



# Superfast broadband access service – access determination inquiry

Draft decision

October 2022



Australian Competition and Consumer Commission

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## Abbreviations and Acronyms

ACCC	Australian Competition and Consumer Commission
ADSL	Asymmetric Digital Subscriber Line
AVC	Access Virtual Circuit carries traffic to and from an end user on the access provider's network. It is charged on a per-connection basis.
CCA	<i>Competition and Consumer Act 2010</i>
CVC	Connectivity Virtual Circuit is the bandwidth capacity required to serve a collection of end-user premises on an aggregate basis.
FAD	Final Access Determination
Layer 2 service	Layer 2 has the same meaning as in the Open System Interconnection Reference Model. In general terms, it provides a point-to-point dedicated connection between two fixed points in a network.
LTIE	Long-term interests of end-users
Mbps	Megabits Per Second
NBN	National Broadband Network
RBS	Regional Broadband Scheme
Overage	A charge that applies when the CVC bandwidth ordered by an access seeker is greater than the CVC Inclusions of all bundled services ordered in aggregate.
RSP	Retail Service Provider
SBAS	Superfast Broadband Access Service

## Executive Summary

The ACCC proposes to regulate the price and non-price terms of access for the superfast broadband access service (SBAS) until 28 July 2026 under a new final access determination (FAD).

The key objectives of this draft decision are to promote competition and ensure that retail service providers (RSPs) and end users supplied through SBAS networks will not be any worse off than if they are supplied services through the National Broadband Network (NBN). This means that wholesale access prices for the SBAS will be set in line with NBN prices over the term of the FAD.

We consider that these regulatory arrangements will encourage RSPs to use the wholesale services of SBAS networks. This will promote competition in the supply of services to end users through better price and service offerings, and greater incentives to innovate and provide a wide array of retail products.

We are proposing to continue to benchmark regulated access terms for the SBAS against the NBN given ongoing stakeholder support for this approach and that wholesale access markets have continued to develop in a manner broadly consistent with the long-term interests of end-users under this approach. For instance, we note SBAS providers have continued to enter markets and invest in their wholesale access services since 2017 when we introduced benchmarking.

In addition, NBN Co's access arrangements are subject to very close regulatory review now the NBN is fully built and operational, and so there can be confidence that its access arrangements will further align with those of an efficient and competitive network operator over time. Consequently, we consider that benchmarking SBAS prices to NBN prices will continue to support the long-term interest of end users of broadband services for the FAD period.

Our draft decision regulates access prices for the SBAS at the 25/5-10 megabits per second (Mbps) and 50/20 Mbps speed tiers. Adding charges for the 50/20 Mbps speed tier recognises that this speed tier currently represents most of the residential Australian broadband services market, while retaining an entry level speed tier is important to protecting consumers that do not need or might not be able to afford a higher speed service.

Our draft decision also proposes to:

- regulate certain non-recurring charges such as connection, transfer, and end user appointment fees levied by providers
- require SBAS providers to provide transparency to access seekers on the performance and reliability of services over their networks
- remove the current exclusions from regulated access to small networks supplying less than 12,000 end users.

We consider that regulating non-recurring charges will improve retail competition by reducing barriers to end user switching between RSPs.

Also, greater transparency on service levels will provide stronger incentives for SBAS providers to deliver the service levels expected by RSPs and end users and address poor performance where it arises. These arrangements will improve consistency and certainty of regulation applying across all fixed line superfast broadband networks.

We recognise that there is presently some uncertainty about future NBN access pricing due to the regulatory review of NBN Co's special access undertaking and NBN Co deferring

negotiations over its next Wholesale Broadband Agreement. Consequently, we intend to make our final decision in 2023 when there is greater certainty over NBN Co's access arrangements for the period of the FAD.

As set out below we are currently seeking written submissions on this draft decision by 9 December 2022.

## ***Pricing methodology and regulated price components for the SBAS***

The methodology for setting regulated prices to the SBAS will continue to be benchmarking against prevailing NBN pricing for similar wholesale access residential grade products (with an exception for Telstra's fibre access broadband service, discussed below).

Regulated access prices for the SBAS will continue to be referenced directly to the access charges for equivalent residential grade products for NBN services inclusive of the bundled access/usage charges and discounts offered by NBN Co from time to time.

Access prices will be regulated at the 25/5-10 Mbps and 50/20 Mbps speed tiers consistent with prevailing NBN AVC and CVC (overage and inclusive) charges for these speed tiers inclusive of bundled discounts.

SBAS charges cannot exceed prevailing NBN charges for access and usage (including aggregation service charges) for equivalent residential grade products.

## ***Non-recurring and ancillary charges***

The FAD will regulate charges levied on access seekers for *service activation, service reactivation, service transfer, service transfer reversal* and end-user premises *appointments*.

Consistent with the NBN, these fees will distinguish between 'standard' and 'non-standard' connections. The former will have a standard fee and the latter will be charged to recover costs based on labour time and materials.

## ***Regional Broadband Scheme levy***

The FAD will specify access prices that are inclusive of the regional broadband scheme levy and preclude imposing an additional charge in respect of regional broadband scheme payments that the SBAS provider makes.

We note that stakeholder views on whether providers should be allowed to charge an additional amount to cover the levy were mixed, with SBAS providers generally of the view that the FAD should provide them this flexibility.

However, benchmarking SBAS access prices to the NBN already makes an allowance for levy recovery given NBN Co's prices are inclusive of its levy costs. Further, it is likely that this will continue to be the case as the regulatory arrangements for the NBN are intended to allow access prices that contribute to the recovery of government charges that NBN Co incurs under a statutory requirement such as the levy.

## ***Fibre Access Broadband service regulation***

Regulated access prices for Telstra's fibre access broadband service will continue to be benchmarked to Telstra's wholesale asymmetric digital subscriber line (ADSL) service until the end of 2023. This is based on our understanding that the service will be withdrawn by Telstra by the fourth quarter of 2023.

## ***Non-price terms and conditions***

Current regulated non-price terms and conditions will be maintained with the additional requirement for SBAS providers to provide information to access seekers covering network service quality and reliability attributes if requested (e.g., when the parties are negotiating an access agreement) and on a quarterly basis, covering the following service attributes:

- availability, performance, quality, and reliability of the network



- timeframes for – fault identification and fault rectification services, and end-user connection, activation, and transfer services.

Such information is to be made available from 1 July 2023.

### ***Small network and competition-based exclusions***

The current exclusion from the standard access obligations for small network operators (i.e., with <12,000 end-users) built prior to 1 January 2011 will be removed and networks will be subject to the SBAS irrespective of their size and when they were built.

Exclusions from the standard access obligations on the basis that a network is competing directly with an alternative superfast broadband network will not apply for the term of the new FAD.

We have considered TPG's proposal for an exclusion from regulation for its PIPE and TransACT networks and our draft decision is to not support the proposal.

### ***Duration of the access determination***

The price and non-price terms set out in the new SBAS FAD will apply until 28 July 2026.

### **Consultation on the draft decision and next steps**

Submissions on this draft decision are due by 9 December 2022.

We will consider submissions along with any further consultation and the required statutory considerations in making a final decision.

We intend to release our final decision in 2023. We will publish an exposure draft of the FAD instrument in 2023 before making a final decision. This will give stakeholders an opportunity to comment on the specific price & non-price terms that will apply.

The current interim access determination will expire on 31 December 2022. We have extended the expiry date of the interim access determination to maintain the current price and non-price terms until we make a new FAD in 2023.

# 1. Introduction

The superfast broadband access service (SBAS) is a non-National Broadband Network (NBN) wholesale telecommunications service that access seekers can use to supply broadband and other services to end-users that are connected to a superfast broadband fixed-line network. A superfast broadband network is one that is normally capable of download data speeds of 25 megabits per second (Mbps) or higher.<sup>1</sup>

The SBAS currently has two variants:

- the standard SBAS is a wholesale Layer 2 broadband access service that is similar to that provided by the NBN.
- the second variant is only supplied over the Telstra Velocity and South Brisbane networks, is referred to as the fibre access broadband service and was designed to work with Telstra's legacy voice and cable television services.

## What is the SBAS?

The standard SBAS is a point-to-point Layer 2 bitstream service supplied over a fixed-line superfast broadband network and is used for the carriage of communications in digital form between a network-network interface (located at a point of interconnect) and an end-user interface. The provider aggregates SBAS services from their serving areas (e.g., residential developments, multi-dwelling units, etc) and transports the traffic stream to the provider's nearest point of interconnect, typically located in the capital city of each state or territory. These aggregated traffic streams connect to retail service provider (RSP) networks at their points of interconnect.

Backhaul transmission systems may be required to connect the points of interconnect to the RSP's point(s) of presence. The aggregation network is usually provided by the SBAS provider. Backhaul services may be supplied by the provider or procured / provided separately by a RSP depending on the locations of points of interconnect and RSP point(s) of presence. This enables the two-way carriage of communications between end-users / devices connected to the provider's network and end-users / devices connected to other networks.

The SBAS is a 'declared' telecommunications service.<sup>2</sup> Declaration of a service means that an access provider is subject to standard access obligations. These require the access provider to provide access to the declared service, on request, to an access seeker. In doing so the access provider must take all reasonable steps to ensure that the technical and operational quality of the service is equivalent to that which the access provider provides to itself. The declaration provides a retailer of broadband services with a right of access to the SBAS. The service description for the SBAS as set out in the declaration is at Appendix B. The declaration does not apply to NBN services<sup>3</sup> or fixed wireless, satellite, and mobile technologies. Also, access prices for backhaul transmission services are regulated separately under the ACCC's domestic transmission capacity service access determination.<sup>4</sup>

<sup>1</sup> See <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/lbas-sbas-declarations-inquiry-2020/final-decision>.

<sup>2</sup> See <https://www.accc.gov.au/public-registers/telecommunications-registers/s152aq-declared-services-register/superfast-broadband-access-service>.

<sup>3</sup> The ACCC does not need to specifically exclude services provided by NBN Co as a declaration by default does not apply to services supplied, or eligible to be supplied, by an NBN Corporation (CCA, subsection 152AL (3A)).

<sup>4</sup> See <https://www.accc.gov.au/regulated-infrastructure/telecommunications-internet/transmission-services-and-facility-access-regulation/domestic-transmission-capacity-service-final-access-determination-inquiry-2019-2020/final-report>.

Once a telecommunications service is declared, the ACCC must hold a public inquiry about a proposal to make an access determination for that service. An access determination may include a broad range of matters, but if it includes terms and conditions relating to access to the service, it must specify price or a method of ascertaining price. Parties (i.e., access provider and access seeker) can rely on the terms and conditions set out in an access determination, or they can negotiate commercial terms and conditions regarding access to the service.

An access determination provides a 'fall back' set of terms and conditions that access seekers can rely on if they are unable to reach agreement with an access provider on the terms and conditions of access to a declared service. Access determinations can shape the negotiation of an access agreement. This means that the final access determination (FAD) made by the ACCC, and the structure and level of prices (and other terms) it establishes, serves a fundamental role in facilitating commercial negotiation of terms and conditions of access that are broadly consistent with efficient outcomes and promoting the long-term interests of end-users (LTIE).

An access determination can also serve other purposes, including specifying circumstances in which the access provider is excluded from complying with the standard access obligations.

Consequently, an access determination plays a key role in refining the bounds of regulation and facilitating commercial negotiation or otherwise establishing terms and conditions of access that promote the LTIE.

## 1.1. Background

The ACCC first declared a superfast broadband access service on 24 February 2012. That declaration applied only to superfast fixed-line networks that were built after 1 January 2011 and was called the local bitstream access service. The ACCC declared the SBAS in July 2016, which applied to superfast fixed-line networks that were built before 1 January 2011.

In July 2021 we decided to vary and extend the SBAS declaration until 28 July 2026. The decision combined the SBAS and previous local bitstream access service declarations to apply to all superfast broadband networks (i.e., built both before and after 1 January 2011). We revoked the local bitstream access service declaration concurrently to the varied SBAS declaration taking effect.

We have made an interim access determination to maintain the current price and non-price terms until we make a new FAD.<sup>5</sup> It applies from 27 July 2021 to either 31 Dec 2022 or the day on which a new access determination comes into force, whichever is earlier. The current regulated prices are set out in Schedule 2 of the access determination.<sup>6</sup> We have extended the expiry date of the interim access determination to maintain the current price and non-price terms until we make a new access determination in 2023.

To date we have benchmarked SBAS access pricing with NBN or Telstra wholesale access offers depending on the SBAS variant. We adopted this approach in the 2017 access determination inquiry and maintained it in the July 2021 interim access determination.

