

Unclassified

Our reference: 351-04-09-01

15 July 2020

Mr Ed Seymour and Mr Stephen Farago
Communications Competition
Australian Competition and Consumer Commission

Reference: A. Superfast broadband network class exemption and deemed functional separation undertaking – Consultation Paper
B. Frontier Networks Pty Ltd submission to SBAS/LBAS FAD joint inquiry dated 21 October 2016

Dear Sirs,

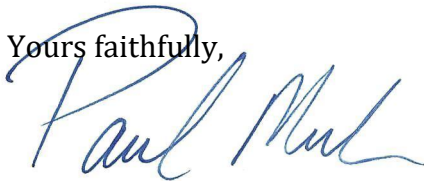
Our arguments for this proposition are the same as in our prior submission for the SBAS/LBAS inquiry, which we have attached for convenience.

Frontier is a licenced wholesale specialist carrier providing telecommunications services today to predominately [REDACTED] markets within Australia. This is a narrow market that is often [REDACTED]. Frontier currently has [REDACTED] wholesale services.

We believe that the added costs associated with functional separation will ultimately increase the retail priced needed to be charged. This will have a severe impact on the day-to-day lives of our customers.

We request that the class exemption be set to a threshold of 12000 wholesale services keeping this exemption inline with the SBAS/LBAS exemptions.

Yours faithfully,



Paul Mula
Managing Director

Frontier Networks Pty Ltd submission to SBAS/LBAS FAD joint inquiry

CONFIDENTIAL VERSION

21 OCTOBER 2016

Frontier Networks Pty Ltd (**Frontier**) welcomes the opportunity to respond to the Australian Competition and Consumer Commission's (**ACCC**) Superfast Broadband Access Service (**SBAS**) and Local Bitstream Access Service (**LBAS**) Final Access Determination Joint Inquiry (the **SBAS/LBAS FAD Inquiry**).

As the ACCC cannot grant exemptions from the LBAS in accordance with section 152BC(4AA) of the *Competition and Consumer Act 2010* (Cwlth), Frontier's submission is limited to the SBAS only.

1 Executive summary

Frontier is a small provider of wholesale internet services to senior housing communities in Australia, and their end user residents, with [REDACTED] wholesale services currently in operation.

The significant costs of implementing and complying with an SBAS declaration on all of its networks will have a substantial impact on Frontier's business and services.

Frontier submits that small providers like Frontier should be exempt from the SBAS FAD as Frontier's inclusion is not in the long-term interests of end-users: it would unfairly burden Frontier with significant implementation costs, reduce infrastructure competition and prevent seniors from accessing Frontier's innovative products and services. Frontier should remain free to elect to offer wholesale access as it does today on several of its networks.

2 Frontier

2.1 Who is Frontier?

Frontier is a small licensed wholesale telecommunications carrier. Frontier has [REDACTED]

Frontier designs, constructs and installs networks in residential aged care facilities and retirement villages (collectively **Senior Housing Communities**) around Australia (each such network being a **Frontier Network**).

Frontier designs, constructs and installs:

- a) network infrastructure upgrades in brownfield Senior Housing Communities to enable high speed connectivity on existing layer 1 infrastructure (including existing copper and HFC infrastructure); and
- b) turnkey solutions for high speed FTTP connectivity in greenfield Senior Housing Communities.

Frontier develops and operates these networks to deliver wholesale high-speed broadband and other bespoke wholesale services to meet the needs of the

operators of these Senior Housing Communities, and their end user senior residents, and which integrate seamlessly onto the operator's infrastructure and service delivery platforms. Services Frontier offers over its networks include:

- c) wholesale telecoms solutions, including broadband, voice and payTV bundles;
- d) bill certainty for end user residents;
- e) "seniors friendly" installation and help desk support for end user residents; and
- f) wholesale telehealth solutions including emergency response, medical alarm, smoke alarm, backup battery and inactivity monitoring services.

