

**RESPONSE BY OPENNET PTE LTD TO THE CONSULTATION DOCUMENT ON
REVIEW OF OPENNET PTE LTD'S INTERCONNECTION OFFER ISSUED BY
THE INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY OF SINGAPORE
ON 13 JUNE 2014**

STATEMENT OF INTEREST

- (A) In September 2008, OpenNet was appointed by the Info-communications Development Authority of Singapore ("IDA") as the Network Company to design, build and operate the passive infrastructure of the Next Generation Nationwide Broadband Network.
- (B) OpenNet received its Facilities-Based Operator Licence from the IDA on 1 April 2009, and was designated as a Public Telecommunication Licensee under Section 6 of the Telecommunication Act (Chapter 323) on the same day.
- (C) OpenNet primarily offers its Mandated Services to its Requesting Licensees through the Interconnection Offer ("ICO") Agreement, which is the subject of the IDA's consultation document issued on 13 June 2014.

EXECUTIVE SUMMARY

OpenNet welcomes this opportunity to provide its views and comments on the Consultation Document on “Review of OpenNet Pte Ltd’s Interconnection Offer”, issued by the IDA on 13 June 2014 (“Consultation Document”).

OpenNet has reviewed the Consultation Document and hereby submits its views and comments with respect to paragraph 6 of the same, for the IDA’s consideration.

In summary, the salient points of OpenNet’s position are as follow:

- OpenNet accepts that Service Level Guarantees (“SLGs”) will apply in situations where the failure to meet the applicable SLG is solely caused by OpenNet. However, OpenNet respectfully objects to the IDA’s proposed requirement to attribute to OpenNet delays in provisioning Non-Residential End-User Connections that are caused by developers/owners/ Management Corporations Strata Title (“MCSTs”) of buildings, and to require OpenNet to provide a remedy in the form of a rebate to Requesting Licensees for such delays.
- The IDA’s proposed requirement is unreasonable as it compels OpenNet to assume the commercial risk of having to compensate Requesting Licensees for delays due to the actions or inactions of third parties, which OpenNet has no control over.
- The IDA should, in place of its proposed requirement, adopt a more direct and proactive regulatory approach through directly regulating the house rules imposed by developers/owners/MCSTs of buildings, and in ensuring that their implementation of house rules and related practices are reasonable. Such an approach is clearly more aligned with the IDA’s stated objective to “*tackle delays attributed to developers/owners/MCSTs of buildings.*”¹
- The Quality of Service Framework on Provisioning of Residential and Non-Residential End-User Connections (“QoS Framework”) already serves as a very strong regulatory instrument to ensure that OpenNet promptly engage and follow-up with developers/owners/MCSTs of buildings, in order to provision Non-Residential End-User Connections to/within their premises.

¹ Paragraph 6 of the Consultation Document

- The IDA's proposed requirement is therefore unnecessary and unwarranted given that the IDA has already imposed stringent performance requirements on OpenNet's provisioning of Non-Residential End-User Connections through its QoS Framework.

OpenNet's specific comments on paragraph 6 of the Consultation Document are set out in the following section.

SPECIFIC COMMENTS

1. Under paragraph 6 of the Consultation Document, the IDA has proposed to limit the timeframe for which OpenNet can claim exemption from the applicable SLGs, for delays that are attributed to developers/owners/MCSTs of buildings for the Non-Residential End-User Connection Service. In other words, in respect of the Non-Residential End-User Connection Service, the IDA is proposing to hold OpenNet liable for failures to meet the applicable SLGs beyond a prescribed timeframe, even though such failures are attributable to developers/owners/MCSTs of buildings and are not caused by OpenNet (“Proposed Requirement”).
2. OpenNet respectfully submits that the Proposed Requirement is unreasonable and inequitable for the following reasons:
 - (a) OpenNet accepts that SLGs will apply in situations where the failure to meet the applicable SLG is solely caused by OpenNet. The IDA’s Proposed Requirement to attribute to OpenNet delays that are caused by developers/owners/MCSTs of buildings, and to require OpenNet to provide a remedy in the form of a rebate to Requesting Licensees for such delays, unreasonably expands the scope of the SLGs under OpenNet’s ICO and is clearly inequitable.
 - (b) OpenNet has no control over the actions or inactions of developers/owners/MCSTs of buildings, or any other third party. The IDA’s Proposed Requirement compels OpenNet to assume the commercial risk of having to compensate Requesting Licensees for delays due to the actions or inactions of third parties which OpenNet has no control over. This represents a significant and unacceptable commercial risk for OpenNet.
 - (c) The speed of delivering Non-Residential End-User Connections is subject to a number of external factors outside of OpenNet’s control. For example, OpenNet has to adhere to the house rules imposed by developers/owners/MCSTs of buildings when carrying out installation work within their premises. The house rules typically include (but are not limited to):