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<sup>5</sup> See <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/sbas-final-access-determination-inquiry-2021/interim-access-determination>.

<sup>6</sup> See <https://www.accc.gov.au/public-registers/telecommunications-registers/s152bcw-access-determinations-register/interim-access-determination-no-1-of-2021-for-the-superfast-broadband-access-service-sbas>.

## 1.2. Inquiry and consultation process

On 19 July 2021, we commenced a public inquiry under Part 25 of the *Telecommunications Act 1997* to make an access determination for the SBAS to consider the price and non-price terms and conditions of access.<sup>7</sup>

On 4 November 2021 we released a Discussion Paper which considered relevant market developments since the previous access determination was made and discussed several pricing options for public consultation.<sup>8</sup> We received six public submissions, which are listed in Appendix C and available on the ACCC's website.

On 2 May 2022 we extended the FAD inquiry by 6 months, in accordance with subsection 152BCK(3) of the *Competition and Consumer Act 2010* (CCA).<sup>9</sup> We have decided to extend the FAD inquiry by a further 6 months, to 19 July 2023.

In May-June 2022 ACCC staff met with stakeholders, including several that had not provided a submission, to discuss issues raised in our November 2021 Discussion Paper. The meetings are listed in Appendix C.

We have made this draft decision on making the new SBAS FAD considering submissions to our Discussion Paper, subsequent consultation, and the required statutory considerations.

We are seeking submissions on this draft decision which we will consider along with any further consultation and the required statutory considerations in making a final decision. We will publish an exposure draft of the FAD instrument in 2023 for stakeholder feedback before making a final decision.

## 1.3. Making a submission

We encourage industry participants, other stakeholders, and the public more generally to consider and make submissions on the issues set out in this draft decision.

We consider that, for the consultation process to be effective, it is necessary for the consultation process to be as public and transparent as possible. This is to enable effective participation by all stakeholders.

To foster an informed and consultative process, all submissions will be considered as public submissions and posted on the ACCC's website.

We will assess any confidentiality claims on a case-by-case basis and in doing so will consider whether we are required to publish information having regard to our statutory duties and functions in each instance and in accordance with section 155AAA of the CCA.

We will consider whether publication of the information is required to enable effective public consultation and to allow us to perform our statutory functions in making a final decision. We will assess whether this requirement outweighs any significant commercial harm that may result from publication. We will take into account procedural fairness considerations for all relevant stakeholders.

Our decisions to publish information will be subject to the process described below.

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<sup>7</sup> See <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/sbas-final-access-determination-inquiry-2021/notice-of-sbas-fad-inquiry>.

<sup>8</sup> See <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/sbas-final-access-determination-inquiry-2021/discussion-paper-and-submissions>.

<sup>9</sup> See <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/sbas-final-access-determination-inquiry-2021/notice-of-extension-of-fad-inquiry-0>.

If interested parties wish to make any claim of confidentiality over material provided to the ACCC during this consultation, they should follow the process below:

1. Please submit two versions of the submission:
  - a) a public submission that can be published on the ACCC's website, in which all confidential material has been removed and replaced with an appropriate symbol. Please ensure that redacted information is not searchable or otherwise able to be viewed.
  - b) a confidential version that clearly identifies the information over which confidentiality is claimed by bookending the confidential material with a marking of 'commercial-in-confidence'. Please also highlight for ease of reference the material over which confidentiality is claimed.
2. Information over which a party claims confidentiality must be limited to ensure full consultation on all relevant material.
3. Please provide a supporting submission that specifically substantiates the confidentiality claim for each item of information over which confidentiality is claimed. Confidentiality claims need to detail why the information is competitively sensitive or otherwise confidential, or why disclosure of the information would be likely to cause significant commercial harm to the person to whom the information is confidential. 'Blanket' claims of confidentiality will not be accepted. We will notify parties of any additional information required to assess a confidentiality claim.
4. Where we propose to publish the information which is the subject of a confidentiality claim, we will provide a right to be heard and to amend or withdraw the information before proceeding to publication with redactions removed.
5. Where we propose to not publish information which is the subject of a confidentiality claim and publish a redacted submission, we may reconsider that claim at a future date if it becomes evident that the redacted information is important to our consultation and needs to be tested with third parties. We will notify the relevant party and engage with them in relation to how this information can be disclosed. The *ACCC-AER information policy: the collection, use and disclosure of information (2014)* sets out the general policy of the ACCC and the Australian Energy Regulator on the collection, use and disclosure of information. A copy of the guideline is available on the ACCC's website.<sup>10</sup>

The ACCC prefers to receive submissions in electronic form, either in PDF or Microsoft Word format which allows the submission text to be searched.

Submissions are due by 9 December 2022. Please email submissions to: [superfastbroadbandinquiry@acc.gov.au](mailto:superfastbroadbandinquiry@acc.gov.au)

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<sup>10</sup> See <https://www.accc.gov.au/publications/accc-aer-information-policy>.

## 1.4. Structure of draft decision

This draft decision is structured as follows:

- **Section 2** summarises the legislative framework under which the ACCC may make an access determination
- **Section 3** sets out the views of stakeholders and key issues we considered in making this draft decision
- **Appendix A** details the access determination legislative framework and our approach under this framework
- **Appendix B** sets out the service description of the declared SBAS
- **Appendix C** lists the submissions to this inquiry and meetings held between ACCC staff and stakeholders.

## 2. ACCC approach to pricing and terms and conditions for declared services

The following section summarises the legislative framework under which the ACCC may make a FAD. Further detail in relation to the legislative framework for making a FAD is provided at Appendix A.

### 2.1. Legislative requirements

Under the CCA, the ACCC may make an access determination that specifies terms and conditions of access to a declared service, which must include terms and conditions relating to price or a method of ascertaining price.<sup>11</sup> This enables us to determine pricing as well as other terms and conditions for access to a declared service which access seekers can rely on if they are unable to commercially agree on prices with the access provider.

The CCA requires us to take several matters into account when making a FAD, which are:

- whether the FAD will promote the LTIE, which involves considering the extent to which it is likely to result in the achievement of the following objectives:
  - promoting competition in markets for listed services
  - achieving any-to-any connectivity
  - encouraging the economically efficient use of, and economically efficient investment in, the infrastructure by which the listed services are supplied, and any other infrastructure by which listed services are, or are likely to become, capable of being supplied<sup>12</sup>
- the legitimate business interests of a carrier or carriage service provider who supplies, or is capable of supplying, the declared service, and the carrier's or provider's investment in facilities used to supply the declared service
- the interests of all persons who have rights to use the declared service
- the direct costs of providing access to the declared service
- the value to a person of extensions, or enhancement of capability, whose cost is borne by someone else
- the operational and technical requirements necessary for the safe and reliable operation of a carriage service, a telecommunications network or a facility
- the economically efficient operation of a carriage service, a telecommunications network or a facility.<sup>13</sup>

In considering whether a FAD is likely to encourage the economically efficient use of, and economically efficient investment in, infrastructure by which listed services are supplied, or are capable of being supplied, we must have regard to:

- whether it is or is likely to become technically feasible for the services to be supplied and charged for having regard to certain matters<sup>14</sup>
- the legitimate commercial interests of the supplier or suppliers of the services, including the ability of the supplier or suppliers to exploit economies of scale and scope

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<sup>11</sup> CCA, subsection 152BC(8), by reference to paragraphs 152BC(3)(a), (b) and (f).

<sup>12</sup> CCA, subsection 152AB(2).

<sup>13</sup> CCA, subsection 152BCA(1).

<sup>14</sup> CCA, subparagraphs 152AB(6)(a)(i), (ii) and (iii).

- the incentives for investment in the infrastructure by which the services are supplied, or any other infrastructure by which services are, or are likely to become, capable of being supplied, which must involve consideration of the risks involved in making the investment.<sup>15</sup>

We may also take into account the supply of other eligible services by the access provider and any other matters that we consider relevant.<sup>16</sup>

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<sup>15</sup> CCA, subsections 152AB(6) and (7A).

<sup>16</sup> CCA, subsections 152BCA(2) and (3).



### 3. Key issues considered for the access determination

In our November 2021 Discussion Paper, we sought views on a range of specific issues regarding the new SBAS FAD as well as other issues relevant to the statutory considerations for an access determination.

These issues and the responses from stakeholders are outlined below. We have considered these issues in making our draft decision.

#### 3.1. SBAS pricing

##### 3.1.1. Discussion Paper

###### *Pricing methodology*

Our Discussion Paper asked what pricing methodology should determine regulated SBAS prices.

To date, the SBAS has been subject to price regulation in the form of anchor prices benchmarked to NBN pricing for similar wholesale access services (with an exception for Telstra's fibre access broadband service, as discussed below).

Our Discussion Paper asked whether regulated SBAS prices should continue to be set in line with NBN prices (and for the fibre access broadband service, Telstra's ADSL prices) and, if not, what alternative approaches should be considered. We discussed alternative approaches such as the building block model and retail minus methodologies which we had considered in 2017 but did not adopt for SBAS regulation.

We also asked whether regulated prices should continue to be specified at download/upload speeds of 25/5 Mbps. This is the entry level product tier for superfast broadband services. The access price set for this speed tier (plus a charge for shared network capacity) is the 'anchor' price point for regulated access.

###### *Fibre access broadband service*

Telstra supplies a fibre access broadband service on its South Brisbane and Velocity Estates networks, which is regulated under the FAD. Regulated access prices for this service are benchmarked to the service-specific costs of Telstra's wholesale ADSL service, at download/upload speeds of 30/1 Mbps.

Our Discussion Paper asked whether this approach should continue while the fibre access broadband service is still operating and regulated. The fibre access broadband service is being progressively withdrawn following the sale of Telstra's South Brisbane and Velocity Estates networks to Uniti Group in 2020 and is not expected to be available after 2023.

Our Discussion Paper canvassed whether it would be appropriate to set a point in time from which its regulated access price is set at the same level as the equivalent regulated SBAS and NBN services. End-users connected to Telstra's South Brisbane and Velocity Estates networks are not connected to the NBN.

###### *Regulated price components and anchor points for the SBAS*

Regulated SBAS prices are referenced directly to the access prices for equivalent residential grade products for NBN and Telstra wholesale ADSL services. That is, for the SBAS, the NBN bundled access virtual circuit (access charge) / connectivity virtual circuit (CVC (usage charge)) price (plus CVC overage if applicable) inclusive of discounts at download /upload

speeds of 25/5 Mbps. For the fibre access broadband service, access (i.e., port charge per month) and usage (i.e., aggregation) charges are benchmarked to the costs of Telstra's wholesale ADSL service at download / upload speeds 30/1 Mbps.

Our Discussion Paper recognised that there may be some access providers and RSPs that prefer regulated charges not to be separated by access and usage, instead having greater flexibility to incorporate the costs of network access and usage within a single fixed charge. We considered that this may be desirable both for providers and access seekers where it would simplify regulated pricing for wholesale access and provide greater certainty about the cost of (and revenue from) network access and usage at regulated prices. We asked whether we should take a different approach to the product components that are price regulated and / or to the structure of regulated charges in the new FAD.

We also asked whether regulated SBAS prices should continue to include NBN Co's bundling/discount offers that are offered from time to time, or instead be based on prices published in NBN Co's Price List that exclude such offers.

We noted that regulating the price of 25/5 Mbps (and 30/1 Mbps for the fibre access broadband) services provides a price constraint on higher speed services (that are not regulated) while allowing for price flexibility in unregulated higher speed services. However, we asked whether only the current anchor price points should be regulated, or whether regulated prices should be set for a range of speed tiers. We also asked whether 25/5 Mbps is still an appropriate anchor point for regulated access prices should prices continue to be regulated at a single anchor point.

### ***Non-recurring and ancillary charges***

Current SBAS regulation does not apply to non-recurring and ancillary charges such as connection, activation and transfer fees levied by SBAS providers.

Our Discussion Paper noted that where non-recurring and ancillary charges are unreasonably high and do not reflect the costs of the service or function provided, these charges may be an impediment to customers transferring to another network or RSP and potentially detrimental to competition.

We asked whether any non-recurring charges should be regulated.

### ***Regional Broadband Scheme levy***

The regional broadband scheme (RBS) was established by the Australian Government in 2020 to fund fixed wireless and satellite broadband services in regional, rural, and remote areas.

Under the RBS, a carrier or declared nominated carrier is required to pay \$7.10 per month to the Government for each eligible premise on their telecommunication network that has an active fixed line that provides a designated broadband service.

