at the scene of an installation fault when OpenNet considers it “*commercially reasonable*” to do so. If the proposed Clause 6A.2 is introduced, this would remove the incentives on OpenNet to improve its Quality of Service. We strongly submit that this Clause needs to be amended to require OpenNet to attend 100% of cases within one hour of the receipt of the RL’s request.

Clause 6A.3:

17. This Clause proposes that OpenNet and the RL jointly sign-off on an investigation report. While we appreciate the benefits in having a joint sign-off, we are aware of a significant number of installation faults which have been classified by OpenNet as “*No Fault Found*”. In such cases, it is unlikely that OpenNet and the RL will be able to jointly sign-off on an investigation report, as the parties will take different views as to the cause of the problem. In addition, if the RL is able to provide evidence that the fault is caused by OpenNet, we submit that OpenNet will have to acknowledge them and should not be left with the sole discretion in deciding the outcome of the investigation. We would therefore suggest that Clause 6A.3 be amended to reflect these circumstances.

Clause 6A.4:

18. In Clause 6A.4(a) it has been proposed that OpenNet can impose an onsite charge on the RL if “*the fault is caused or occasioned by the Requesting Licensee*”. In the interests of fairness, we submit that if the fault is caused jointly by OpenNet and the RL, OpenNet should not be allowed to impose the onsite fee.

19. In Clause 6A.4(b) it has been proposed that OpenNet can impose an onsite charge on the RL if – regardless of where the fault is found to lie – the RL has failed to comply with Clause 6A.1. This approach is completely unacceptable, as it would allow OpenNet to impose onsite charges even where the installation fault has been caused by OpenNet. OpenNet could argue, for example, that even if OpenNet’s sub-contractors were remiss in installing the connection, the RL has failed to use an approved cleaning kit, and therefore OpenNet can impose an onsite charge on the RL. We strongly submit that, if the fault has been caused by OpenNet, OpenNet should not be able to impose an onsite charge on the RL.

Clause 6A.5:

20. StarHub supports the concept that, where the fault lies on OpenNet’s network, OpenNet must delay the billing start date for the Residential End-User Connection. However, Clause 6A.5 suggests that this delay will only takes place when the cause of the fault has been agreed by the joint investigation, and it is unlikely that the parties will be able to agree a joint report in cases classified by OpenNet as “*No Fault Found*”. Where the RL can demonstrate that the fault exists, we strongly believe that OpenNet should be

required to delay the billing start date for the Residential End-User Connection, even when OpenNet classifies the case as “*No Fault Found*”. We also believe that OpenNet should not be allowed to classify a “*No Fault Found*” in a fault investigation when a service cannot be provided to an end-user. For such cases, we submit that OpenNet should delay the billing start date until the service can be provided on the Residential End-User Connection.

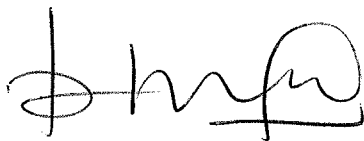
21. In addition, even if OpenNet does delay the billing start date for the Residential End-User Connection, this should not impact on the calculation of OpenNet’s compliance with the Service Activation Periods. OpenNet’s first and foremost obligation must be to ensure that Connections are installed in working order, within the Service Activation Periods.

Clause 6A.6:

22. OpenNet has proposed that RLs will not be entitled to make any SLA or MTTR claims for the duration of the joint investigation and the time take to resolve faults. StarHub respectfully submits that this Clause should be deleted, as it sets the wrong incentives for OpenNet. If Clause 6A.6 is introduced, OpenNet has almost no incentive to conclude the joint investigation and resolve the fault in a timely manner, as the RL cannot make SLA or MTTR claims during that period. We strongly believe that OpenNet should be incented to conclude the joint investigation and resolve the fault as quickly as possible. For this reason we propose that Clause 6A.6 should be deleted.

23. We are grateful of the Authority’s consideration of this submission, and would welcome further discussions with the Authority on this issue. Please do not hesitate to contact me, should anything in this submission require clarification or elaboration.

Yours sincerely
For and on behalf of
StarHub Ltd



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Tim Goodchild
Head (Government & Strategic Affairs)