



# Fixed line telecommunications services declaration inquiry

## Consultation and position paper

31 August 2018

[Version 2 – error on page 12 corrected – 8 November 2018.]

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# 1. Introduction

Declaration of a telecommunications service by the ACCC allows access seekers (retailers or wholesalers) to obtain access to an infrastructure owner's service on request, in accordance with the standard access obligations (SAOs) set out in Part XIC of the *Competition and Consumer Act 2010* (CCA).

The ACCC can make these declarations when it has conducted an inquiry and considers it is in the long term interests of end-users (the LTIE).

On 17 April 2014, the ACCC published its final decision to extend and vary the existing declarations<sup>1</sup> (the '2014 Declaration Final Decision') under section 152AL of the CCA, of the following fixed line telecommunications services, which are generally provided over Telstra's copper network, effective from 1 August 2014 until 31 July 2019:<sup>2</sup>

- Unconditioned Local Loop Service (ULLS)
- Line Sharing Service (LSS)
- Wholesale Line Rental (WLR)
- Local Carriage Service (LCS)
- Fixed Originating Access Service (FOAS, formerly PSTN OA)
- Fixed Terminating Access Service (FTAS, formerly PSTN TA).

As the existing declarations expire on 31 July 2019, the ACCC must consider whether these declarations should be remade, further extended, revoked, varied, allowed to expire or extended and then allowed to expire.

The National Broadband Network (NBN) rollout is well advanced – as at 10 August 2018 over 7 million premises are able to connect to the NBN, with over 4 million already connected.<sup>3</sup>

As the NBN rollout progresses, the relevance of Telstra's bottleneck copper network declines. Within the fixed line rollout, end-users must migrate to the NBN or another high-speed network as the legacy copper services are switched off. However, in the short term, the network still remains relevant to millions of end-users, either prior to migration or in NBN fixed wireless and satellite areas where legacy services remain available.

## 1.1. Purpose and consultation approach

During this declaration inquiry, the ACCC is considering whether the current declarations for the six fixed line services listed above should be remade, further extended, revoked, varied, allowed to expire or extended and then allowed to expire.

The ACCC is conscious that at this point in time the rollout of the NBN is well advanced and due to be completed by 2020, with the full migration of customers in the NBN fixed line footprint expected to occur in 2021.

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<sup>1</sup> <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-declaration-inquiry-2013/final-report#declaration-inquiry-final-report>

<sup>2</sup> CCA, subsection 152ALA(7).

<sup>3</sup> <https://www.nbnco.com.au/corporate-information/about-nbn-co/corporate-plan/weekly-progress-report.html>

In this interim period, the ACCC has decided to take a streamlined approach to this declaration inquiry. The approach aims to:

- provide stakeholders with an opportunity to convey their views; and
- minimise the resources required for industry to engage with the consultation.

This consultation and position paper does not set out in full the detailed explanations and discussions of economic models and methodologies set out in the 2013-14 fixed line declaration documents.<sup>4</sup> Rather, the ACCC will be using as its starting point the findings made in its 2104 Final Declaration Decision<sup>5</sup> and focusing on seeking submissions and consulting on what remains the same and what has changed since the last declarations.<sup>6</sup> The ACCC will also consider what needs to be taken into account in making its decision on the future of these declarations, having regard to the timing of the NBN rollout/migration and related implications for Telstra's remaining fixed line services monopoly.

Consistent with that approach, this consultation and position paper seeks views on the ACCC's position to **extend the six existing declarations of the fixed line services for five years until 30 June 2024**. This further extension would retain the same terms, including service descriptions, as the existing declarations.

The ACCC's *Guideline to the declaration provisions for telecommunication services under Part XIC of the Competition and Consumer Act 2010* also provides guidance about the declaration process and the ACCC's general approach to declaration decisions.<sup>7</sup>

Submissions are sought on the ACCC's position, specific questions raised in this document (see consolidated list at [Attachment A](#)) and any other matters stakeholders may wish to raise.

After considering any submissions, the ACCC will publish a final decision on this matter. At this stage, the ACCC does not propose publishing a draft decision prior to finalising this matter. If substantial issues are raised regarding the ACCC's position, the ACCC can undertake further consultation before making a final decision.

If declarations are to remain in effect, a separate process will be undertaken in the future to consider the Final Access Determinations (FADs) that applies to these services (including pricing). The current FADs expire on 30 June 2019.