SBAS providers are currently allowed to pass through the RBS levy to end users in addition to the regulated access charges.

In our Discussion Paper, we asked whether the RBS levy should continue to be able to be added to regulated access charges (i.e., passed through to RSPs by providers if they choose to), or whether the levy should instead be absorbed by providers by not allowing the levy to be added to the regulated charges.

### 3.1.2. Submissions

#### *SBAS pricing methodology*

Submissions were supportive of the ACCC's current approach of benchmarking regulated SBAS access prices in line with NBN wholesale access prices.

Telstra,<sup>17</sup> TPG<sup>18</sup> and the Australian Communications Consumer Action Network (ACCAN)<sup>19</sup> supported the current approach. Generally, these submitters considered that benchmarking:

- is more straightforward to implement than any of the potential alternative approaches and continues to help ensure access seekers are not paying more than equivalent NBN services
- is consistent with the 'level playing field' provisions and provides a simple means for non-NBN networks to ensure compliance with the FAD
- ensures consumers are not disadvantaged by the network their premises are connected to.

Other methodologies, such as the building block model and retail minus approach, were not supported by TPG<sup>20</sup> and ACCAN<sup>21</sup> on the basis that these approaches:

- are complex and resource intensive as they involve determination of costs for several non-NBN networks with different technology and systems
- could potentially entrench monopoly prices.

Submissions generally supported maintaining NBN Co's bundled/discount offers available from time to time as the benchmark for setting regulated access prices. TPG<sup>22</sup> and Telstra<sup>23</sup> submitted that regulated access prices should continue to reflect NBN Co's bundled/discounted offers, on the basis that:

- these are the prices that NBN Co charges access seekers.
- it will promote competition in the supply of retail services through improved price and quality of service, as well as providing incentives for RSPs to innovate and provide a wider array of products.
- this approach facilitates uniform retail broadband offerings to consumers across both the NBN and SBAS networks.

ACCAN<sup>24</sup> submitted that if NBN bundled / discount offers were not reflected in regulated SBAS access prices, the benefits of setting prices in line with NBN prices would be undermined as it could prevent RSPs from pursuing national pricing strategies.

Continuation of the current approach to regulated price components (i.e., distinguishing access and usage charges consistent with NBN Co's current price offers) was also supported in submissions by Telstra and TPG.<sup>25</sup> Telstra submitted that the current approach:

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<sup>17</sup> Telstra [submission](#) p 5.

<sup>18</sup> TPG [submission](#) p 3.

<sup>19</sup> ACCAN [submission](#) p 6.

<sup>20</sup> TPG [submission](#) p 3.

<sup>21</sup> ACCAN [submission](#) p 6.

<sup>22</sup> TPG [submission](#) p 3.

<sup>23</sup> Telstra [submission](#) p 5.

<sup>24</sup> ACCAN [submission](#) p 6.

<sup>25</sup> Telstra [submission](#) pp 7-8. TPG [submission](#) p 4.

- ensures there is a regulated price for the SBAS aligned with NBN Co's price structure, which helps promote downstream competition by enabling RSPs to offer a uniform retail offering across the NBN and SBAS networks
- leaves providers free to offer commercial wholesale pricing using alternative price structures – such as a single fixed charge including unlimited data usage – which enables them to protect their legitimate business interests and may help to promote competition between SBAS providers and the NBN.<sup>26</sup>

Telstra<sup>27</sup> and TPG<sup>28</sup> both submitted that only the current anchor price point (i.e., download / upload speeds of 25/5 Mbps) should be regulated. Their submissions noted that this reflects the minimum download speed required of statutory infrastructure providers, including NBN Co.

However, ACCAN<sup>29</sup> submitted that prices should be set for a range of additional speed tiers. According to ACCAN, the ability for the regulated price of the 25/5 Mbps service to restrain the price of higher speed tiers is likely to diminish as consumers, particularly larger households, require higher speed services to meet their needs. It submitted that the proportion of end-users on speeds of 25 Mbps or below has been falling, demonstrating changing consumer preferences. It considered that setting regulated access prices across a range of speed tiers will encourage RSPs to operate across all networks with national plans for different speed tiers. It also considered that prices for speeds up to 100 Mbps should be set in line with NBN prices.

According to ACCAN, regulation that applies solely to an anchor product is not likely to fully address the barriers that retailers face in offering services, particularly if demand for the anchor product is low. It considered that there also needs to be a regulated price for a voice only / low use internet product, as a safeguard for consumers who only require a voice-service connection. In addition, ACCAN noted that if a single regulated anchor point is adopted, the 50/20 Mbps speed tier is the most appropriate point.

The stakeholders that we met with in May-June 2022 were supportive of our current approach of benchmarking regulated SBAS access prices in line with NBN wholesale access prices. Several of these stakeholders considered that regulated prices should be set for 25/5 Mbps services as well as higher speed tiers. Some stakeholders commented on the uncertainty of future NBN pricing (due to the regulatory review underway) and considered this could in the current circumstances detract from the suitability of a benchmarking approach.

### ***Approach to regulated access pricing for the fibre access broadband service***

Telstra's<sup>30</sup> and ACCAN's<sup>31</sup> views differed on how regulated access prices should be approached for the fibre access broadband service.

Telstra submitted that the current approach should remain because:

- the approach (i.e., regulated access prices based on Telstra's wholesale ADSL service) avoids the costs and time involved in implementing a revised approach, noting that its service is being progressively withdrawn following the sale of the South Brisbane and Velocity networks to Uniti Group

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<sup>26</sup> Telstra [submission](#) p 8.

<sup>27</sup> Telstra [submission](#) p 8.

<sup>28</sup> TPG [submission](#) p 4.

<sup>29</sup> ACCAN [submission](#) p 8.

<sup>30</sup> Telstra [submission](#) p 6.

<sup>31</sup> ACCAN [submission](#) p 7.

- it will provide regulatory certainty and stability for Telstra and for Telstra's relevant wholesale customers during the transition of services to Uniti Group.

ACCAN submitted that access pricing for the fibre access broadband service should be adjusted to account for the lower upload speeds (i.e., compared to a 25/5 Mbps service) currently available through the South Brisbane and Velocity networks.

Telstra's<sup>32</sup> and ACCAN's<sup>33</sup> views also differed on the appropriate speed tier to use as a benchmark for regulated access prices.

Telstra considered that the 30/1 Mbps fibre access broadband service is the closest equivalent to the SBAS 25/5 Mbps Layer 2 service, and 30/1 Mbps is therefore the appropriate speed tier for regulated access. Telstra considered that should its 100/5 Mbps service be regulated, the closest equivalent NBN product is the 100/20 Mbps speed tier. Telstra noted that currently, NBN Co charges \$58 per month for its 100/20 Mbps service, which is more than 50 per cent higher than the \$37 per month charged by NBN Co for its 25/5 Mbps service. According to Telstra, it would be unfair and unjustified to require Telstra to offer its 100/5 Mbps service for the same price as NBN Co's 25/5 Mbps service.

ACCAN<sup>34</sup> considered that end users connected to the South Brisbane and Velocity networks should not be worse off due to their premises not being connected to the NBN. ACCAN's view was that until Uniti Group can provide a Layer 2 service over the South Brisbane and Velocity networks, the charges for Telstra's 100/5 Mbps fibre access broadband service should be the same as NBN Co's 25/5 Mbps service. ACCAN also considered that charges for Telstra's 30/1 Mbps service should be the same as NBN Co's 12/1 Mbps service.

### ***Regional broadband scheme levy***

Submissions differed on whether SBAS providers should be required to absorb the RBS levy or continue to be allowed to pass on the levy to RSPs should they choose to.

ACCAN<sup>35</sup> submitted that to ensure competitive neutrality, SBAS providers that are required to pay the levy should be able to pass the cost through given that NBN Co is able to recover its levy costs from end users (through an internal cross-subsidy). ACCAN noted that networks that service less than 2,000 chargeable premises should not be able to pass through the RBS levy as they are not required to pay it. It also noted that consideration should be given to the legislated concessions from the levy applicable to providers during the first five years of the scheme.<sup>36</sup>

TPG<sup>37</sup> submitted that providers should continue to have the opportunity to pass on the levy to their wholesale customers.

The Internet Association of Australia<sup>38</sup> submitted that the levy should be absorbed by providers instead of being passed through to RSPs and end-users and noted that the levy poses an additional cost to RSPs.

Telstra<sup>39</sup> submitted that providers should not be required to charge access prices below costs, but considered it was unclear that absorbing the RBS levy would result in this

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<sup>32</sup> Telstra [submission](#) p 7.

<sup>33</sup> ACCAN [submission](#) p 8.

<sup>34</sup> Ibid, p 7.

<sup>35</sup> Ibid, p 7.

<sup>36</sup> That is, applicable to lines for supplying residential or small business premises (up to the first 25,000 such premises) and recently connected Greenfields premises (up to the first 55,000 such premises).

<sup>37</sup> TPG [submission](#) p 3.

<sup>38</sup> Internet Association of Australia [submission](#) p 1.

<sup>39</sup> Telstra [submission](#) p 5.

outcome. Telstra noted that there has been no increase to access charges for NBN services since the levy came into effect as NBN Co's wholesale customers are already contributing to the levy through an internal cross subsidy from its fixed line services. Telstra also considered that the levy contains several exemptions that could make it complex to determine how much of it needs to be recovered.

Telstra further noted that adding the levy to access charges could result in wholesale (and consequently retail) charges for broadband services supplied over non-NBN networks being higher than those for NBN customers. Telstra considered that such an outcome could run counter to the ACCC's rationale for setting prices anchored to NBN prices – namely to ensure that retailers are not paying more than equivalent NBN services.

The stakeholders that we met with in May-June 2022 had mixed views on whether providers should retain the flexibility to pass through the RBS levy. Several stakeholders expressed the view that RSPs don't have the capacity to absorb the levy, if providers were to pass it through, due to competition at the retail level and noting that NBN Co does not explicitly add the levy to its wholesale charges.

### ***Non-recurring and ancillary charges***

Both Telstra<sup>40</sup> and TPG<sup>41</sup> did not consider that non-recurring and ancillary charges (e.g., connection, activation, and transfer fees) should be regulated.

TPG submitted that it does not consider there is any basis for the ACCC to regulate non-recurring charges.

Telstra submitted that it did not believe it is justified to impose additional regulation in the absence of evidence that SBAS providers' non-recurring charges are unreasonably high or that they fail to reflect the costs of the service or function provided.

In contrast, ACCAN<sup>42</sup> submitted that non-recurring charges such as transfer fees can prevent retail competition by creating a barrier to switching providers where charges are not cost-reflective. ACCAN noted that excessively high connection costs could prevent low-income households from connecting to a network. It considered that if SBAS providers are found to be charging excessively high non-recurring charges, these charges should be set in line with NBN Co's equivalent charges.

Several stakeholders that we met with in May-June 2022 raised concerns regarding non-recurring and ancillary charges. They provided an example of a \$99 charge currently levied on retailers by an SBAS provider for the transfer / activation of end-users to another retailer, noting that NBN Co and Telstra (i.e., for wholesale ADSL) currently charge \$5-\$15 for similar customer transfers / activations. The stakeholders explained that end-user transfers between RSPs are usually enabled remotely through a network provider's customer relationship management system and generally do not require a technician to visit the customer's premises.

There were also concerns raised about charges levied on RSPs for the connection of premises to a network in circumstances where the cost for the physical connection (i.e., for installation of local network infrastructure and / or the lead-in cable to the premises) had already been recovered from a previous owner or tenant of the premises. The potential for the provider to recover this cost multiple times was raised. A further concern was raised regarding charges levied by some SBAS providers for service appointments (e.g., fault

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<sup>40</sup> Telstra [submission](#) p 8.

<sup>41</sup> TPG [submission](#) p 4.

<sup>42</sup> ACCAN [submission](#) p 9.



identification) apparently being greater than the cost to the provider of the service or function provided.

### **3.1.3. ACCC's draft decision**

#### ***Pricing methodology***

Our draft decision is that the pricing methodology for setting regulated access charges for the SBAS will continue to be benchmarking against prevailing NBN pricing for similar wholesale access residential grade products (with an exception for Telstra's fibre access broadband service, discussed below).

Regulated access charges for the SBAS will be the same as NBN Co's prevailing bundled / discount offers at the speed tiers regulated under the FAD (discussed below).

We consider that the alternative methodologies canvassed in our Discussion Paper and previously considered in our 2017 inquiry, such as the building block model and retail minus approach, are resource intensive and complex to implement for providers.