- i. initial engagement with building developers/owners/MCSTs;
 - ii. preparation and submission of OpenNet’s proposed installation plans and any additional documentation required by building developers/owners/MCSTs for their review and processing;
 - iii. scheduling of joint site surveys with building developers/owners/MCSTs at different stages of the engagement; and
 - iv. follow-up with building developers/owners/MCSTs to enquire on the progress of their review of the proposed installation plans and where necessary solicit their assistance and cooperation to expedite their internal processing.
- (d) In some cases, building developers/owners/MCSTs impose additional restrictions in the form of limiting the duration of access to their premises and/or number of workers permitted for each access. There are also building developers/owners/MCSTs which require lengthy clearance procedures to review and approve the list of personnel appointed by OpenNet to perform fibre installation work. All these requirements (non-exhaustive) imposed by developers/owners/MCSTs of buildings inadvertently delay the provisioning of Non-Residential End-User Connections for Requesting Licensees and end-users. Clearly, given the IDA’s objective in putting forth the Proposed Requirement is to “*further [tighten] the provisioning processes for Non-Residential End-User Connections under the ICO to **tackle delays attributed to developers/owners/MCSTs of buildings** (emphasis added)*”², OpenNet submits that the IDA should, in place of its Proposed Requirement, adopt a more direct and proactive regulatory approach through directly regulating the house rules imposed by developers/owners/MCSTs of buildings, and in ensuring that their implementation of house rules and related practices are reasonable.
- (e) OpenNet therefore submits that it would be unfair and unreasonable of the IDA to impose the Proposed Requirement on OpenNet, when OpenNet clearly has no control over the actions or inactions of developers/owners/MCSTs of

² Paragraph 6 of the Consultation Document

buildings (including but not limited to the house rules imposed by such parties). Instead, the IDA should directly regulate the house rules of developers/owners/MCSTs of buildings, and their implementation of house rules and related practices, so that the IDA is able to effectively “*tackle delays attributed to developers/owners/MCSTs of buildings.*”³

- (f) It must be noted that the IDA has allowed Nucleus Connect Pte Ltd (“Nucleus Connect”) to exempt itself from being held liable for failures to meet the prescribed service activation periods stipulated in Nucleus Connect’s interconnection offer agreement, “[*where*] *Nucleus Connect’s inability to activate a Connection or a Modification to an existing Connection within the applicable Prescribed SAP or SAP (as the case may be) is attributable to matters that are not within Nucleus Connect’s control, including without limitation, the action or inaction of the Contracting QP and/or a third party service provider, or failure of Contracting QP and/or third party equipment or Network.*”⁴ The IDA has accepted that Nucleus Connect’s customers (which are referred to as “Contracting QPs” under Nucleus Connect’s interconnection offer agreement) shall not be entitled to make any claim for compensation from Nucleus Connect, if Nucleus Connect’s failure to meet the prescribed service activation period is “*attributable to matters that are not within Nucleus Connect’s control.*”
- (g) In the circumstances, OpenNet submits that the IDA’s Proposed Requirement unreasonably and unfairly discriminates against OpenNet. In this regard, OpenNet would refer the IDA to Section 1.5.8 of the Code, which states:
- “Non-discrimination*
- IDA’s decisions will be non-discriminatory. IDA will treat similarly situated Licensees on an equivalent basis.”*
- (h) The IDA’s Proposed Requirement is clearly discriminatory and contrary to Section 1.5.8 of the Code.

³ Paragraph 6 of the Consultation Document

⁴ General service terms and conditions of Nucleus Connect’s interconnection offer agreement at: http://www.ida.gov.sg/~media/Files/PCDG/Licensees/NextGen%20NBN/NucleusConInterOffer/General_20130312.pdf

- (i) OpenNet therefore respectfully disagrees with the IDA’s view that the Proposed Requirement “*is reasonable as OpenNet would have a stronger incentive to promptly follow-up with the developers/owners/MCSTs of buildings to resolve delays before they become protracted.*”⁵ As explained in the preceding paragraphs, the Proposed Requirement will unfairly penalise OpenNet if developers/owners/MCSTs of buildings choose not to act on OpenNet’s request, or if they remain uncontactable to OpenNet (despite OpenNet’s attempts to reach them). The Proposed Requirement will unfairly penalise OpenNet if developers/owners/MCSTs of buildings impose unreasonable house rules that require more time for follow-up by OpenNet (for example, by requiring extensive documentation from OpenNet before they would approve OpenNet’s proposed installation plans). The Proposed Requirement will unfairly penalise OpenNet for delays that are due to the actions or inactions of developers/owners/MCSTs of buildings, including but not limited to delays arising from the house rules imposed by developers/owners/MCSTs of buildings that necessitate extensive preparation and follow-up by OpenNet before it could respond to them.
- (j) Importantly, OpenNet is already subject to the stringent requirements stipulated in the QoS Framework imposed by the IDA. This in itself already serves as a very strong regulatory instrument to ensure that OpenNet promptly engage and follow-up with developers/owners/MCSTs of buildings for the provisioning of Non-Residential End-User Connections to/within their premises. The IDA’s Proposed Requirement is therefore not only unreasonable and unfair to OpenNet for the reasons explained above; it is also unnecessary and unwarranted.
3. OpenNet appreciates this opportunity to provide its views and comments on the Consultation Document, and would welcome a meeting with the IDA to discuss this submission.

Thank you.

⁵ Paragraph 6 of the Consultation Document