## 1.2. Making a submission

The ACCC encourages industry participants, other stakeholders and the public more generally to consider and make submissions on the issues set out in this consultation and position paper.

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

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<sup>4</sup> These documents are available for reference here: <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-declaration-inquiry-2013>

<sup>5</sup> <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-declaration-inquiry-2013/final-report>

<sup>6</sup> Sections 505A and 505B of the *Telecommunications Act 1997*.

<sup>7</sup> <https://www.accc.gov.au/publications/guideline-for-part-xic-declaration-provisions-for-telecommunication-services>

should clearly identify the commercial-in-confidence material by replacing the confidential material with an appropriate symbol or 'c-i-c'.

The ACCC expects that claims for commercial in confidence status of information by parties will be limited in nature in order to allow widest possible participation in the public inquiry.

The *ACCC-AER information policy: the collection, use and disclosure of information* 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 can be downloaded from the ACCC's website.<sup>8</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. Please contact Andrew Hunt regarding any questions you have concerning this consultation on 02 6243 1075.

Submissions are due on Friday, 12 October 2018.

Please email submissions to:

[fixedline@acc.gov.au](mailto:fixedline@acc.gov.au)

In addition, to assist reduce the costs and complexity of engagement, the ACCC has provided a web form to allow a short submission to be made in response to the consultation questions without the need to construct a full written submission. This form is available on the consultation hub here: <https://consultation.acc.gov.au/communications-1/fixed-line-services-declaration-inquiry-2018>.

## 2. Legislative framework

Under Part XIC of the CCA, the ACCC can declare a specified eligible service if it is satisfied that this will promote the LTIE of carriage services or of services provided by means of carriage services.<sup>9</sup>

When determining whether declaration of the service promotes the LTIE, the ACCC must have regard to the extent to which declaration is likely to result in the achievement of the following three objectives:<sup>10</sup>

- promoting competition in markets for telecommunications services;
- achieving any-to-any connectivity (the ability of end-users on a particular network to communicate with end-users on any other network); and
- encouraging the economically efficient use of, and the economically efficient investment in, the infrastructure by which telecommunications services are supplied, and any other infrastructure by which such services are, or are likely to become, capable of being supplied.

An eligible service is a carriage service or a service that facilitates the supply of a carriage service.<sup>11</sup> A carriage service is defined in the *Telecommunications Act 1997* (Telco Act) as a

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<sup>8</sup> <https://www.acc.gov.au/publications/acc-aer-information-policy-collection-and-disclosure-of-information>

<sup>9</sup> CCA, section 152AL.

<sup>10</sup> CCA, section 152AB.

<sup>11</sup> Where the service is supplied, or capable of being supplied, by a carrier or carriage service provider (whether to itself or other persons). CCA, subsection 152AL(1).

service for carrying communications by means of guided and/or unguided electromagnetic energy.<sup>12</sup> This includes communications services, such as telephone and internet services, that are provided using fixed-lines, satellite-based facilities, mobile towers and certain radio communications links. The unconditioned local loop service is an example of a carriage service, while access to facilities (such as ducts and exchange space) are examples of services that facilitate the supply of carriage services.

Once a service is declared, an access provider (typically an infrastructure operator) that supplies the declared service to itself or others must also supply the service, upon request, to service providers (or access seekers) in accordance with the standard access obligations set out in section 152AR of the CCA. The ACCC must also commence a public inquiry into making an access determination for that service (a FAD). The access determination may include a broad range of terms and conditions but must specify price or a method of ascertaining price.<sup>13</sup>

The ACCC is required to conduct a public inquiry during the 18 month period preceding the expiry of a declaration.<sup>14</sup>

The declaration inquiries referred to in sections 152AL/ALA of the CCA are inquiries under Part 25 of Telco Act, which states that the ACCC must:

- publish the fact that that it is holding an inquiry and certain other matters (section 498);
- provide reasonable opportunity for a member of the public to make a written submission (the ACCC is taken not to have provided a reasonable opportunity to make submissions unless it has allowed a period of at least 28 days) (section 500); and
- must prepare and publish a report (section 505).