Frontier also offers wholesale access services on some of its networks to RSPs, and to date no access seeker has sought access to those services.

2.2 Frontier services in operation

Today, Frontier Networks pass approximately [REDACTED] independent living units, serviced apartments and aged care beds in Senior Housing Communities, and there are approximately [REDACTED] wholesale services in operation over approximately [REDACTED] Frontier Networks.

Frontier forecasts that within 3-5 years, Frontier Networks will pass approximately [REDACTED] units, apartments and beds in Senior Housing Communities, and deliver wholesale services to approximately [REDACTED] subscribers.

Accordingly, Frontier considers that it is, and will remain, a Small Provider (as defined in the *Interim Access Decision No. 1 of 2016 (SBAS)* (the **SBAS IAD**)).

3 SBAS compliance costs

Frontier strongly supports the ACCC's statements that:

- a) the costs of complying with the SBAS declaration will be disproportionately high for small providers such as Frontier; and
- b) such costs would be higher than any competition gains that would result from regulating SBAS on Frontier Networks.

3.1 ACCC questions

In the SBAS/LBAS FAD Inquiry, the ACCC asked:

24. What are the likely compliance costs to access providers of supplying an SBAS?

25. Do the compliance costs for supplying a SBAS ... vary according to the size and or location of the telecommunications network on which they are supplied? Please outline how or why these costs vary.

26. Of the costs discussed above, which of them are one-off costs and which are recurrent? (Please itemise costs against systems/software charges, equipment purchases, staffing costs etc. Parties should also specify the type of ordering and other business systems they would implement/use in order to provide a wholesale service.

3.2 Frontier's One-off implementation costs for supplying an SBAS

Today, Frontier falls within the Small Provider exemption to the SBAS IAD, and does not supply a wholesale product or any standalone Layer 2 service to any

retail service provider despite offering wholesale access services on several of its networks.

If Frontier is an access provider, to supply the SBAS on all of its networks, Frontier would need to develop, test and launch the following for each Frontier Network at the following costs:

	Estimated cost	Basis for estimation	Total estimated cost
a stand-alone Layer 2 service for retail service providers for each Frontier Network	[REDACTED] per Frontier Network	[REDACTED]	[REDACTED] for all Frontier Networks
TOTAL	-	-	[REDACTED]

Frontier would, in effect, need to establish wholesale regulated access services on all its networks despite no access sought from RSPs on the networks where it voluntarily offers wholesale access today.

Frontier's best estimate is that implementing the SBAS declaration on all of its networks, [REDACTED]

3.3 Frontier's ongoing costs for supplying an SBAS

To ensure ongoing compliance with the SBAS declaration across all of its networks, Frontier will need to hire new staff to:

- a) manually process orders from access seekers;
- b) manage relationships with retirement village operators;
- c) manage relationships with access seekers;
- d) permit and enable access seeker interconnection with Frontier Networks; and
- e) keep records and ensure compliance with the SBAS declaration.

Frontier estimates ongoing compliance with a SBAS declaration would cost [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c)

4 Variance in costs for Frontier supplying an SBAS

4.1 ACCC questions

In the SBAS/LBAS FAD Inquiry, the ACCC asked:

25. Do the compliance costs for supplying a SBAS ... vary according to the size and or location of the telecommunications network on which they are supplied? Please outline how or why these costs vary.

4.2 Implementation costs

Not all Frontier Networks use the same access technology – they variously use

As a result, for Frontier to be able to supply the SBAS on all of its networks, at least 3 separate wholesale products, standalone Layer 2 products and interconnection solutions would need to be developed, tested and launched – one for each access technology.

Due to the differing technical requirements and challenges for each of these access technologies, the implementation costs for supplying an SBAS would vary depending on the technology used in the network.

It is not expected that one-off implementation costs would materially vary based on network size or location.

4.3 Ongoing costs

We assume that larger Frontier Networks would see a greater volume of RSP access and customer churn. As a result, we assume that the larger a network is, the greater the total ongoing compliance costs will be for supplying an SBAS over that network.

