

30 November 2023

ACCC

By email: superfastbroadbandinquiry@acc.gov.au

Re: SBAS access determination inquiry - further consultation on NBN price benchmarking approach – 3 November 2023

Leap Telecommunications (Leaptel) welcomes the opportunity to respond to the Superfast broadband access service (SBAS) further consultation on the NBN price benchmarking approach that the ACCC sought on 3 November 2023.

Leaptel has previously submitted responses throughout the SBAS Final Access Determination (FAD) process as X Integration, our wholesale and business arm. At present, across all entities, Leaptel has approximately 15,000 services in operation across the following SBAS networks: ASN Telecom, Frontier Networks, Lightning Wholesale, Opticomm Networks and Redtrain Networks. We therefore have wide exposure to how SBAS providers set and implement their pricing arrangements.

In broad terms, our overall position is unchanged since our first response almost 12 months ago in December 2022. Based upon our extensive experience dealing with SBAS networks, it is imperative that the ACCC's regulatory approach ensures that SBAS networks cannot charge more for their services, including ancillary charges, than NBN Co charges for equivalent services. This is the only way to ensure that the long-term interests of end-users of SBAS services are protected.

Unfortunately, due to the limited scope of the current SBAS FAD, consumers have paid significantly more for services than they otherwise would. Since the draft decision was published by the ACCC in October 2022, Leaptel has paid one SBAS provider over \$300,000 in service activation charges, most of which were automated software activations. The equivalent cost for the same type of service activation on NBN would be between \$15,000 to \$20,000.

Multiplied across the entire SBAS footprint and all the retail service providers (RSPs) selling services, SBAS providers have likely gouged millions of dollars in these fees alone while the ACCC has waited for the NBN special access undertaking (SAU) variation to conclude, even though service transfer fees were not a point of contention in the SAU variation. Ultimately all charges are passed on to consumers, either directly by on-charging activation fees, or through higher service costs or less attractive discounts. Therefore SBAS providers have gouged these fees from the pockets of end-users who would not have paid these fees if they lived at an address serviced by NBN Co.

We therefore urge the ACCC to act rapidly to ensure that there are no further delays to the implementation of parts of the FAD that have already been decided, such as requiring SBAS providers to charge the same price for service transfer as NBN charges (\$5 ex gst).

Regulated SBAS and price terms

We support the ACCC's proposal to allow SBAS providers to either adopt NBN Co's 'floor and ceiling' pricing approach as set out in the SAU variation, or for SBAS providers to adopt an SBAS total monthly charge that does not exceed NBN Co's Average Combined Charge for equivalent residential grade services.

NBN Co's 'floor and ceiling' pricing approach is extremely complicated and its implementation by SBAS providers would be problematic and involve extensive costs. Given that this pricing approach is due to be phased out on 1 July 2025, it is not in the interests of consumers, SBAS providers or RSPs to require SBAS providers to develop the systems necessary to implement this pricing construct.

NBN Co's Averaged Combined Charge establishes a fair price for SBAS providers to charge and was formulated using

the actual speed tier mix as of May 2023 and forecast usage growth over the remainder of FY24. It represents a reasonable and fair attempt to establish a fair AVC only cost for the regulated speed tiers and is far superior to allowing SBAS providers to establish their own arbitrary total monthly charge.

We note that one SBAS provider (Opticomm) has already implemented its own total monthly charge and has set its prices 18.5% higher on 25Mbps/5Mbps and 4.5% higher on 50Mbps/20Mbps.¹ This illustrates the need for quick and decisive action by the ACCC to implement a SBAS FAD because we're already seeing SBAS providers roll out their own versions of post SAU variation pricing but to their revenue benefit.

It is in the long-term interests of end users that they should not be charged more for these speed tiers on SBAS networks, even if there are legitimate grounds to allow SBAS networks to not have to implement the 'floor and ceiling' approach.