The Telco Act also allows the ACCC to have regard to prior evidence, submissions and other material and information and prior findings from the 2014 Final Declaration Decision (sections 505A and 505B) when undertaking this Declaration Inquiry. This enables the ACCC to consider what remains the same and has changed since the last declarations and, therefore, what needs to be taken into account for any fresh decision. This enables a streamlined approach to this consultation, noting that the ACCC retains the ability to undertake any further consultation as necessary.

## 2.1. The long term interests of end-users (LTIE)

The following considers the statutory test outlined above that the ACCC must use to determine whether declaration is in the LTIE. The following sections broadly outline aspects of these elements that would apply, whereas Chapters 4 and 6 consider the relevant services more specifically.

### **Promoting competition in telecommunications markets**

Since the ACCC's focus is the long-term interests of end-users, the ACCC must consider whether competition will be promoted in the markets for services used by end-users; these are downstream retail markets. To deliver retail services, retail service providers (RSPs) require wholesale services that allow them to supply these retail products. The question for

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<sup>12</sup> *Telecommunications Act 1997*, section 7.

<sup>13</sup> CCA, subsections 152BC(3) and 152BC(8).

<sup>14</sup> CCA, subsection 152ALA(7).

this declaration inquiry is which wholesale services should continue to be declared in order to promote competition in the related retail markets and thereby promote the LTIE.

Consistent with the 2014 Final Declaration Decision, the ACCC considers that there are three main related markets for which the regulated services are supplied over bottleneck infrastructure. These are:

- fixed voice services;
- fixed broadband services; and
- bundles of fixed voice and broadband services.

In considering whether declaration would promote competition, the ACCC applies a 'with or without' test to declaration. In general, without declaration a provider with bottleneck monopoly infrastructure has the incentive and ability to raise prices, limit access or reduce quality for access seekers' customers.

Further, subsection 152AB(4) of the CCA provides that, in determining the extent to which declaration is likely to result in the objective of promoting competition, regard must be had (but is not limited)<sup>15</sup> to the extent to which declaration will remove obstacles to end-users of listed services gaining access to listed services.

### **Achieving any-to-any connectivity**

Subsection 152AB(8) of the CCA provides that the objective of any-to-any connectivity is achieved if, and 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, or a similar service, with each other whether or not they are connected to the same network.

In the declaration context, only certain services are of substantive relevant to the achievement of any-to-any connectivity.

Any-to-any connectivity is most relevant in this context to voice interconnection services – originating and terminating access (FOAS/FTAS). Voice interconnection is the handover of telephone calls between telecommunications network operators. Through interconnection arrangements, network operators provide end-users with access to other end-users, services or content on other networks, regardless of which retailer they use.

### **Economically efficient use of, and economically efficient investment in, infrastructure**

In determining the extent to which declaration is likely to encourage the economically efficient use of, and economically efficient investment in, infrastructure, subsection 152AB(6) of the CCA also requires the ACCC to have regard to the technical feasibility of providing and charging for the services, the legitimate commercial interests of the supplier(s) of the services, and the incentives for investment in infrastructure.

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<sup>15</sup> CCA, subsection 152AB(5).



### 3. The services in question

The existing declarations apply to the following wholesale services that are supplied using Telstra's copper network. The declared services can be grouped as network access, resale and voice interconnection services:

The ACCC does not propose to alter the service descriptions from those used in the 2014 Final Declaration Decision. The ACCC considers that the existing service descriptions remain current and appropriate.

**Please note:** full service descriptions are available on this inquiry's consultation page.<sup>16</sup>

#### **Network access services**

The unconditioned local loop service (ULLS) and line sharing service (LSS) are network services that can be used by access seekers to supply products:

- to other access seekers at the wholesale level (such as wholesale fixed voice services or wholesale fixed broadband services); or
- directly to end-users at the retail level:
  - ULLS (which gives access to the copper line) can be used to supply fixed voice, fixed broadband or a bundle of both; and
  - LSS (which gives access to only the high frequency part of the copper line) can be used to supply fixed broadband where the end-user wishes to retain a traditional voice service rather than VOIP via broadband.

#### **Resale services**

The wholesale line rental (WLR), local carriage service (LCS) and public switched telephone network originating access (FOAS OA) (pre-selection and override), which are wholesale inputs usually purchased as a bundle to allow an access seeker to supply traditional retail fixed voice services.