Network location is unlikely to have a material impact on ongoing costs.

5 NBN arrangements and standards

5.1 ACCC questions

In the SBAS/LBAS FAD Inquiry, the ACCC asked:

32. Do you consider it appropriate for any SBAS/LBAS FAD terms to mandate consistent arrangements or standards with the NBN? Why? How do these relate to the subsection 152BCA(1) statutory criteria?

33. What would be the costs faced by access providers in adopting consistent arrangements or standards with the NBN. Please itemise these costs. What would be their effect on the legitimate business interests of the access provider and other efficiency and competition considerations?

It is unclear what is meant by 'consistent arrangements or standards with the NBN'. If this means access seekers being required to provide the same provisioning and assurance systems as NBN, Frontier notes that:

- a) third parties, like Frontier, do not have access to NBN provisioning and assurance systems;

- b) the development of the ‘generic interface service for retail service providers’ mooted by the Commonwealth Government’s *Telecommunications Regulatory and Structural Reform* document of December 2014 has not yet started; and
- c) in any event, section 152AR(5)(e) of the CCA requires access providers to ‘take all reasonable steps to ensure that the service provider receives, in relation to the interconnection, fault detection, handling and rectification of a technical and operational quality and timing that is equivalent to that which the access provider provides to itself’.

Why should access providers be required to use the same technology as NBN in provisioning and assurance when technical neutrality is seen as a key tenet of good regulation?

5.2 Additional costs to comply with NBN standards

Assuming there was a ‘common provisioning and assurance system’ available, for Frontier to access and use, to ‘adopt the same product constructs, provisioning and assurance systems as the NBN’ Frontier would need to:

- a) understand the complex NBN products and systems;
- b) conform its products (and therefore, its networks) to NBN standards;
- c) build systems to interface with the NBN provisioning and assurance systems; and
- d) (likely) pay to access and use the NBN provisioning and assurance systems.

This would cause a significant commercial detriment for Frontier.

Requiring consistent arrangements and standards with the NBN would force Frontier to use more complex and expensive systems – the establishment and ongoing costs would be significant and unnecessary.

In addition, Frontier Networks have been constructed, before and after the creation of the NBN, according to Frontier’s own technical and commercial imperatives. Frontier Networks offer specialised wholesale products and services for the senior housing industry (**Seniors’ Product**) and in doing so, Frontier has developed a legitimate commercial advantage over competitors in the highly-competitive market for installation of networks in greenfield developments and the upgrade of networks in brownfield developments.

Mandating consistent products with the NBN could:

- a) necessitate network changes so that Seniors’ Products may no longer be provided over a Frontier Network, which would deprive end users of an important service, destroy the capital Frontier has invested in setting up that Seniors Product, and deny Frontier a legitimate line of business; or
- b) if Frontier Network could be changed provide to NBN products and Seniors’ Products, Frontier would have more limited avenues by which to earn a return on the capital it has expended to develop and provide those Seniors’ Products (as SBAS-wholesale customers would not on-supply these Seniors’ Products to their end users). This leaves end users deprived of an important service and fewer end users to provide a return on the capital Frontier invested to provide the Seniors’ Product (which would likely see the price of that product increase).

Larger providers may be able to conform their systems and practices to NBN arrangements and standards, but it is unlikely Frontier could bear this cost.

6 Retail markets

6.1 ACCC questions

In the SBAS/LBAS FAD Inquiry, the ACCC asked:

29. Are there thresholds that must be met in order to justify entry into retail markets or submarkets supplied [by] particular superfast networks? What are these thresholds and how do they affect entry decisions?

6.2 Frontier incurs costs regardless

Typically, each retirement community served by a Frontier Network has between [REDACTED] potential subscribers.