A benchmarking methodology where access prices are equivalent to NBN residential grade products (and benchmarked to ADSL for the fibre access broadband service) is straightforward to implement and is well understood and accepted by access providers and access seekers. The approach supports market entry by RSPs through common regulated access terms regardless of the location of the network.

Our draft decision to continue with a benchmarking methodology also helps to ensure that access seekers are not paying more than for equivalent NBN services, which will promote competition and benefit consumers.

NBN Co's future price path is to be considered as part of its special access undertaking variation proposal.<sup>43</sup> Recognising that this regulatory process will continue into 2023, we intend to make our final decision on the SBAS FAD in 2023 when these matters are more settled.

#### ***Regulated price components and anchor points***

Our draft decision is that regulated access prices for the SBAS will continue to be referenced directly to the access prices for equivalent residential grade products for NBN services inclusive of the bundled access / usage price and discounts offered by NBN Co from time to time.<sup>44</sup>

Access providers will be required to provide the SBAS at the same price and discounts offered by NBN Co for equivalent residential grade products at the regulated speed tiers in the FAD. SBAS charges cannot exceed prevailing NBN charges for access and usage (i.e., AVC and CVC including aggregation service charges) for equivalent residential grade products. Parties will not be precluded from making commercial agreements on alternative price structures for access such as a single fixed charge incorporating usage.

Our draft decision is that access prices for the SBAS will be regulated at the 25/5-10 Mbps speed tier. Given growing demand for higher speed broadband services, and the strong consumer preference for services at the 50 Mbps download data rate, our draft decision is to also regulate access prices at the 50/20 Mbps speed tier.

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<sup>43</sup> NBN Co has set out its proposed future charges in its August 2022 *Special access undertaking variation: Proposed changes, discussion paper* and is proposing to submit a variation proposal to the ACCC in November 2022.

<sup>44</sup> We note that under the 2022 special access undertaking variation NBN Co has proposed to remove its bundled discounts from 1 July 2023 in favour of direct product offers subject to maximum price & minimum CVC inclusions. We will take such changes into account before making a final decision.

Access prices at the 25/5-10 Mbps and the 50/20 Mbps speed tiers will be consistent with prevailing NBN charges and future NBN charges arising from regulatory processes underway. NBN Co has published an outline of its proposed pricing arrangements from July 2023. Among other things, NBN Co has made a commitment to a timeframe for the removal of CVC charges and the introduction of AVC-only pricing across the 25 Mbps and 50 Mbps wholesale speed tiers by 1 July 2026.<sup>45</sup>

We consider that anchoring price regulation at both the 25/5-10 Mbps and the 50/20 Mbps tiers reflects the change in consumer preferences since our previous inquiry in 2017. The 25/5-10 and 50/20 Mbps speed tiers together represent around 70 per cent of the Australian broadband services market, with the 50/20 Mbps alone comprising almost 60 per cent.<sup>46</sup> Consumer demand and pricing for 50 Mbps services is now well established and there is a low risk that regulating this speed tier at the same price as NBN services would result in inefficient pricing.

We also consider that regulating SBAS prices at the 50/20 Mbps speed tier will be more effective in constraining prices of higher speed access services than if only the 25/5-10 Mbps speed tier is price regulated, while providing flexibility for the pricing of >50 Mbps services offered by providers. In addition, regulation at the 25/5-10 Mbps speed tier will help to protect consumers of entry level broadband services connected to SBAS networks from monopoly pricing.<sup>47</sup>

The SBAS service description covers all Layer 2 broadband access services that are supplied over a fixed line non-NBN network capable of supplying a 25 Mbps service. This means a relevant fixed line network with a 25 Mbps capability could also supply a lower speed service such as 12 Mbps (i.e., low data rate and voice only services) and that lower speed service is subject to the declaration.

Our draft decision is not to regulate access prices for 12/1 Mbps services supplied over SBAS networks. We consider that low-cost pre-paid and post-paid mobile phone services,<sup>48</sup> which are readily available in geographic areas serviced by SBAS networks, are an effective substitute, and provide a sufficient competitive constraint on prices, for low data rate / allowance and voice only services. We also note that NBN Co has announced its intention to reposition its 25/5 Mbps service as its entry level broadband offer by charging a similar notional price to its 12/1 Mbps service.<sup>49</sup>

We consider that our draft decision will facilitate uniform broadband offerings to access seekers across the NBN and SBAS networks, while allowing for flexible access pricing arrangements through negotiation, with the fallback to regulated prices that reflect consumer demand for broadband services. We also consider that our draft decision will promote competition at the wholesale level and in downstream retail markets for broadband services, benefiting consumers of both entry level and higher speed broadband services.

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<sup>45</sup> See <https://www.nbnco.com.au/corporate-information/media-centre/media-statements/nbn-co-releases-revised-sau-variation-discussion-paper>.

<sup>46</sup> See <https://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/nbn-wholesale-market-indicators-report/march-quarter-2022-report>.

<sup>47</sup> Where applicable, the statutory infrastructure provider regime also requires designated providers to offer broadband service speeds of at least 25 Mbps downstream and 5 Mbps upstream across all network technologies.

<sup>48</sup> The ACCC's [Communications Market Report 2020-21](#) reported that 85% of available post-paid mobile phone service plans were priced below \$60 per month in 2020-21, with 23% of plans at the most common price point of \$20-\$30, with an average data allowance of 20 GB. A large proportion of post-paid plans offered by smaller providers are priced below \$40. Similarly, 26% of pre-paid mobile phone service plans were at the \$20-\$30 price point in 2020-21.

<sup>49</sup> See: NBN Co, [Special access undertaking variation - discussion paper](#), August 2022, p.6.



## ***Fibre access broadband service***

Our draft decision is that regulated access prices for the fibre access broadband service will continue to be benchmarked to Telstra's wholesale ADSL service, at download / upload speeds of 30/1 Mbps, until the end of 2023. The service description in the SBAS declaration and regulated access pricing arrangements as currently set out in the access determination will continue to apply, based on our understanding that the service will be withdrawn in all areas of the South Brisbane and Velocity estates by the fourth quarter 2023.

Based on information provided by Telstra, it is anticipated that by September 2023 the fibre access broadband service will be completely withdrawn following the migration of end-users in the South Brisbane and Velocity estates to Uniti Group's Layer 2 network and the decommissioning of Telstra's network infrastructure.

We consider that maintaining our current approach to regulated access prices during the migration of end-users to Uniti Group's Layer 2 network will provide certainty and stability of access prices during the migration process. We consider that this will facilitate migration of end-users and promote competition between RSPs offering services to the South Brisbane and Velocity estates. We are of the view that end-users will have an incentive to migrate to Uniti's Layer 2 network to receive the benefits of competitive pricing and service offerings akin to those available on the NBN.

We consider that it would be disproportionate regulation to introduce new access terms for the fibre access broadband service during the migration process and based on our understanding that the service will be withdrawn within the next 12 months.

Should the fibre access broadband service continue to be available after 2023 and on an ongoing basis we would consider reviewing our approach through a FAD variation inquiry. In these circumstances we would consider aligning fibre access broadband service prices with the nearest equivalent NBN service.

## ***Non-recurring and ancillary charges***

Our draft decision is to regulate certain non-recurring and ancillary charges levied on access seekers by SBAS providers under the FAD.

We consider that where non-recurring and ancillary charges are unreasonably high and do not reflect the costs to the provider of the service or function provided, these charges can impede customers transferring between networks and RSPs and be detrimental to competition and consumers. We have noted examples of such charges during consultation for this inquiry.

Our draft decision is to regulate charges levied by SBAS providers on access seekers for *service activation*, *service reactivation*, *service transfer*, *service transfer reversal* and end-user premises *appointments* (i.e., including charges for end user missed appointments and cancellations). Our proposed approach will be to benchmark SBAS provider charges for these services against NBN Co's charges at the time for the same or comparable services (i.e., recognising access technology type).

This means, for example, that a provider's charge for transferring end-users between RSPs could not exceed \$5 based on NBN Co's current charge for this service. NBN Co's current non-recurring charges are set out in its *Price List nbn™ Ethernet Product Module Wholesale Broadband Agreement*.<sup>50</sup>

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<sup>50</sup> See <https://www.nbnco.com.au/content/dam/nbn/documents/sell/wba/2022/sfaa-wba-nbn-ethernet-price-list-20220501.pdf>.

Service activation and reactivation charges will similarly use NBN Co's two-tiered approach that distinguishes between a nominal fee for standard connections and a cost recovery formula (based on hourly labour & material costs) for non-standard connections.<sup>51</sup> This will allow providers to seek a suitable up-front contribution to the costs of a new connection without creating barriers to end-user switching or seeking a contribution where the access provider does not incur a material cost.<sup>52</sup>

In our discussions with stakeholders, we have noted concerns with other ancillary charges such as those for network-to-network interface services<sup>53</sup> and state-based aggregation service charges levied by some providers.<sup>54</sup> We have not at this stage decided on whether to regulate charges for these services but seek stakeholder views on whether these charges are above-cost or an impediment to retail competition.

### ***Regional Broadband Scheme levy***

Our draft decision is that regulated access prices for the SBAS will be inclusive of the RBS levy. That is, providers will be precluded from recovering the cost of the levy from RSPs in addition to the regulated access charges.

We note that benchmarking SBAS access prices to the NBN already makes an allowance for levy recovery given NBN Co's prices are inclusive of its levy costs (through an internal cross-subsidy from its fixed line services). We similarly note that SBAS providers do not appear to have increased their access prices to recover the levy, despite having the opportunity to do so.

We consider that this approach promotes competition in downstream retail markets for broadband services by enabling retailers to offer uniform retail offerings across the NBN and SBAS networks.

Where SBAS providers operate at both the wholesale and retail level there is the risk that giving the provider the flexibility to pass through the levy to its wholesale customers may result in its retail arm having an unfair advantage in the market. Also, RSPs subject to the levy would be at a disadvantage in comparison to retail offerings for NBN-based services given that NBN Co does not explicitly add the levy to its wholesale charges. We consider that these outcomes would be detrimental to competition and consumers.

In the wholesale market, allowing the SBAS a higher access price above costs could distort competition given the higher returns available to providers could be used to gain an unfair advantage over others bidding for the right to install fibre networks in new developments.

We recognise that larger providers will have a greater capacity to absorb the costs of the levy due to the economies of scale and scope of their networks compared to smaller network operators. Also, established network operators are more likely to have already recovered their initial capital investment in their network compared to new entrants and may have a greater capacity to absorb the levy.

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<sup>51</sup> The [NBN special access undertaking](#) (Annexures 1-6) contains requirements on what constitutes a 'standard connection'. Simply, it entails cases where the technician can access the premises within the day of appointment and the connecting equipment can be readily installed (e.g., a short fibre cable connecting the provider network to the customer residence) or is already installed. For NBN Co the cost of standard connections is \$0, but for other industries such as energy this can be a nominal fee (usually \$10-\$50).

<sup>52</sup> As noted by several stakeholders that we met with in response to our Discussion Paper, reactivation of existing connections can often be made by the SBAS operator without visiting the premises. One stakeholder noted instances of an operator levying a \$300 'new development charge' each time a new tenant moves in and a service is reactivated.

<sup>53</sup> From our analysis TPG and Unifi both charge the same as NBN Co for network-to-network interface services. Some RSPs have concerns that NBN Co's charges are too high and have not reduced in-line with technology improvements over the past decade.

<sup>54</sup> For example, Unifi's charge to hand-over traffic to RSPs at state capital points-of-interconnect. Unifi has recently increased this monthly charge by 40%, from \$2 to \$2.80 per end-user.

We note that the legislated concessions from the RBS levy acknowledge that smaller providers and new entrants are likely to have less capacity to pay the levy initially. That is, access providers with fewer than 2,000 premises are exempt from paying the levy. Also, there are concessions from the levy during the first five years of the scheme applying to lines supplying residential or small business premises up to the first 25,000 such premises and concessions for recently connected Greenfields premises up to the first 55,000 such premises.

### **3.1.4. Assessment of approach against section 152BCA matters**

As set out in section 2.1 of this draft decision, section 152BCA of the CCA sets out the matters we must take into account in making an access determination.

In benchmarking SBAS access prices to those of the NBN, we are seeking to ensure that these prices encourage RSPs to use the wholesale services of SBAS networks, thereby promoting competition in the supply of retail services to end users through improved price and service offerings, and greater incentives to innovate and provide an array of retail products. As a result of this competition, productive and allocative efficiency are likely to be promoted as well as the LTIE.

