

Dear stakeholder,

We are seeking stakeholder feedback regarding the ACCC's proposal to benchmark regulated maximum prices for the Superfast Broadband Access Service (SBAS) in the final access determination to NBN Co's new pricing approach (the 'floor and ceiling' price). We set out below some further guidance on this proposed approach. The pricing approach for the NBN was recently accepted in relation to the NBN Co Special Access Undertaking (SAU) variation.

We are also seeking feedback on proposed regulated access terms for certain Network-to-Network Interface (NNI) charges for inclusion in the SBAS final access determination.

We are intending to continue to benchmark regulated access terms for the SBAS against the NBN. We consider that these regulatory arrangements will encourage retailers to use the wholesale services of SBAS networks. We believe 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. Importantly, it will also offer price protections to help ensure that retailers and their end customers will not be worse off than if they were supplied broadband services by the NBN. Our intention to continue to benchmark regulated SBAS access prices against the NBN has received wide stakeholder support since we commenced the current regulatory review of the SBAS in 2020. In contrast, alternative forms of regulation, such as applying the building block methodology to individual SBAS networks, has not been supported.

NBN Co's updated access arrangements have been subject to extensive regulatory review to ensure that over time they align with those of an efficient network operator. Consequently, we consider that benchmarking SBAS access prices against NBN will continue to support the long-term interest of end users of broadband services for the upcoming SBAS access determination period.

### **Regulated SBAS and price terms**

The SBAS access determination regulates the maximum wholesale prices that retail service providers will pay, in the absence of a commercial agreement, to acquire high-speed fixed line broadband services on non-NBN broadband networks.

The ACCC's draft decision was to continue to benchmark regulated access terms for the SBAS against NBN prices for equivalent residential broadband services. The approach provides price certainty and protection to end-users, which is in their long-term interests.

As set out in our draft decision, 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.

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.

The *Competition and Consumer Act 2010* (CCA) requires us to take several matters into account when making an access determination. Broadly speaking, this includes consideration of whether the determination will promote the long-term interests of end

users,<sup>1</sup> the legitimate business interests of access providers and of persons with rights to use the service, the direct cost of access, and requirements necessary for the safe, reliable, and economically efficient operation of the service and/or network.

We refer to our [October 2022 draft decision](#) and [March 2023 draft instrument](#) for further information. A detailed discussion of the legislative criteria we must apply is also available at Appendix A of the draft decision.

Our current position is to retain the NBN benchmarking approach and we are proposing two options under which access providers can supply the declared Layer 2 wholesale SBAS in compliance with the standard access obligations. SBAS providers can adopt either of the following options:

1. NBN Co's 'floor and ceiling' pricing approach, as recently accepted and set out in the SAU variation. Maximum monthly charges will be benchmarked against NBN Co's bundled AVC TC-4 and CVC TC-4 (access and usage) product components, inclusive of CVC overage charges. This will be subject to a price ceiling that will ensure that the total bundled charge, inclusive of overage, cannot exceed the price of the NBN 100 Mbps service (equal to \$55/month in 2023-24). Access seekers will no longer have the ability to pool CVC entitlements across services (that is, the price ceiling will apply on a per-service basis).
2. Access providers may alternatively adopt an SBAS total monthly charge that does not exceed NBN Co's Average Combined Charge<sup>2</sup> for equivalent residential grade services.<sup>3</sup> This would not require access providers to adopt NBN Co's two-tier pricing structure and recognises that SBAS providers may prefer to adopt alternative price structures for access, for example a single fixed charge incorporating usage.

Access prices for the SBAS will be regulated at the 25/5 Mbps and 50/20 Mbps speed tiers. We no longer propose to regulate access to the 25/10 Mbps speed tier. Since the time of our draft decision NBN Co has withdrawn its proposal to reposition the 25/10 Mbps speed tier as an entry level broadband service. This does not preclude SBAS providers from offering this or other such products on a commercial basis. We note that some retailers have adopted this form of access for their NBN retail plans and may wish to acquire it for retail product consistency on SBAS networks.

SBAS access services at the 25/5 Mbps and 50/20 Mbps speed tiers will be benchmarked against NBN Co's equivalent charges published in its Tariff List on 1 May each calendar year. CVC Inclusions will be re-adjusted twice-yearly (on 1 January and 1 July) and reflected in the Tariff List. SBAS providers will be required to implement the NBN pricing and Inclusion changes for regulated SBAS speed tiers within six months from the date NBN Co publishes the Tariff List. NBN Co's charges for 2023-24 are reproduced in Table 1 below.

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<sup>1</sup> We consider the extent to which the determination is likely to promote competition in relevant markets, promote any-to-any connectivity, and encourage the economically efficient use of, and investment in, infrastructure used to supply the services.

<sup>2</sup> See Table 1 below.

<sup>3</sup> The Average Combined Charge operates as an average price ceiling for NBN Co's bundled wholesale offers, which it has committed to publish when it sets its annual Tariff List under the varied SAU.