We're disappointed that the ACCC seems to have all but ruled out regulating higher speed tiers. Consumers should be protected on speeds other than just entry level speed tiers. Given the ongoing changes to the cost of higher speed tiers under the NBN SAU variation, which will make speeds of 100Mbps or above far more accessible from a price perspective to consumers, it is strange that the ACCC will not extend protection of consumers beyond 50Mbps.

It is in the long-term interests of end users that they should be able to obtain speeds of at least 100Mbps, if not more, at the same price on SBAS network as they can on NBN Co's network. NBN Co has outlined the pricing for these speed tiers and it is unclear why SBAS providers should be exempted from being required to match NBN up to at least 100Mbps.

NNI Charges

Leaptel extensively covered NNI charges in both its NBN SAU variation submissions and in its previous SBAS submissions. We maintain our consistent position that NNI charges across both NBN and SBAS networks do not reflect the direct costs for providing these services.

We do however welcome NBN Co's commitment to reducing these charges over time.

It is in the long-term interest of end-users that NBN Co's planned price reductions are incorporated into the SBAS FAD. The ACCC has proposed only regulating 1G and 10G charges. We strongly urge the ACCC to also regulate 100G interface pricing. Regulating the pricing should not require SBAS providers to offer the interface, but it will protect RSPs, and through them end-users, from excessive charging for 100G interfaces.

The ACCC argues that the smaller interfaces are most relevant to smaller RSPs competing to build market share, however it is unclear why the end-users of larger RSPs should be placed at risk of having to pay a larger proportion of the NNI component simply because that RSP has successfully built volume on a particular SBAS network.

We note the concern from the ACCC that NBN Co's price could potentially set a ceiling that is disproportionately high in the context of SBAS access. It is in the interests of SBAS providers to make access to their networks as straightforward as possible. In our experience SBAS networks have tended to make initial access very cost effective, and then rely on higher charges on NNI upgrades because once an RSP needs to upgrade it has little choice but to submit to the higher prices otherwise it will be unable to increase its customer base. This is a further reason to consider regulation of the 100G NNI.

State-based Aggregation

In our response to the draft decision, lodged on 15 December 2022 we have provided a comprehensive submission into the State-based Aggregation charge that Uniti charges on its Opticomm network.

To repeat our key arguments from those submissions, they are as follows:

1. It is being used to mitigate the Regional Broadband Scheme Levy (which the ACCC is proposing to prohibit SBAS providers from recovering).
2. It is, by Uniti's own admission, being used to cover costs other than just backhaul aggregation.

¹ 25Mbps/5Mbps will be charged at \$39 and 50Mbps/20Mbps will be charged at \$53.

3. It does not accurately reflect the cost of backhaul to SBAS providers.
4. It is a flat fee, and not proportionate to the service plan, which makes lower speed tiers less viable and may lead to their withdrawal from the SBAS market, which will disproportionately impact low-income end users.
5. SBAS providers were already extremely profitable prior to the introduction of this fee and the fee has only enhanced their profitability.
6. SBAS providers already enjoy high wholesale fees because they are benchmarked against NBN without incurring many of the costs NBN incurs.

We note crucially on points 1 and 2 that these arguments are supported by the words of Uniti's own management staff, and refer you back to our 15 December 2022 submission for the supporting evidence.

More broadly, the ACCC needs to make it clear that where there are cost efficiencies for SBAS providers, it is in the long-term interests of end-users that some of those efficiencies be passed on to end users. They do not exist simply to enhance the profitability of private enterprise.

Given the highly competitive retail market, these cost efficiencies will benefit consumers, and this aligns with ACCC's view is that it is in the long-term interest of end users if particular terms and conditions contribute towards the provision of goods and services at lower prices.²

Overall aggregation / backhaul benchmarking.

The ACCC has flagged a desire to achieve a benchmarking approach that is similar in relative cost to access NNI capacity for aggregation / backhaul across NBN and SBAS networks on a per-service basis. We strongly discourage the ACCC from further consideration of this approach for the following reasons, it is exceptionally difficult to establish a benchmark figure to begin with, it undermines the fundamentals of the benchmarking methodology that has been established for service delivery and ultimately it is not within the long-term interests of end users.