Linking SBAS access prices to equivalent residential grade products for NBN services, which include the cost of the RBS levy, provides consistency in regulated access arrangements across NBN and non-NBN superfast broadband networks. We consider that this uniformity of regulatory approach promotes the efficient use of, and investment in infrastructure and the economically efficient operation of a carriage service, network, or facility.

We consider that the application of anchor pricing will reduce regulatory costs and help provide for flexibility and innovation in pricing, which are in turn expected to help encourage efficient investment and protect the legitimate business interests of access providers.

As discussed above, we recognise that there is presently some uncertainty about future NBN pricing due to the regulatory review of NBN Co's special access undertaking. The regulatory arrangements allow for cost recovery by NBN Co and are intended to generate efficient outcomes for pricing of wholesale access services. Therefore, we do not consider that benchmarking SBAS prices to NBN prices will negatively impact on providers' legitimate business interests.

Our draft decision accepts stakeholder views supportive of our current approach of benchmarking SBAS access prices in line with NBN prices. We note also that since we implemented the benchmarking approach in 2017, SBAS providers have continued to enter the market and invest in broadband networks.

In relation to Telstra's fibre access broadband service pricing, these prices will continue to be based on wholesale ADSL pricing which in the 2017 FAD decision we considered to be a suitable proxy for the direct costs of the service over time. Use of these costs to determine the access price means that Telstra's legitimate business interests are likely to be met.

We consider that regulation of non-recurring or ancillary charges levied on access seekers by SBAS providers, to ensure that these charges do not exceed the reasonable cost to the provider of the service or function for which the charge is levied, will support achievement of the section 152BCA objectives. That is, regulation of these charges to ensure they do not exceed reasonable costs will promote competition in the markets for listed services, the efficient use of infrastructure and protect the legitimate business interests of access providers.

We do not consider that the access determination will impact on the operational and technical requirements necessary for the safe and reliable operation of the SBAS or the relevant facilities or networks. We also do not consider that the access determination will impact the value to a person of extensions, or enhancements of capability, whose costs are borne by someone else.

We also consider that the overall price terms and conditions promote other important objectives that we consider are relevant in the circumstances (under section 152BCA(3)). These include that they:

- provide for reasonable consistency of regulation of all superfast broadband services (on NBN and non-NBN networks)
- are well understood, can be implemented easily and at relatively low regulatory cost for both providers and the ACCC, rather than approaches involving extensive cost analysis or adjustment.

## 3.2. Non-price terms and conditions

### 3.2.1. Discussion Paper

The ACCC can specify in an access determination some or all the terms and conditions on which a carrier is to provide an access seeker with access to the declared service. These terms and conditions can take the form of price or non-price terms and conditions. The non-price terms and conditions cover a broad scope as there can be many non-price aspects of access to a declared service. These can range from commercial terms, such as billing, general dispute resolution processes and operational processes by which declared services are to be accessed.

Our 2015 *Telecommunications Final Access Determination Inquiries - Non-price terms and conditions - Final decision for the mobile terminating access service and views for fixed line services and domestic transmission capacity service, Final Report*, provided a list of general commercial and service specific conditions that can be utilised in an access determination.

Our approach to regulated non-price terms in FADs has been to address the key commercial terms of access that would facilitate the commercial supply of the service to occur, and to base these upon a set of model terms and conditions. These provide the fall-back terms and conditions if access providers and access seekers cannot agree on their own set of terms and conditions for access to a declared service. The current regulated terms reflect this approach and are consistent with the most recent FADs of other declared services. Our Discussion Paper asked whether these terms should continue in their current form.

We also asked whether SBAS providers should be required to disclose certain key data - confidentially - to current or potential access seekers to promote greater transparency of key network service quality and reliability attributes such as network speed, fault rectification, outages and other key service quality and reliability indicators.

### 3.2.2. Submissions

Submissions generally supported the non-price terms in their current form. However, submissions differed on whether providers should be required to disclose network service quality and reliability data to access seekers.

ACCAN and the Internet Association of Australia supported disclosure of key service standards, with ACCAN noting that information in relation to service quality may act as an incentive to improve quality where network competition exists.<sup>55</sup>

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<sup>55</sup> ACCAN [submission](#) p 10. Internet Association of Australia [submission](#) p 1.

ACCAN proposed the following indicators of network service quality and reliability:

- timeframes for fault rectification, new connections, existing connections, and appointment keeping
- availability metrics including the number of minutes that a customer can expect to be without services in a year and the incidence of faults
- network performance metrics.<sup>56</sup>

ACCAN also proposed disclosure by SBAS providers of whether compensation will be paid when service standards are not met, and the amounts available if applicable.

Both TPG and Telstra did not consider there is an evidence-base for SBAS providers to disclose service quality information to their wholesale customers.<sup>57</sup> Telstra and TPG also took the view that it may be premature to impose additional regulatory obligations on SBAS providers during the access determination period, as service quality obligations may be mandated by the Australian Government during this period.

Several stakeholders that we met with in May-June 2022 considered that providers should be required to disclose network service quality and reliability information to RSPs. These RSPs explained that the quality and reliability of SBAS networks that they access was in some cases not apparent until their customers (i.e., end-users) made complaints to the RSP about poor service quality. They considered it should be a regulatory requirement that information about the service performance, quality, and reliability of a SBAS network is available to RSPs. They advised that this would assist their management of service issues that affect their customers and expectations about network service levels and customer support.

### **3.2.3. ACCC's draft decision**

Our draft decision is that the current regulated non-price terms and conditions be maintained with the additional requirement for SBAS providers to provide information to RSPs if requested (e.g., when the parties are negotiating an access agreement) and on a quarterly basis, covering the following service attributes:

- availability, performance, quality, and reliability of the network
- timeframes for – fault identification and fault rectification services, and end-user connection, activation, and transfer services, provided by the SBAS provider.

This will require providers to specify and keep current its service standards for the attributes above, along with a benchmark level of service (for example, maximum timeframes for connections and repairs, the number of minutes a customer can expect to be without a service in a year). The provider will then be required to report actual performance against its service standards each quarter. This will include information on whether compensation will be paid to RSPs and end-users when service standards are not met, and the amounts available if applicable.

Such information is to be made available by SBAS providers from 1 July 2023. This information is to be disclosed when an RSP expresses interest in gaining network access and updated on a quarterly basis.

We consider that improved transparency of service levels will provide greater incentives for SBAS network providers to ensure their networks and customer support systems are of an acceptable standard and support the service level expectations of RSPs and end-users.

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<sup>56</sup> ACCAN [submission](#) p 10.

<sup>57</sup> TPG [submission](#) p 4. Telstra [submission](#) p 9.

Further, we consider that improving the transparency of service levels and support offered by SBAS networks will promote the LTIE by ensuring there is a regulatory fall back for matters that might impact detrimentally on consumers and competition, or potentially be the subject of disputation between SBAS providers and access seekers. We intend to consider standard metrics for provision of service level information by SBAS providers to RSPs and for public reporting purposes in our upcoming review of record keeping and reporting for service levels by NBN Co and SBAS providers. We received support from stakeholders through recent consultations on the NBN services in operation record keeping rules,<sup>58</sup> and regarding NBN Co's proposed special access undertaking, to include service level record keeping and reporting requirements in a future rule.

We intend to consult further with stakeholders on record keeping and public reporting arrangements on service levels. We expect this will provide important insights on standard metrics for future record keeping and public reporting on these matters.<sup>59</sup> Any decision to make a record keeping rule, including its form and the timeframe for implementation and reporting, would be informed by consultation with stakeholders. This work will sit outside the current SBAS FAD inquiry but would inform future access determinations.

We recognise that service quality obligations may be mandated by the Australian Government<sup>60</sup> and it is our preference that minimum service standards are set through this process. We note however that we could consider embedding minimum service standards as part of the non-price terms in a future inquiry (for example, through a FAD variation). We do not propose to make such a decision through this inquiry. However, such a decision would be informed by the outcomes of the Government's consultation on minimum service standards and the information we receive from consultation on our proposed service level reporting requirements.

### **3.2.4. Assessment of approach against section 152BCA matters**

We have previously had regard to the matters specified in section 152BCA of the CCA in approving the existing non-price terms for the declared services, most recently in the ACCC's *Domestic Transmission Capacity Service Final Access Determination Inquiry, Final Report, October 2020*.<sup>61</sup>

We are not aware of any change in circumstances that requires a departure from our prior assessments of the non-price terms against the section 152BCA matters, except in relation to the additional requirement for SBAS providers to provide information to RSPs covering service levels.

We note that we have not received any objections to maintaining the existing non-price terms and have received support from several stakeholders for disclosure of network service quality and reliability information to RSPs.

We consider that maintaining the existing non-price terms with the additional information requirement on service levels will promote the LTIE by ensuring there is a regulatory fall back for matters that might impact detrimentally on consumers and competition, or potentially be the subject of disputation between SBAS providers and access seekers. Further, we consider that the regulatory arrangements will promote competition in markets for the listed services, the interests of persons who have rights to use the declared service

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<sup>58</sup> See <https://www.accc.gov.au/regulated-infrastructure/communications/monitoring-reporting/nbn-services-in-operation-record-keeping-rules/october-2021-consultation-proposed-changes-to-nbn-sio-rkr-reporting>.

<sup>59</sup> A review of these matters would also be consistent with recommendations by Department of Infrastructure, Transport, Regional Development and Communications in 2019. See <https://www.infrastructure.gov.au/sites/default/files/consumer-safeguards-review-part-b-reliability-services-final-report.pdf>.

<sup>60</sup> See <https://www.infrastructure.gov.au/department/media/news/consultation-changes-broadband-access-laws>.

<sup>61</sup> *Domestic transmission capacity service final access determination inquiry, final report, October 2020*, p.51.



and will support the safe and reliable operation of a carriage service, telecommunications network or facility.

### 3.3. Exclusions for the SBAS access determination

#### 3.3.1. Discussion Paper

##### *Competition-based exclusion*

During the 2021 SBAS declaration inquiry, we received support from stakeholders to consider the development of a competition-based exclusion framework that could exclude networks from regulation in certain circumstances. In our final decision, we undertook to consider the circumstances in which there could be exclusions from the standard access obligations<sup>62</sup> under the SBAS access determination.

We recognised that there were geographic areas where it may be commercially viable for multiple superfast broadband networks to co-exist and compete, such that an exclusion from regulation may be appropriate. In the absence of the standard access obligations applying, the price and non-price terms of access would be subject to commercial negotiation between an access provider and access seeker without fall back to the regulated terms of access where agreement cannot be reached.<sup>63</sup>

Our Discussion Paper discussed and posed several questions regarding the need for, form and implementation of a potential competition-based exclusion framework. We recognised that a competition-based exclusion framework may not be straightforward to apply in practice and sought stakeholder views on the form of any exclusion framework.

##### *Small network exclusion*

Our Discussion Paper also raised the current exclusions for small scale operators of SBAS networks built prior to 1 January 2011. A small-scale operator is one with no more than 12,000 end-users supplied by the network.<sup>64</sup> We asked whether the small network exclusion should be removed, modified, or remain the same.

The 2021 SBAS interim access determination maintained the exclusion from the standard access obligations under the 2017 SBAS FAD for small scale SBAS providers (but not post-2011 local bitstream access service providers).

Our Discussion Paper noted that we were considering adopting a uniform approach for small-scale operators of SBAS networks in the new access determination. That is, if the current small network exclusion is maintained, varied or removed, changes would apply equally to all networks.

#### 3.3.2. Submissions

##### *Small network exclusion*

Submitter's views on the regulatory approach for small networks differed.

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<sup>62</sup> CCA section 152AR.

<sup>63</sup> Access providers that are designated by the Government as a statutory infrastructure provider must offer wholesale access and any exclusion we make would not remove that statutory obligation.

<sup>64</sup> ACCC, [Interim Access Determination No. 1 of 2021 for the Superfast Broadband Access Service \(SBAS\)](#), Clause 5.

Telstra supported the continuation of the current small network exemption.<sup>65</sup> According to Telstra, this approach would ensure a proportionate approach to regulation and is likely to help promote investment in smaller scale networks.

In contrast, NBN Co<sup>66</sup> and ACCAN<sup>67</sup> raised concerns that the exclusion allows for pockets of premises with significantly less retail choice and competition than surrounding areas and should be removed. According to NBN Co, this is particularly the case in new housing estates, retirement / lifestyle villages and new apartment complexes. It submitted that in instances where the developer for these locations elects to use a small provider to install telecommunications infrastructure, it is likely that end-users will have a limited number of retail service providers from which to choose, in some cases as few as one. ACCAN's submission noted that infrastructure owners with sufficient market power have the incentive and ability to be able to maximise their profits by charging prices above competitive market rates.