**Table 1: NBN Co's wholesale offers for 2023-24**

Charge component		Monthly recurring fixed charge	CVC Inclusion (Mbps)	Average Combined Charge
Effective price per month	25/5 Mbps	\$26.00	0.22	\$32.16
	25-50/5-20 Mbps	\$50.00	3.55	\$51.12
CVC Overage per Mbps		\$5.50		

Source: <https://www.nbnco.com.au/rsps/special-access-undertaking-sau>

## NNI charges

The ACCC received submissions to regulate NNI charges levied by SBAS providers. We are aware from both our consultation in this inquiry and the SAU variation inquiry that current NNI charges levied by access providers are a source of competition concerns, particularly for small access seekers.

The concerns arise in part because of the economies of scale embedded in the current pricing structures (levied by both NBN Co and SBAS providers) which can disadvantage small retailers or otherwise act as a potential barrier to retail entry. Among the concerns raised include large setup and recurring monthly costs, that setup costs are not able to be easily amortised through a loan structure as the interface does not provide a product for financial security, and that costs are sunk before retail providers build scale and upgrade their capacity.

NBN Co has committed in its varied SAU to reduce its setup and monthly recurring NNI charges. These include cost reductions for 1 Gigabit (1G), 10G, and 100G interfaces (the latter two to occur from 1 July 2024), and further rebates to encourage more efficient use of available interface capacity and reduce cost disadvantages that entrants may face in upgrading to 10G interfaces as utilisation increases.<sup>4</sup>

In response to these concerns and NBN Co's recent commitments to reduce NNI prices, we are proposing to regulate setup and monthly recurring charges levied by SBAS providers for 1G and 10G NNIs, which we consider are of most relevance to smaller retail providers competing to build market share. Under the SBAS access determination, regulated NNI charges would be benchmarked against NBN Co's equivalent charges published in its annual Tariff List. NBN Co's charges for 2023-24 and 2024-25 are reproduced in Table 2 below.

Uniti has submitted that any such charge should be adjusted to reflect charges that retailers would otherwise face to interconnect to the NBN. We understand that Uniti and some other SBAS providers recover this cost through a 'state-based aggregation' charge. Uniti has contended that it is replicating third-party provision of backhaul<sup>5</sup> through the aggregation charge for its SBAS, which it levies to recover its own backhaul investment and ongoing bandwidth costs.<sup>6</sup> Uniti currently levies this charge on a per-service basis (currently \$2.80), however we note that some stakeholders have previously submitted that Uniti's charges exceed those for similar transmission services that access seekers can acquire

<sup>4</sup> See NBN Co, SAU variation 2023 – Supporting submission, August 2023, p.45.

<sup>5</sup> In the absence of investing in their own backhaul infrastructure, smaller retailers typically purchase this service from a third party to aggregate from NBN's points of interconnect to their own points of presence.

<sup>6</sup> Uniti Group [submission to SBAS draft instrument](#), April 2023, p.13-14.

commercially or through ACCC regulated services, which are also generally levied as a function of data throughput.<sup>7</sup>

We welcome stakeholder views on whether NNI charges should be benchmarked to NBN Co's equivalent charges based on capacity and distance, whether they reflect current market offers; that is, whether NBN Co's charges would target NNI capacities of most relevance to stakeholders and that they would not set a regulated price ceiling that is disproportionately high in the context of SBAS access. In particular, the outcome we would seek to achieve from this benchmarking approach is a similar relative cost to access NNI capacity (i.e., inclusive of aggregation / backhaul) across NBN and SBAS networks on a per-service basis.

**Table 2: NBN Co's Network-to-Network Interface offers<sup>8</sup>**

NNI product	Monthly recurring charge		Set-up charge	
	2023-24	2024-25	2023-24	2024-25
1000BaseLX	\$100.00		\$1000.00	
1000BaseEX	\$125.00		\$2000.00	
10GBaseLR	\$400.00		\$5000.00	\$3000.00
10GBaseER	\$500.00		\$6000.00	\$4,000.00

Source: <https://www.nbnco.com.au/rsps/special-access-undertaking-sau>

### Submissions and confidentiality

We are inviting submissions on each of these matters by close of business **Thursday 30 November**. Please email submissions to: [superfastbroadbandinquiry@accc.gov.au](mailto:superfastbroadbandinquiry@accc.gov.au). After considering submissions, we expect to publish a final decision in early 2024. We will publish a report outlining our reasons.

To foster an informed and consultative process, all comments will be considered as public and will be posted on our website. Interested parties wishing to submit commercial-in-confidence material to the ACCC should submit both a public and a commercial-in-confidence version of their comments. The public version of the comments should clearly identify the commercial-in-confidence material by replacing the confidential material with an appropriate symbol or 'c-i-c'.

We have published a Confidentiality Guideline which sets out the process parties should follow when submitting confidential information to communications inquiries commenced by us. The Guideline describes our legal obligations with respect to confidential information, the process for submitting confidential information and how we will treat confidential information provided to us. A copy of the Guideline can be downloaded from our [website](#). The ACCC-AER information policy: the collection, use and disclosure of information is also a useful reference and can be downloaded from our [website](#).

<sup>7</sup> Leaptel [previously estimated](#) (on page 9) that their backhaul costs from a capital city data centre to an outer metro NBN point of interconnect (a comparable locality to many SBAS networks) is on average between \$0.15-\$0.3/megabit.

<sup>8</sup> These are NBN Co's wholesale offers for its 'long reach' and 'extended reach' (i.e., fibre length) NNI products, respectively.