The WLR provides access to the low frequency part of the copper line to enable fixed voice calls and includes a dial tone and telephone number. The LCS involves the carriage of a telephone call from one end-user to another end-user in the same standard zone or local exchange area. FOAS pre-selection and override provide for the handover of telephone calls between network operators where the caller wants to use another service provider for particular services, such as international calls.

Purchase of the WLR, LCS (the two resale services) and FOAS (pre-selection and override) services, usually as a bundle, enables access seekers to provide a full suite of voice services to their retail customers (local, long distance, international and fixed-to-mobile calls). Resale services enable access seekers to supply end-users with traditional fixed voice services without having to invest in their own equipment in Telstra's telephone exchanges. Being part of a bundle, FOAS OA (pre-selection and override) is considered for the purposes of this inquiry as being part of resale services, rather than voice interconnection services.

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<sup>16</sup> <https://www.accc.gov.au/regulated-infrastructure/regulatory-projects/fixed-line-services-declaration-inquiry>

## Voice interconnection services

The fixed originating access service (FOAS) (special numbers<sup>17</sup>) and fixed terminating access services (FTAS) are used to allow the connection of fixed voice calls between end-users on different networks. These services support any-to-any connectivity between end-users.

In the 2014 Final Declaration Decision, the ACCC noted that there may be a need to move to a technology neutral description of interconnection. However, at this time the ACCC is not proposing any change. The existing standard remains workable and there is no agreement in Australia on an IP-based interconnection standard.<sup>18</sup>

### Question 1

Do you consider that the fixed line service descriptions as declared in 2014 remain current and appropriate? Please explain the reasons for your view.

## 4. The 2013-14 declaration inquiry

On 17 April 2014, the ACCC published its 2014 Final Declaration Decision for the Fixed Services Review Declaration Inquiry. The ACCC decided to extend and vary the declarations for each of the existing fixed line services. The new declarations came into force on 1 August 2014.

As noted above in Chapter 2, the Telco Act also allows the ACCC to have regard to prior evidence, submissions and other material and information and prior findings from the 2014 Final Declaration Decision (sections 505A and 505B) when undertaking this Declaration Inquiry. This section of the consultation and position paper does not set out all of the discussion of the Final Declaration Decision, but provides for ease of reference the relevant concepts and summarises the ACCC's final views from that decision. Please refer to that document for the full findings.

### 4.1. Network access services

Network access services refers to the ULLS and LSS services. In the 2013-14 declaration inquiry, the ACCC received five submissions in response to the draft report commenting on the future regulation of network access services. AAPT, iiNet, Macquarie Telecom, Optus and Telstra all supported the continued declaration of the ULLS and LSS.

### Promotion of competition

In section 4.1.3.1 of the Final Declaration Decision, the ACCC considered that 'without extending the declarations, Telstra will have significant market power in the negotiation of commercial terms and conditions for these services. In particular, Telstra will have the power to charge higher prices for the network access services and access seekers will be unable to compete effectively with Telstra by offering products to end-users at competitive prices.' The ACCC further concluded that 'extending the declaration of ULLS and LSS will promote

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<sup>17</sup> Call origination for the facilitation of 13/1300 and 1800 number services.

<sup>18</sup> See discussion of the future of interconnection in Part 6.2 below.

greater competition in related downstream markets and will provide to access seekers with greater flexibility to develop products which meet the needs of their end-users.’

### **Economically efficient use of, and economically efficient investment in, infrastructure**

Section 4.1.3.2 of the 2014 Final Declaration Decision set out the ACCC’s view that declaration would promote retail competition and lead to greater efficiency through incentivising innovation, investment and cost-reflective pricing. It further considered that ‘if the declarations were not extended, Telstra would have the ability and incentive to charge prices for the ULLS and LSS that exceed the efficient costs of supplying those services. This would increase the costs to access seekers of using their existing copper-based DSLAM equipment and could lead to less than efficient use of access seekers’ infrastructure investments and disincentives to undertake any further investments that may otherwise be efficient and commercially viable’.

Any-to-any connectivity is not of substantial relevance to considering declaration for network services and was not discussed in detail in the ACCC’s final view in the 2014 Final Declaration Decision.

The ACCC concluded in the 2014 Final Declaration Decision that the continued declaration of network services was in the LTIE.