Several of the stakeholders that we met with in May-June 2022 supported the removal of the small network exclusion although some considered that it should be retained.

### ***Competition based exclusion***

Submitters did not generally support exclusions from the standard access obligations for SBAS providers, raising the potential for harm to investment and competition due to regulatory complexity and uncertainty, which could outweigh the benefits of a competition-based exclusions framework. ACCAN,<sup>68</sup> Telstra<sup>69</sup> and NBN Co<sup>70</sup> raised common concerns noting that while there is merit in removing regulation where competition exists, there may be significant network switching costs borne by customers that prevent effective competition. They considered that establishing an exclusion framework may be complex to administer.

Telstra submitted that if competition-based exclusions were to apply, they favoured the ACCC granting exclusions on a case-by-case basis. Telstra noted that it would be essential for the purposes of regulatory certainty that the application of an exclusion be determined on a geographic basis and upfront, following an inquiry prior to expiry of an existing declaration or FAD. Telstra considered that the approach could be similar, for example, to the exempt routes the ACCC publishes<sup>71</sup> under the domestic transmission capacity service declaration.

ACCAN submitted that there needs to be a minimum of two networks available to a premises before the network provider could be excluded from regulation for that premises. It was ACCAN's preference that one of the two competing networks is the NBN given that it will remain subject to the regulated access prices.

NBN Co<sup>72</sup> submitted that competition-based exclusions are not in the LTIE because in areas such as new housing estates and retirement villages, there may be a degree of wholesale competition but inadequate retail competition. NBN Co advised that previous submissions from smaller SBAS providers suggests that retailer on-boarding in new housing estates and retirement villages has been extremely limited, or non-existent. NBN Co also noted that non-discrimination obligations put certain restrictions on NBN Co to respond directly to

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<sup>65</sup> Telstra [submission](#) p 9.

<sup>66</sup> NBN Co [submission](#) pp 1-2.

<sup>67</sup> ACCAN [submission](#) p 12.

<sup>68</sup> ACCAN [submission](#) p 12.

<sup>69</sup> Telstra [submission](#) p 9.

<sup>70</sup> NBN Co [submission](#) p 2.

<sup>71</sup> See <https://www.accc.gov.au/regulated-infrastructure/communications/transmission-services-facilities-access/domestic-transmission-capacity-service-declaration-inquiry-2018-2019/final-report>.

<sup>72</sup> NBN Co [submission](#) p 2.



competitive activities in certain geographic areas, giving SBAS providers a competitive advantage.

In contrast, Gary McLaren<sup>73</sup> considered that competition-based exclusions should apply when a criteria or threshold (based on competition hierarchies) is met. He considered that if such a threshold is met the network provider (fixed line or fixed wireless) should be exempted from regulation. Mr McLaren considered that being required to meet the standard access obligations is likely to decrease the incentive for efficient investment especially in regional areas. Mr McLaren commented that the LTIE is best served by having maximum competitive pressure on NBN Co to deliver efficient prices and efficient investment in higher quality broadband technologies.

The Internet Association of Australia<sup>74</sup> submitted that exclusions from the access determination are necessary to promote infrastructure competition and encourage new entrants but noted that poor service will affect RSPs negatively and translate into poor customer experience.

TPG's<sup>75</sup> submission proposed that an exclusion should apply to its PIPE and TransACT networks, because they are in areas where NBN Co has substantially overbuilt TPG's networks and the NBN is an alternative for wholesale and retail customers in these areas. It commented that it does not have the ability or incentive to raise wholesale access prices above the NBN's access prices in these areas because wholesale and retail customers can easily switch to the NBN. TPG noted however that there would be commercial and operational difficulties if different regulatory requirements were to be implemented across its networks. TPG provided a confidential supplementary submission to the ACCC in July 2022 with further information supporting its proposal for an exclusion for its PIPE and TransACT networks.

The stakeholders that we met with in May-June 2022 generally did not support competition-based exclusions for SBAS networks.

### **3.3.3. ACCC's draft decision**

#### ***Small network exclusion***

Our draft decision is to remove the exclusion from the standard access obligations under the access determination for small scale operators of SBAS networks (i.e., <12,000 end-users) built prior to 1 January 2011.

We are unaware of any carriers who would currently fall under this exclusion (that is, any pre-2011 networks that are still in existence and have not been expanded). Consequently, we consider there is unlikely to be a regulatory burden from removing the exclusion. Further, as the standard access obligations currently apply to post-2011 (formerly known as local bitstream access service) networks irrespective of their size, our draft decision to adopt a consistent approach for all superfast broadband networks irrespective of their size does not impose any additional regulatory burden on post-2011 networks.

We consider that our draft decision will promote competition at the wholesale level and in downstream retail markets for broadband services including those supplied over smaller scale networks, benefitting consumers connected to those networks.

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<sup>73</sup> Gary McLaren [submission](#) p 2.

<sup>74</sup> Internet Association of Australia [submission](#) p 1.

<sup>75</sup> TPG [submission](#) p 2.

Our draft decision is consistent with our recent approach to a class exemption determination for superfast broadband networks. Specifically, new legislation<sup>76</sup> and regulations<sup>77</sup> came into effect in 2020 and 2022, respectively, providing that carriers with no more than 12,000 end-users may be exempt from wholesale-only requirements (i.e., such carriers can become wholesale and retail providers), subject to them electing to be bound by a class exemption determination made by the ACCC.<sup>78</sup> The ACCC made the *Telecommunications (Superfast Broadband Network Class Exemption) Determination 2020* in August 2020.<sup>79</sup> The determination provides that networks with no more than 12,000 end-users that are exempt from wholesale-only requirements must provide a wholesale access service. The determination designates the SBAS as that wholesale access service.

We note also that it is a statutory obligation<sup>80</sup> for a network that is a designated statutory infrastructure provider, which can include SBAS networks, to offer wholesale access to its network irrespective of network size. In those cases, applying price regulation under the access determination will not impose additional significant costs.

### **Competition based exclusion**

Our draft decision is to not provide any competition-based exclusions from the standard access obligations for SBAS providers for the term of the access determination.

To date we have not seen information that would support an exclusion for an SBAS network(s) that would be in the LTIE. We consider there is merit in considering exclusions from the standard access obligations as circumstances change. We acknowledge that in some areas it may be commercially viable for multiple networks to co-exist and compete, such that regulation would not promote further competition and may impose unnecessary regulation and cost. Should circumstances change during the term of the FAD we would consider a variation, or alternatively a review of the issue as part of the next declaration inquiry. We consider that in areas where it is currently not commercially viable for carriers to duplicate fixed line networks, other technologies (such as mobile, fixed wireless or satellite) may gain prominence as practical and effective substitutes for fixed line networks in the future.

We have considered TPG's proposal for an exclusion for its PIPE and TransACT networks. As discussed above, TPG's proposal was on the basis that its PIPE and TransACT networks have been substantially overbuilt by the NBN. It considered that the NBN is an alternative for most end-users in the areas served by the networks but acknowledged that the NBN is not ubiquitous in these areas. TPG's confidential supplementary submission outlined the proportions of its PIPE and TransACT networks that have not been overbuilt by the NBN. Its proposal for an exclusion was on the basis that the exclusion includes service areas that have not been overbuilt by the NBN (i.e., the exclusion would cover premises that do not have NBN access). The information provided by TPG established that a large proportion of the PIPE and TransACT network service areas have been overbuilt by the NBN. However, the number of premises in these areas connected to TPG's network but without access to the NBN as an alternative is not insignificant.

TPG's public submission stated that if its networks are subject to different regulations depending on whether the NBN or another superfast fixed line provider is present, then this

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<sup>76</sup> The *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* (TLA Act) amended the Telecommunications Act to enable superfast fixed-line broadband networks serving residential customers to operate on a functionally separated basis (rather than a wholesale-only basis). These carrier separation rules took effect on 25 August 2020.

<sup>77</sup> See <https://www.legislation.gov.au/Details/F2022L00253>.

<sup>78</sup> See <https://www.accc.gov.au/regulation/infrastructure/communications/carrier-separation-rules/industry-guidance-on-the-carrier-separation-rules>.

<sup>79</sup> See <https://www.legislation.gov.au/Details/F2021C00171>.

<sup>80</sup> Section 360P *Telecommunications Act 1997*.

would have the effect of unwinding some of the benefits it intends to achieve through its Functional Separation Undertaking.<sup>81</sup> TPG's confidential supplementary submission proposed that any exclusions should be network not competition-based (i.e., it proposed that an exclusion should cover the entire PIPE and TransACT networks including premises served by these networks that do not have NBN access). It considered that an exclusion based on the parts of its networks that face direct competition would lead to a patchwork of regulation across its networks and an increase in regulatory costs.

Our 2021 declaration decision noted that a likely precondition for applying an exclusion would be the presence of the NBN as an alternative network for RSPs and end-users. Although this is generally the case in areas served by TPG's PIPE and TransACT networks, many premises served by these networks do not currently have NBN access. We consider that if an exclusion was in place for the entire PIPE and TransACT networks (including premises that do not have NBN access), TPG would have the incentive and opportunity to seek monopoly rents from RSPs and, by extension, end-users that do not have the NBN as an alternative. The end-users are likely to be in areas where it is not commercially viable for carriers to duplicate TPG's existing fixed line networks. Where these circumstances prevail, we consider that access and price regulation is necessary to promote the LTIE.

We agree with TPG's view that a patchwork of regulation whereby an exclusion from the standard access obligations applies to parts of a network, on the basis that those parts are subject to effective competition, would create regulatory complexity for access seekers and raise costs for network providers. For example, we consider that it would be impractical and inefficient for network providers to have exclusions in place at a premises level. Such an approach is likely to create uncertainty and confusion for end-users about the range and choice of superfast broadband networks and RSPs able to provide services to their serving areas and premises.

#### **3.3.4. Assessment of approach against section 152BCA matters**

Applying the standard access obligations for all networks is in the LTIE because it provides price stability and certainty of regulated access arrangements across these networks. We consider that our draft decision on exclusions avoids the regulatory costs and inefficiency that would arise from a combination of regulatory approaches across different networks based on network size and / or service area. Our approach gives the assurance of regulated price and non-price terms of access to RSPs irrespective of network size and location, benefitting competition and outcomes for end-users.

We consider that these arrangements will continue to promote a competitive environment for the listed services and that applying regulated access arrangements consistently will provide a stable investment environment for RSPs and is in the LTIE.

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<sup>81</sup> <https://www.accc.gov.au/public-registers/telecommunications-registers/functional-separation-undertakings-register/tpg-joint-functional-separation-undertaking>.

## 3.4. Duration

### 3.4.1. Discussion Paper

Access determinations are typically up to five years in duration and are typically matched to the duration of the underlying declaration. In some cases, a shorter duration may be appropriate and the ACCC retains the right to commence a variation inquiry at any time during the term of a declaration or FAD.

Our Discussion Paper canvassed aligning the expiry of the new SBAS FAD with that of the SBAS declaration (i.e., 28 July 2026) and asked whether this duration is supported.

### 3.4.2. Submissions

Submissions that commented on the duration supported aligning the term for the new FAD with the expiry of the declaration in 2026.<sup>82</sup>

The stakeholders that we met with in May-June 2022 also supported aligning the expiry of the new FAD with that of the declaration.

### 3.4.3. ACCC's draft decision

The ACCC's draft decision is that the price and non-price terms set out in the new SBAS FAD will apply until 28 July 2026.

We consider that this duration is sufficient to ensure pricing stability and regulatory certainty over the medium term.

We note we can initiate an inquiry to vary an access determination at any time if we consider it necessary. Any decision to initiate such an inquiry would be informed by consultation with stakeholders.

### 3.4.4. Assessment of approach against section 152BCA matters

We consider that a FAD that applies until 28 July 2026 will give regulatory certainty and promote the achievement of the matters specified in section 152BCA of the CCA in relation to carriage services that involve communication between end-users.<sup>83</sup>

In our opinion, there are no circumstances that warrant the specification of a date that is different to the date of expiry of the declaration.

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<sup>82</sup> ACCAN [submission](#) p 15; TPG's [submission](#) p 5; NBN Co's [submission](#) p 3; Telstra [submission](#) p 11.

<sup>83</sup> Paragraph 152BCA(1)(a) of the CCA.

## Appendix A Legislative Framework

This section sets out the relevant legislative framework in relation to final access determinations.