Trying to do a like-to-like comparison of this one specific element of service delivery on SBAS networks versus NBN networks is fraught with difficulty.

NBN POIs range at a minimum encompass tens of thousands of premises which can vary from residential, small, and medium enterprises to large commercial and corporate operations. Additionally, the 121 NBN POIs comprise a mixture of metro, suburban and regional locations, all of which have different costs to connect to depending on a range of factors. Depending on the RSP's mix of services and size and scale, the cost will vary significantly.

Therefore, trying to establish what it costs to provide POI backhaul for an individual NBN service, so that it can be included in an aggregated backhaul benchmark is at best educated guesswork.

The above ignores the point that NBN Co lists dark fibre and managed service backhaul as costs in its Proposed Cost Allocation Module, which would in many ways be equivalent to the costs that SBAS providers incur for state-based aggregation.

It is also unclear why SBAS providers should be permitted to recover this one cost. NBN incurs a variety of costs that SBAS providers incur to a much lesser extent or not at all.

For example, because the overwhelming majority of SBAS providers are in greenfield areas, they lease very little duct space or pay little in pole rental from the owners of these assets. They also lease little if any rack space in Telstra exchanges for the purpose of aggregation. By contrast, inside an NBN customer service area (CSA), NBN Co incurs significant costs for the aggregation of services to the POI itself in the above form.

By not having to pay these costs, SBAS providers achieve cost efficiencies that allow them to be far more profitable than NBN Co who must service a massive brownfield footprint and pay to lease existing infrastructure.

² ACCC, [Telecommunications services – declaration provisions: a guide to the declaration provisions of Part XIC of the Trade Practices Act](#), August 2016, p. 28,

If SBAS providers wish to seek cost recovery for backhaul aggregation, then perhaps they should excise out these cost savings at the same time.

This comes back to the entire purpose of having a regulated access price set to a benchmark of the NBN price. Prices are benchmarked, rather than utilising other methodologies such as the building block model which could have accounted for differing costs between service delivery on the NBN network compared to SBAS providers. This has been an approach that SBAS providers and RSPs have supported.

Excising out any service delivery cost, whether it be for state data aggregation or something else, undermines the fundamental purpose of benchmarking to begin with.

It is also surprising that the ACCC would contemplate the establishment of a price regime that legitimises SBAS providers delivering services at a cost above that of the government owned equivalent provider. By doing so the ACCC would be fundamentally failing its responsibilities under subsection 152BCA (1) of the CCA. It is not within the long-term interests of end-users of SBAS networks for this charge to be levied, it does not reflect a direct cost of providing access to an SBAS network and instead is a new fee invented to offset other costs. The existence of this fee will not support the economically efficient operation of an SBAS network.

We strongly urge the ACCC to think very carefully before folding in state-data aggregation as some sort of reasonable and necessary charge for the efficient operation of SBAS networks and recognise this fee for what it ultimately is and artifice constructed to offset other operational costs, and in particular the RBS Levy as Uniti's own words made clear.

Conclusion

Leaptel again thanks the ACCC for the participate in the SBAS FAD process.

We reiterate our support for the SBAS FAD process and encourage the ACCC to think proactively about ensuring the long-term interests of end-users are protected. Since the last SBAS FAD was implemented, we have seen consolidation of SBAS providers through mergers and acquisitions, resulting in higher service activation charges, the addition of state data aggregation charges and in our opinion a decline in service quality when comparing greenfield NBN to greenfield SBAS networks.

We hope that the ACCC will recognise the need to be decisive in addressing these concerns, and where it needs to give the benefit of the doubt it does so in the long-term interests of end-users. Because ultimately end-users do not get to choose who has the monopoly over the fixed-line network in their area, and the very minimum they should expect from privately owned infrastructure providers is service and price parity compared to the publicly owned equivalent.

If the ACCC should have any questions or wish to discuss this matter please feel free to contact us.

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