Frontier notes that:

- a) the small size of each Frontier Network may mean access seekers would consider the addressable market to be limited; and
- b) irrespective of whether an access seeker actually requests an SBAS over a Frontier Network, absent an exemption, Frontier would nonetheless be required to have the *capacity* to supply that SBAS on request and so, will need to incur the majority of costs listed above. That is, there is likely to be little if any demand to justify the incurrence of significant upfront costs by Frontier.

Frontier should be free to elect to comply but not compelled to do so on all of its networks.

7 Small provider exemption

7.1 ACCC questions

In the SBAS/LBAS FAD Inquiry, the ACCC asked:

46. Is an exemption of small providers from the application of the SAOs, as set out in the SBAS IAD, appropriate?

7.2 Small provider exemption

Frontier strongly supports an exemption from the SBAS FAD for small providers.

As Frontier submits above:

- a) the implementation and ongoing costs of complying with the SBAS declaration will be disproportionately high for small providers such as Frontier; and
- b) such costs would be higher than any competition gains that would result from regulating SBAS on Frontier Networks.

7.3 Effect on Frontier prices

As Frontier is a small network provider, with no ability to cross subsidise between products, the impact of these costs on Frontier is disproportionately heavy, particularly as Frontier has not previously wholesaled all of its services or provided wholesale access services to retail service providers on all of its networks, only selectively.

Frontier sees significant competitive pressure on the prices for services provided over Frontier Networks. Complying with the SBAS on all of its networks would necessarily see prices rise, but given the competitive pressures already at play, Frontier would struggle to recover these SBAS costs via a price increase.

7.4 Effect on competition

Frontier submits that not exempting small providers like Frontier from the SBAS FAD may have a chilling impact on infrastructure competition.

Were small providers not exempt from the SBAS FAD, Frontier submits that small providers would be at a competitive disadvantage to construct new networks; large providers who can absorb the compliance costs (or who would not need to incur substantial implementation costs) would be at a significant advantage in the market, reducing overall competition and economically efficient investment in telecommunications infrastructure.

This is not in the long-term interests of end-users, who benefit from the price and technological competition of a greater number of diverse providers in the market (as shown by Frontier's innovative Seniors' Products).

As the ACCC notes on page 10 of the SBAS Final Decision of July 2016 that:

An access regime ... must not discourage future investment in networks or network elements where such investment is efficient.

Frontier submits that there is sufficient competition, and efficient investment, in greenfield estates (and brownfield estates undertaking upgrades) to win the right from developers to supply fixed network infrastructure in retirement communities.

8 SBAS FAD exemption

8.1 ACCC questions

In the SBAS/LBAS FAD Inquiry, the ACCC asked:

47. ... how should ... an exemption [for small providers] operate? Please explain how this exemption relates to the criteria in subsection 152BCA(1).

8.2 SBAS IAD exemption

Having less than 20,000 end users of the relevant services, Frontier is a 'Small Provider' under clause 5 of the SBAS IAD. Frontier supports the wording of this exemption.

The Australian Communication and Media Authority's *Communications Report 2014-2015* (the **ACMA Report**) notes on page 20 that at June 2015, there were:

- a) 12,762,000 internet subscribers in Australia (excluding mobile); and
- b) 33,755,000 internet subscribers in Australia (including mobile).

A provider with 20,000 'Specified Services' (as defined in the SBAS IAD) would therefore have the following approximate market share:

- c) 0.16% of internet subscribers in Australia (excluding mobile); and
- d) 0.06% of internet subscribers in Australia (including mobile).

8.3 Matters for consideration in making an access determination

In compliance with subsection 152BCA(1) of the CCA, such an exemption would:

- a) promote the long term interests of end users by:
 - a. promoting infrastructure competition;
 - b. reducing pressure on retail prices; and
 - c. permitting seniors to receive products and support tailored for their special needs; and
- b) protect the legitimate business interests of small carriers, consider the direct costs of providing access to the SBAS, and promote the economically efficient operation of a network, by:
 - a. not unfairly burdening small carriers with disproportionately high compliance costs (especially when RSPs may never obtain an SBAS from that carrier, in which case those costs would never be recovered); and
 - b. permitting a return on capital for specialised products developed by that carrier that would not be acquired by end users served via an SBAS.

