

9 December 2022

Sean Riordan
General Manager
Communications Markets and Advocacy
Australian Competition and Consumer Commission
Via email

Dear Sean

Re Superfast broadband access service – access determination inquiry draft decision October 2022

Aussie Broadband Limited (**Aussie Broadband**) welcomes the opportunity to respond to the Australian Competition and Consumer Commission (**ACCC**) access determination inquiry on superfast broadband access service (**SBAS**).

Aussie Broadband agrees with ACCC's draft decision to continue benchmarking regulated access terms and pricing for the SBAS against NBN equivalent services. We also believe it is essential to ensure the ongoing regulation of non-recurring SBAS charges and welcome the further regulation of other ancillary charges currently levied by SBAS providers. It is our view that these pricing regulations coupled with improved transparency of service levels for SBAS providers will promote acceptable standards and provide regulatory recourse for matters that may adversely impact consumers and competition.

Aussie Broadband acknowledges that the ACCC intend to make their final decision on SBAS Final Access Determination (**FAD**) in 2023 when the NBN Special Access Undertaking (**SAU**) matters are more settled. We appreciate that NBN future price paths will be considered with respect to benchmarking SBAS pricing.

SBAS pricing

Pricing methodology

Aussie Broadband agrees that pricing methodology for setting regulated access charges for the SBAS is to continue to be benchmarked against NBN pricing for similar wholesale access residential grade products. We believe that regulated access charges for the SBAS should reflect NBN's prevailing bundled and discount offers at the speed tiers regulated under the FAD. Overall, Aussie Broadband consider the regulation and benchmarking of pricing promotes consumer's long term interests by encouraging flexible pricing and competition, with a regulatory fallback position where required to ensure customers do not pay more for equivalent NBN services.

Regulated price components and anchor points

Aussie Broadband agrees with the ACCC's draft decision that regulated access prices for SBAS will continue to be referenced directly to equivalent access prices for NBN services. Our position is that SBAS charges and network costs to Retail Service Providers (**RSPs**) should be aligned to NBN and not exceed current NBN charges for access and usage. As a result, we also agree with ACCC benchmarking charges against NBN access prices and discounts for equivalent residential grade products at the regulated speed tiers, including the services with bundled access and usage prices as offered by NBN from time to time. Additionally, Aussie Broadband appreciates ACCC's consideration of the current NBN SAU before making a final decision. In particular, the current SAU proposal to remove bundled discounts for direct product offers which are subject to maximum price and minimum CVC inclusions.

Aussie Broadband further believes that SBAS access prices at the 25/5-10 Mbps and 50/20 Mbps speed tiers should be both regulated and remain consistent with current and future NBN charges. We appreciate that ACCC is seeking to facilitate consistent broadband service offerings across both NBN and SBAS networks. We also understand NBN's intention to reposition the 25/5 Mbps service as its entry level broadband offering. However, we disagree with ACCC's decision not to regulate prices for SBAS 12/1 Mbps services on the basis that RSPs may continue to view the 12/1 Mbps as an entry level offering and as a result, expect it to be regulated alongside all other speed tiers.

Fibre access broadband service

Aussie Broadband agree to the continuation of regulated access prices for the fibre access broadband service to be benchmarked to Telstra's wholesale ADSL service, at download / upload speeds of 30Mbps, until the end of 2023. However, this is based on the understanding that the service will be withdrawn in all areas of the South Brisbane and Velocity estates and migrated to Uniti Group's Layer 2 network. We also agree on the premise that Telstra's network infrastructure will be decommissioned by the fourth quarter of 2023.

Should the service continue post 2023 and on an ongoing basis, Aussie Broadband will welcome a review by ACCC through a FAD variation inquiry. While we currently accept the regulated prices, we will expect any ongoing access prices post 2023 for fibre access broadband services to be benchmarked to NBN pricing.

Non-recurring and ancillary charges

Aussie Broadband agrees with ACCC's draft decision to regulate non-recurring charges imposed by SBAS providers such as connection, transfer, and end user appointment fees. The decision to regulate and benchmark charges against NBN's comparable charges for service activation, service reactivation, service transfer, service transfer reversal and end user premises appointments is welcomed by Aussie Broadband. We have concerns relating to current SBAS charges of this nature, such as one BSAB provider's \$99 service activation fee which we consider both excessive and unreasonable. We question whether this charge is warranted in light of the function being provided, and in view of NBN's comparable charge of \$5 for transferring consumers between RSPs. As a result, Aussie Broadband believes that connection fees associated with service activation and reactivation should be in line with NBN's charge and two-tiered approach as identified in the draft decision. Furthermore, due to the excessive over charging of the current service activation fee from OptiComm, and the fact that the ACCC will wait for the NBN SAU to be finalised before issuing a FAD, Aussie Broadband request that any regulated benchmark pricing adjustments be backdated to 19 July 2021 to align with the start of the final access determination process.

Aussie Broadband understands that the ACCC have not yet decided whether to regulate other ancillary charges levied by providers, such as network-to-network interface services and state-based aggregation service charges. Aussie Broadband's view is that these charges should also be regulated at minimum, should they continue to exist at all. Overall, Aussie Broadband believes that unreasonably high charges that fail to reflect actual operational costs to SBAS providers ultimately impedes on customers transferring between networks and RSPs. We consider it imperative to maintain retail competition and to ensure the long term interest of the end user (**LTIE**).

Regional Broadband Scheme levy

Aussie Broadband appreciates that regulated access prices for the SBAS will be inclusive of the Regional Broadband Scheme (**RBS**) levy. Whilst we are agreeable to the RBS levy application, we strongly support the legislated concessions and current exemption of paying this levy for smaller providers. Aussie Broadband currently falls into this category and we believe we should remain exempt from this report.

Non-price terms and conditions

Aussie Broadband agrees with ACCC to maintain the current regulated non-price terms and conditions and welcomes the additional requirement for SBAS providers to provide information relating to the service attributes as outlined in the draft decision. We believe that keeping service standards in line with these attributes, along with a benchmark level of service is important for maintaining service quality. Further, we believe the required performance reporting against service standards each quarter assists in ensuring providers are also held to account for service standard failures or inadequacies.

Exclusions for the SBAS access determination

Small network exclusion

Aussie Broadband acknowledges ACCC's draft decision is to remove the small network exclusion from the standard access obligations for small scale operators of SBAS networks. While we appreciate ACCC's reasoning, we maintain our position that the small network exclusion should be retained where there is a competitive environment. It is Aussie Broadband's view that small scale SBAS providers must offer wholesale access on non-discriminatory terms.

Competition based exclusion

Aussie Broadband understand ACCC's draft decision not to provide any competition-based exclusions from the standard access obligations for SBAS providers for the term of the access determination. It is our view that an even competition playing field is to be maintained at all times and is the most beneficial outcome for the LTIE. We note the ACCC has not seen information that would support an exclusion for SBAS networks that would be in the LTIE and therefore, we believe that the implementation of a competition based exclusion must only be in circumstances where it is commercially viable and promotes effective competition.

Duration

Aussie Broadband accept that the price and non-price terms set out in the new SBAS FAD will apply until 28 July 2026 and appreciate that any inquiry initiated by ACCC to vary an access determination will be informed by consultation with stakeholders.

Warm regards,



Andrew Webster
General Manager – Risk, Compliance & Regulatory Affairs