### Content of final access determinations

Section 152BC of the CCA specifies what a FAD may contain. It includes, among other things, terms and conditions on which a carrier or carriage service provider is to comply with the standard access obligations and terms and conditions of access to a declared service.

A FAD may make different provisions with respect to different access providers or access seekers.<sup>84</sup>

### Fixed principles provisions

A FAD may contain a fixed principles provision, which allows a provision in a FAD to have an expiry date after the expiry date of the FAD.<sup>85</sup> Such a provision allows the ACCC to 'lock-in' a term so that it would be consistent across consecutive FADs.

### Varying final access determinations

Section 152BCN allows the ACCC to vary or revoke a FAD, provided that certain procedures are followed.

A fixed principles provision cannot be varied or removed unless the FAD sets out the circumstances in which the provision can be varied or removed, and those circumstances are present.<sup>86</sup>

### Commencement and expiry provisions

Section 152BCF of the CCA sets out the commencement and expiry rules for FADs.

A FAD must have an expiry date, which should align with the expiry of the declaration for that service unless there are circumstances that warrant a different expiry date.<sup>87</sup>

### Matters to consider when making FADs

The ACCC must have regard to the matters specified in subsection 152BCA (1) of the CCA when making a FAD. These matters are:

- (a) whether the determination will promote the long-term interests of end-users of carriage services or services supplied by means of carriage services
- (b) the legitimate business interests of a carrier or carriage service provider who supplies, or is capable of supplying, the declared service, and the carrier's or provider's investment in facilities used to supply the declared service
- (c) the interests of all persons who have rights to use the declared service
- (d) the direct costs of providing access to the declared service
- (e) the value to a person of extensions, or enhancement of capability, whose cost is borne by someone else

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<sup>84</sup> Subsection 152BC (5) of the CCA.

<sup>85</sup> Section 152BCD of the CCA.

<sup>86</sup> Subsection 152BCN (4) of the CCA.

<sup>87</sup> Subsection 152BCF (6) of the CCA.

(f) the operational and technical requirements necessary for the safe and reliable operation of a carriage service, a telecommunications network or a facility, and

(g) the economically efficient operation of a carriage service, a telecommunications network or a facility.

The subsection 152BCA (1) matters reflect the repealed subsection 152CR (1) matters that the ACCC was required to consider in making a final determination in an access dispute. The ACCC interprets the subsection 152BCA (1) matters in a similar manner to the approach taken in access disputes.

Subsection 152BCA (2) sets out other matters that the ACCC may consider in making FADs in certain circumstances.

Subsection 152BCA (3) allows the ACCC to consider any other matters that it thinks are relevant.

The ACCC's views on how the matters in section 152BCA should be interpreted for the FAD process are set out below.

### **Paragraph 152BCA(1)(a)**

The first matter for the ACCC to consider when making a FAD is 'whether the determination will promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services'.

The ACCC has published a guideline explaining what it understands by the phrase 'long-term interests of end-users' in the context of its declaration responsibilities.<sup>88</sup> This approach to the long-term interests of end-users was also used by the ACCC in making determinations in telecommunication access disputes. The ACCC considers that the same interpretation is appropriate for making FADs for the declared fixed line services.

In the ACCC's view, particular terms and conditions promote the interests of end users if they are likely to contribute towards the provision of:

- goods and services at lower prices
- goods and services of a high quality, and/or
- a greater diversity of goods and services.<sup>89</sup>

The ACCC also notes that the Australian Competition Tribunal (Tribunal) has offered guidance in its interpretation of the phrase 'long-term interests of end-users' (in the context of access to subscription television services):

Having regard to the legislation, as well as the guidance provided by the Explanatory Memorandum, it is necessary to take the following matters into account when applying the touchstone – the long-term interests of end-users:

\* End-users: "end-users" include actual and potential [users of the service]...

\* Interests: the interests of the end-users lie in obtaining lower prices (than would otherwise be the case), increased quality of service and increased diversity and scope in product offerings. ... [T]his would include access to innovations ... in a quicker timeframe than would otherwise be the case ...

\* Long-term: the long-term will be the period over which the full effects of the ... decision will be felt. This means some years, being sufficient time for all players (being existing and potential competitors at the

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<sup>88</sup> ACCC, [Telecommunications services – declaration provisions: a guide to the declaration provisions of Part XIC of the Trade Practices Act](#), August 2016, in particular pp. 28–31.

<sup>89</sup> ACCC, [Telecommunications services – declaration provisions: a guide to the declaration provisions of Part XIC of the Trade Practices Act](#), August 2016, p. 28,

various functional stages of the ... industry) to adjust to the outcome, make investment decisions and implement growth – as well as entry and/or exit – strategies.<sup>90</sup>

To consider the likely impact of particular terms and conditions on the long-term interests of end-users, the CCA requires the ACCC to have regard to whether the terms and conditions are likely to result in:

- promoting competition in markets for carriage services and services supplied by means of carriage services
- achieving any-to-any connectivity, and
- encouraging the economically efficient use of, and economically efficient investment in:
  - the infrastructure by which listed carriage services are supplied, and
  - any other infrastructure by which listed services are, or are likely to become, capable of being supplied.<sup>91</sup>

### **Promoting competition**

In assessing whether terms and conditions will promote competition, the ACCC analyses the relevant markets in which the declared services are supplied (retail and wholesale) and considers whether the terms set in those markets remove obstacles to end-users gaining access to telephony and broadband services.<sup>92</sup>

Obstacles to accessing these services include the price, quality and availability of the services and the ability of competing providers to provide telephony and broadband services.

The ACCC is not required to precisely define the scope of the relevant markets in which the declared services are supplied. The ACCC considers that it is sufficient to broadly identify the scope of the relevant markets likely to be affected by the ACCC's regulatory decisions.

The ACCC's view is that the relevant markets for the purpose of making FADs for the declared fixed line services are:

- the market for the retail and wholesale supply of voice services (including Voice over Internet Protocol (VoIP) but excluding mobile originated calls)
- the market for the retail and wholesale supply of broadband, and
- the market for the retail supply of a bundle of voice and broadband services.

### **Any-to-any connectivity**

The CCA gives guidance on how the objective of any-to-any connectivity is achieved. It is achieved only if each end-user who is supplied with a carriage service that involves communication between end-users is able to communicate, by means of that service, with each other end-user who is supplied with the same service or a similar service. This must be the case whether or not the end-users are connected to the same telecommunications network.<sup>93</sup>

The ACCC considers that this matter is relevant to ensuring that the terms and conditions contained in FADs do not create obstacles for the achievement of any to any connectivity.

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<sup>90</sup> *Seven Network Limited (No 4)* [2004] ACompT 11 at [120].

<sup>91</sup> Subsection 152AB(2) of the CCA.

<sup>92</sup> Subsection 152AB(4) of the CCA. This approach is consistent with the approach adopted by the Tribunal in *Telstra Corporations Limited (No 3)* [2007] A CompT 3 at [92]; *Telstra Corporation Limited* [2006] A CompT at [97], [149].

<sup>93</sup> Subsection 152AB (8) of the CCA.



## ***Efficient use of and investment in infrastructure***

In determining the extent to which terms and conditions are likely to encourage the economically efficient use of and investment in infrastructure, the ACCC must have regard to:

- whether it is, or is likely to become, technically feasible for the services to be supplied and charged for, having regard to:
  - the technology that is in use, available or likely to become available
  - whether the costs involved in supplying and charging for, the services are reasonable or likely to become reasonable, and
  - the effects or likely effects that supplying and charging for the services would have on the operation or performance of telecommunications networks
- the legitimate commercial interests of the supplier or suppliers of the services, including the ability of the supplier or suppliers to exploit economies of scale and scope
- incentives for investment in the infrastructure by which services are supplied; and any other infrastructure (for example, the NBN) by which services are, or are likely to become, capable of being supplied, and
- the risks involved in making the investment.<sup>94</sup>

The objective of encouraging the 'economically efficient use of and economically efficient investment in ... infrastructure' requires an understanding of the concept of economic efficiency. Economic efficiency consists of three components:

- productive efficiency – this is achieved where individual firms produce the goods and services that they offer at least cost
- allocative efficiency – this is achieved where the prices of resources reflect their underlying costs so that resources are then allocated to their highest valued uses (i.e., those that provide the greatest benefit relative to costs), and
- dynamic efficiency – this reflects the need for industries to make timely changes to technology and products in response to changes in consumer tastes and in productive opportunities.

On the issue of efficient investment, the Tribunal has stated that:

An access charge should be one that just allows an access provider to recover the costs of efficient investment in the infrastructure necessary to provide the declared service.<sup>95</sup>

...efficient investment by both access providers and access seekers would be expected to be encouraged in circumstances where access charges were set to ensure recovery of the efficient costs of investment (inclusive of a normal return on investment) by the access provider in the infrastructure necessary to provide the declared service.<sup>96</sup>

...access charges can create an incentive for access providers to seek productive and dynamic efficiencies if access charges are set having regard to the efficient costs of providing access to a declared service.<sup>97</sup>

### **Paragraph 152BCA(1)(b)**

The second matter requires the ACCC to consider 'the legitimate business interests' of the carrier or carriage service provider when making a FAD.

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<sup>94</sup> Subsections 152AB (6) and (7A) of the CCA.

<sup>95</sup> *Telstra Corporation Ltd (No. 3)* [2007] ACompT 3 at [159].

<sup>96</sup> *Telstra Corporation Ltd (No. 3)* [2007] ACompT 3 at [164].

<sup>97</sup> *Telstra Corporation Ltd (No. 3)* [2007] ACompT 3 at [159].



In the context of access disputes, the ACCC considered that it was in the access provider's legitimate business interests to earn a normal commercial return on its investment. The ACCC is of the view that the concept of 'legitimate business interests' in relation to FADs should be interpreted in a similar manner, consistent with the phrase 'legitimate commercial interests' used elsewhere in Part XIC of the CCA.<sup>98</sup>

For completeness, the ACCC notes that it would be in the access provider's legitimate business interests to seek to recover its costs as well as a normal commercial return on investment having regard to the relevant risk involved. However, an access price should not be inflated to recover any profits the access provider (or any other party) may lose in a dependent market as a result of the provision of access.

The Tribunal has taken a similar view of the expression 'legitimate business interests'.

### **Paragraph 152BCA(1)(c)**

The third matter requires the ACCC to consider 'the interests of all persons who have the right to use the service' when making a FAD.

The ACCC considers that this matter requires it to have regard to the interests of access seekers. The Tribunal has also taken this approach. The access seekers' interests would not be served by higher access prices to declared services, as it would inhibit their ability to compete with the access provider in the provision of retail services.

People who have rights to currently use a declared service will generally use that service as an input to supply carriage services, or a service supplied by means of carriage service, to end-users.

The ACCC considers that this class of persons has an interest in being able to compete for the custom of end-users on the basis of their relative merits. This could be prevented from occurring if terms and conditions of access favour one or more service providers over others, thereby distorting the competitive process.<sup>99</sup>

However, the ACCC does not consider that this matter calls for consideration to be given to the interests of the users of these 'downstream' services. The interests of end users will already be considered under other matters.

### **Paragraph 152BCA(1)(d)**

The fourth matter requires the ACCC to consider 'the direct costs of providing access to the declared service' when making a FAD.

The ACCC considers that the direct costs of providing access to a declared service are those incurred (or caused) by the provision of access.

The ACCC interprets this matter, and the use of the term 'direct costs', as allowing consideration to be given to a contribution to indirect costs. This is consistent with the Tribunal's approach in an undertaking decision. A contribution to indirect costs can also be supported by other matters.<sup>100</sup>

However, the matter does not extend to compensation for loss of any 'monopoly profit' that occurs as a result of increased competition.<sup>101</sup>

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<sup>98</sup> *Telstra Corporation Ltd (No. 3)* [2007] ACompT 3 at [159].

<sup>99</sup> *Telstra Corporation Ltd (No. 3)* [2007] ACompT 3 at [159].

<sup>100</sup> Application by Optus Mobile Pty Limited and Optus Networks Pty Limited [2006] ACompT 8 at [137].

<sup>101</sup> See Explanatory Memorandum for the *Trade Practices Amendment (Telecommunications) Bill 1996*, p. 44: [T]he 'direct' costs of providing access are intended to preclude arguments that the provider should be

The ACCC also notes that the Tribunal (in another undertaking decision) considered the direct costs matter 'is concerned with ensuring that the costs of providing the service are recovered.'<sup>102</sup> The Tribunal has also noted that the direct costs could conceivably be allocated (and hence recovered) in several ways and that adopting any of those approaches would be consistent with this matter.<sup>103</sup>

### **Paragraph 152BCA(1)(e)**

The fifth matter requires that the ACCC consider 'the value to a party of extensions, or enhancements of capability, whose cost is borne by someone else' when making a FAD.