9 Alternate exemptions

9.1 ACCC questions

In the SBAS/LBAS FAD Inquiry, the ACCC asked:

47. Are there any other exemptions that the ACCC should consider?

Frontier suggests three other possible exemption mechanisms.

9.2 Exemption for providers with less than 100,000 data services in operation

Rather than measuring 'Specified Services' (as defined in the SBAS IAD), an exemption mechanism could apply to a provider that has less than 100,000 internet subscribers (including mobile).¹

By referring to the market for internet services as a whole, the true size of a provider is captured. A large telco with hundreds of thousands of ADSL connections, but less than 20,000 'Specified Services', would more easily be able to absorb the compliance costs for supplying the SBAS, and should not be able to rely on the small provider exemption.

This method may also be easier to calculate than by measuring Specified Services.

9.3 Exemption for providers with less than less than 1% of all data services in operation

Whether measuring 'Specified Services' (as defined in the SBAS IAD), or all internet services in operation (as suggested in paragraph 9.2), an exemption could attach to providers with less than 1% of the relevant services.

The benefit of an exemption that operates by reference to a percentage of the total number of 'Specified Services' or internet services in operation is that it automatically scales to the total size of the market.

¹ Using the ACMA Report, a provider with 100,000 internet services in operation would hold around 0.30% of all Australian internet subscribers (excluding mobile).

9.4 Exemption for providers of telecommunication services to Senior Housing Communities

The special nature of residential aged care and retirement village communities means that certain additional services are usually required in connection with a voice or data service, as listed in paragraph 2.1.

Given that other retail service providers may not offer these specialised services, it is likely that if Frontier was subject to the SBAS declaration, and other entities supplied telecommunications services over Frontier Networks, residents would lose the benefit of Frontier's experience and additional services [REDACTED]

[REDACTED] This is not in the long-term interests of end-users.

In addition, as noted in above and in Frontier's 4 December 2015 submission to the SBAS draft declaration inquiry, Frontier considers that the market for the installation of superfast networks in Senior Housing Communities is highly competitive.

Frontier therefore submits that superfast networks supplying end-users in Senior Housing Communities be exempt from an SBAS declaration.

Frontier notes that the Federal Government has legislation governing residential aged care facilities, and each State and Territory has licensing legislation for retirement villages. An SBAS exemption could draw on definitions in such legislation to determine whether a set of premises is a retirement community that should be subject to the exemption.

For example, the proposed an exemption for (see p 56 of Draft SBAS Declaration):

*a service supplied through an **access multiplexer** located in a **multi-dwelling unit** or a **node** 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 in the same **multi-dwelling unit** or **node** are **business customers, public bodies or charity customers...***

could be sensibly extended to include:

... business customers, public bodies or charity customers or senior housing community customers...²

² Senior housing community customers could be defined by reference to existing legislation to mean any resident of:

- a) a 'Retirement Village' as defined under the *Retirement Villages Act 1986* (Vic), *Retirement Villages Act 1999* (NSW), *Retirement Villages Act 1987* (SA), *Retirement Villages Act 2004* (Tas), *Retirement Villages Act 1999* (Qld), *Retirement Villages Act 1992* (Qld), *Retirement Villages Act 1992* (WA), *Retirement Villages Act 2012* (ACT), *Retirement Villages Act* (NT);
- b) a residence or facility owned, managed or operated by an 'Approved Provider' as defined by the *Aged Care Act 1997* (Cwlth); or
- c) any other residence, facility or community owned, managed or operated for one or more purposes, which includes the provision of retirement accommodation or aged care.

Note that limb c) is intended to capture other retirement communities (for example, motor home retirement communities that are specifically excluded from *Retirement Villages Act 1999* (Qld)) but to exclude aged care provided to individuals or couples in private homes rather than specialist facilities.