In the 1997 Access Pricing Principles, the ACCC stated that this matter:

...requires that if an access seeker enhances the facility to provide the required services, the access provider should not attempt to recover for themselves any costs related to this enhancement. Equally, if the access provider must enhance the facility to provide the service, it is legitimate for the access provider to incorporate some proportion of the cost of doing so in the access price.<sup>104</sup>

The ACCC considers that this application of paragraph 152BCA (1) (e) is relevant to making FADs.

### **Paragraph 152BCA(1)(f)**

The sixth matter requires the ACCC to consider 'the operational and technical requirements necessary for the safe and reliable operation of a carriage service, a telecommunications network or a facility' when making a FAD.

The ACCC considers that this matter requires that terms of access should not compromise the safety or reliability of carriage services and associated networks or facilities, and that this has direct relevance when specifying technical requirements or standards to be followed.

The ACCC has previously stated in the context of model non-price terms and conditions, it is of the view that:

...this consideration supports the view that model terms and conditions should reflect the safe and reliable operation of a carriage service, telecommunications network or facility. For instance, the model non-price terms and conditions should not require work practices that would be likely to compromise safety or reliability.<sup>105</sup>

The ACCC considers that these views will apply in relation to paragraph 152BCA (1) (f) for the making of FADs.

### **Paragraph 152BCA(1)(g)**

The final matter of subsection 152BCA(1) requires the ACCC to consider 'the economically efficient operation of a carriage service, a telecommunications network facility or a facility' when making a FAD.

The ACCC noted in its publication the 'Resolution of telecommunications access disputes—a guide' (the Guide) that the phrase 'economically efficient operation' embodies the concept of economic efficiency as discussed earlier under the long-term interests of end-users. That is, it calls for a consideration of productive, allocative and dynamic efficiency. The Guide also noted that in the context of a determination, the ACCC may consider whether particular

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reimbursed by the third party seeking access for consequential costs which the provider may incur as a result of increased competition in an upstream or downstream market.

<sup>102</sup> *Telstra Corporation Limited* [2006] ACompT 4 at [92].

<sup>103</sup> *Telstra Corporation Limited* [2006] ACompT 4 at [139].

<sup>104</sup> ACCC, [1997 Access Pricing Principles](#), p. 11,

<sup>105</sup> ACCC, [Final Determination – Model Non-price Terms and Conditions](#), November 2008, p. 8,

terms and conditions enable a carriage service, telecommunications network or facility to be operated efficiently.<sup>106</sup>

Consistent with the approach adopted by the Tribunal, the ACCC considers that in applying this matter, it is relevant to consider the economically efficient operation of:

- retail services provided by access seekers using the access provider's services or by the access provider in competition with those access seekers, and
- the telecommunications networks and infrastructure used to supply these services.

### **Subsection 152BCA(2)**

Subsection 152BCA(2) provides that, in making a FAD that applies to a carrier or carriage service provider who supplies, or is capable of supplying, the declared services, the ACCC may, if the carrier or provider supplies one or more eligible services,<sup>107</sup> take into account:

- the characteristics of those other eligible services
- the costs associated with those other eligible services
- the revenues associated with those other eligible services, and
- the demand for those other eligible services.

The Explanatory Memorandum stated that this provision is intended to ensure that the ACCC, in making a FAD, does not consider the declared service in isolation, but also considers other relevant services.<sup>108</sup> As an example, the Explanatory Memorandum stated:

...when specifying the access price for a declared service which is supplied by an access provider over a particular network or facility, the ACCC can take into account not only the access provider's costs and revenues associated with the declared service, but also the costs and revenues associated with other services supplied over that network or facility.<sup>109</sup>

### **Subsection 152BCA(3)**

This subsection states the ACCC may consider any other matters that it thinks are relevant when making a FAD.

We consider that regulatory certainty and consistency will be important when setting the terms and conditions of the FADs.

The ACCC also considers that it should have regard to:

- its previous decisions in relation to the fixed line services (both arbitrations and access determinations)
- consultation documents and submissions in response to those documents
- information provided to the ACCC under record-keeping rules.

These considerations and documents do not limit the matters that the ACCC may have regard to when making the FADs for the declared fixed line services.

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<sup>106</sup> ACCC, [Resolution of telecommunications access disputes—a guide](#), p. 57,

<sup>107</sup> 'Eligible service' has the same meaning as in section 152AL of the CCA.

<sup>108</sup> Explanatory Memorandum, Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010, p. 178.

<sup>109</sup> Explanatory Memorandum, Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010, p. 178.

## Restrictions on access determinations

Section 152BCB imposes certain restrictions on the ACCC's ability to make an access determination.

More specifically, the ACCC is restricted in making an access determination that would have any of the following effects:

- preventing a service provider who already has access to the declared service from obtaining a sufficient amount of the service to be able to meet its reasonably anticipated requirements,
- preventing a carrier or carriage service provider from obtaining a sufficient amount of the service to be able to meet its reasonably anticipated requirements,
- preventing a person from obtaining, by exercise of a pre-determination right, a sufficient level of access to the declared service to be able to meet their actual requirements,
- depriving any person of a protected contractual right,
- resulting in an access seeker becoming the owner (or one of the owners) of any part of a facility without the consent of the owner of the facility,
- requiring a person (other than an access seeker) to bear an unreasonable amount of costs of:
  - extending or enhancing the capability of a facility, or
  - maintaining extensions to or enhancement of the capability of a facility,
- requiring a carrier or carriage service provider to provide an access seeker with access to a declared service if there are reasonable grounds to believe that:
  - the access seeker would fail, to a material extent, to comply with the terms and conditions on which the carrier or provider provides, or is reasonably likely to provide, that access; or
  - the access seeker would fail, in connection with that access to protect the integrity of a telco network or to protect the safety of individuals working on, or using services supplied by means of, a telco network or a facility.

The ACCC is also unable to make an access determination (under section 152BCB(3)) that is inconsistent with any of the standard access obligations that are, or will be, applicable to a carrier or carriage service provider.

## Appendix B SBAS declaration service description

The superfast broadband access service (SBAS)<sup>110</sup> is a point-to-point service for the carriage of communications in digital form between a **network-network interface** and an **end-user interface** that is:

- (a) a **Layer 2 bitstream service** and is supplied over a **superfast telecommunications network**; or
- (b) a **Fibre Access Broadband service**.

This service does not include:

- i. a service supplied through an **access multiplexer** located in a **multi-unit building** in a **central business district area** or in a **node** in a **central business district area** where all end-users of the services supplied or proposed to be supplied through that access multiplexer and any other access multiplexers owned or controlled by the same access provider located in the same **multi-unit building** or **node** are **business customers, public bodies** or **charity customers**;
- ii. a service supplied other than through an **access multiplexer** located in a **multi-unit building** or in a **node** where the premises of the end-users of the service is in a **central business district area** and all end-users of the service are **business customers, public bodies** or **charity customers**;
- iii. services supplied, or capable of being supplied, using a hybrid-fibre coaxial cable network that was in existence on 27 July 2021 and in respect of which there are agreements for the network to be transferred to NBN corporation;
- v. the domestic transmission capacity service defined in the Domestic Transmission Capacity Service Declaration 2019, as that declaration may be varied, extended or replaced from time to time.

### Definitions

Unless otherwise defined in this declaration, words or phrases defined in the *Competition and Consumer Act 2010* or the *Telecommunications Act 1997* have the same meaning in this declaration.

**access line** means a line used to connect the access multiplexer to the end-user interface.

**access multiplexer** means a device that separates communications carried by means of guided electromagnetic energy to enable an end-user to make use of high data rate services.

**business customer** means a customer that:

- (a) carries on a business or enterprise from a premises, regardless of whether there is any incidental use of the premises for occupation (from time to time) as a place of residence; and
- (b) has an ABN for the business or enterprise.

**central business district area** means a geographic area with one of the following postcodes:

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<sup>110</sup> See <https://www.accc.gov.au/system/files/public-registers/other/Instrument%20-%20SBAS%20extension%20-%20SBAS.pdf>.

- (a) Canberra CBD: 2600-2601
- (b) Sydney CBD: 1000-1299; 2000-2009
- (c) Melbourne CBD: 3000-3010; 8000-8010
- (d) Brisbane CBD: 4000-4004
- (e) Adelaide CBD: 5000-5005; 5800-5879
- (f) Hobart CBD: 7000-7003; or
- (g) Perth CBD: 6000-6005; 6800-6899.

**charity customer** means a charity registered with the Australian Charities and Not-for-profits Commission.

**end-user interface** means an interface located at either:

- (a) a physically defined end-user's premises where the access provider's network is directly or indirectly present to an end-user; or
- (b) the jumper cable termination on the customer side of a main distribution frame located in a multi-unit building.

**Fibre Access Broadband service** means a carriage service that:

- (a) is supplied or offered to be supplied by means of an optical fibre line; and
- (b) is offered as a **superfast carriage service** or with the following maximum data transfer rates;
  - (i) download data transfer rate of 30Mbps and upload data transfer rate of 1Mbps; and
  - (ii) download data transfer rate of 100Mbps and upload data transfer rate of 5Mbps; and.
- (c) has the following configurations:
  - (i) a 'best effort' or non-prioritised service, as characterised by the Differentiated Services Code Point Default Forwarding per-hop behaviour; and
  - (ii) connectivity made with static Layer 2 Tunnelling Protocol (L2TP) tunnels and Broadband Virtual Local Area Networks giving direct access to end user sessions; and
  - (iii) end-user sessions are aggregated together via static L2TP tunnels supplied over Ethernet.

**Layer 2 bitstream service** has the meaning given by section 7 of the *Telecommunications Act 1997*.

**line** has the meaning given by section 7 of the *Telecommunications Act 1997*.

**multi-unit building** has the meaning given by section 142A of the *Telecommunications Act 1997*.

Note: For the avoidance of doubt, if a **line** in a **multi-unit building** is used to supply a superfast carriage service to an end-user occupying or using a unit in the building:

- (a) the line is taken to be an **access line**; and

(b) the line is taken to form part of the infrastructure of a **superfast telecommunications network**.

The line does not need to be physically connected to a unit in a multi-unit building because, pursuant to section 24 of the *Telecommunications Act 1997*, “used” means use in isolation or in conjunction with one or more other things.

**NBN corporation** has the meaning given in the *National Broadband Network Companies Act 2011*.

**network-network interface** means an interface provided by an access provider at a **point of interconnection** where the access seeker’s telecommunications network can interface to the access provider’s network.

**node** means a roadside cabinet, pillar, pit or distribution point, but does not include an exchange, that:

- (a) houses the equipment for the supply of services, including access multiplexers, and
- (b) enables the physical connection to the end-user premises using access lines.

**point of interconnection** is a physical point of interconnection which allows the interconnection of facilities in accordance with subsection 152AR(5) of the *Competition and Consumer Act 2010*.

**public body** means:

- (a) the Commonwealth, a State or a Territory; or
- (b) a municipal authority or other local governing body; or
- (c) a public authority that is constituted by or under a law of the Commonwealth, a State or a Territory.

**superfast carriage service** has the meaning given by section 142A of the *Telecommunications Act 1997*.

**superfast telecommunications network** means a telecommunications network, where:

- (a) the network enables end-users to download communications; and
- (b) the network is normally capable of enabling end-users to download communications with a data transfer rate of 25 megabits per second or more; and
- (c) the carriage service is supplied using a line to premises occupied or used by an end-user.

Note: The word “normally” is akin to “usually”; it recognises that circumstances may arise that temporarily displace usual data transfer rates.

**telecommunications network** has the meaning given by section 7 of the *Telecommunications Act 1997*.



## Appendix C Submissions received and subsequent stakeholder consultation

### Submissions

- **ACCAN**, 20 December 2021
- **Gary McLaren**, 20 December 2021
- **Internet Association of Australia**, 20 December 2021
- **Telstra**, 20 December 2021
- **TPG**, 20 December 2021 (and 1 July 2022, confidential submission)
- **NBN Co**, 24 February 2022

### Stakeholder meetings

- **TPG**, 18 May 2022
- **Launtel**, 19 May 2022
- **Telstra**, 20 May 2022
- **Lightning Broadband**, 24 May 2022
- **Telair**, 25 May 2022
- **Centorrino Technologies**, 27 May 2022
- **Uniti Group**, 9 June 2022
- **Leaptel**, 16 June 2022
- **Aussie Broadband**, 20 June 2022