## **4.2. Resale services**

Resale services refers to the WLR, LCS and FOAS (pre-selection and override) services, which are typically sold as a bundle to allow retailers to sell a voice service without the need for any of their own hardware in exchanges. All five submissions from AAPT, iiNet, Macquarie Telecom, Optus and Telstra agreed in the 2013-14 declaration inquiry that the declarations for resale services should be extended, noting that Telstra submitted it was only necessary where network services were not available.

### **Promotion of competition**

The ACCC’s 2014 Final Declaration Decision found that continued declaration would promote competition (section 5.1.3.1 refers). Retail services allow access seekers to provide a national service with only some or none of their own equipment installed in exchanges. Without declaration, the ACCC determined that Telstra would have the ability and incentive to increase prices or deny access, reducing their ability to compete nationally – particularly in the context of migration to the NBN.

### **Economically efficient use of, and economically efficient investment in, infrastructure**

In section 5.1.3.2 of the 2014 Final Declaration Decision, the ACCC considered that continued declaration would ‘encourage the efficient use of both access seekers’ DSLAM equipment and Telstra’s copper network’. Further, without declaration it may incentivise investment by access seekers in equipment that would not be efficient and result in underutilisation of the copper network.

As with network services, any-to-any connectivity is not of substantial relevance to considering declaration for resale services and was not discussed in detail in the ACCC’s final view in the 2014 Final Declaration Decision.

The ACCC concluded in the 2014 Final Declaration Decision that the continued declaration of resale services was in the LTIE.

### 4.3. Voice interconnection services

The currently declared FTAS service involves the carriage of telephone calls, by the access provider, from a point of voice interconnection with the access seeker's network to the party receiving the call. The FOAS (special numbers) is the call origination for the facilitation of 13/1300 and 1800 number services.

As pre-selection and override services are typically purchased together with other resale services, these functions of FOAS are discussed with other resale services above. FOAS special number call origination (e.g. 1300 numbers), as well as terminating services (FTAS), are billed each time they occur.

All submissions to the 2013-14 declaration inquiry agreed that the declarations for voice interconnection services should be extended.

A caller cannot select which network the person they are calling is on. Accordingly, in its final views in section 6.1.3 of the 2014 Final Declaration Decision, the ACCC considered that network effects would mean that a network owner with a large number of fixed voice services has the ability and incentive to exercise market power by raising the price of termination on its network to any network owner that has a smaller number of customers. This had impacts in relation to all three statutory criteria for assessing the LTIE.

#### **Promotion of competition and economically efficient use of, and economically efficient investment in, infrastructure**

Without declaration, the ACCC found in the 2014 Final Declaration Decision that the exercise of such power would likely cause competitive harm to the extent it meant higher costs being passed on to end-users or end-users switching to the larger provider to avoid the costs (section 6.1.3.1 refers). For similar reasons, the ACCC found that efficient investment could be deterred, or inefficient use of existing, infrastructure could occur without declaration (section 6.1.3.3).

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

At section 6.1.3.2 of the 2014 Final Declaration Decision, the ACCC was of the view that network operators have market power in respect of calls terminating on their network and calls to special numbers that originate on their network. Network operators have the ability and incentive to use their market power to either deny interconnection or to impose above cost charges for these interconnection services. Doing so would either prevent or discourage any-to-any connectivity between end-users on different networks.

As such, the ACCC concluded in the 2014 Final Declaration Decision that the continued declaration of voice interconnection services was in the LTIE.

## 5. Relevant changes since 2014

At the time of making the 2014 Final Declaration Decision, the ACCC expected that during the 5 year declaration period the NBN would continue its rollout and end-users would progressively migrate to the NBN or another high-speed network as the legacy copper services are switched off. The NBN roll out is now well advanced – as at 10 August 2018

over 7 million premises are able to connect to the NBN, with over 4 million already connected.<sup>19</sup> As expected, the relevance of Telstra's bottleneck copper network is declining but it remains relevant to millions of end-users in the meantime.

*[Updated 8 November 2018 – An erroneous paragraph relating to the copper network has been deleted.]*

A pause in the hybrid-fibre coaxial (HFC) components of the NBN rollout in late-2017<sup>20</sup> will also increase the relevance of the copper network to some end-users in the short term, as their migration timing may be delayed. However, the ACCC does not consider that the pause on the HFC rollout is a substantive issue for the consideration of future declaration, given its short term effect on only a relatively small proportion of end-users.

Lastly, Telstra is the Primary Universal Service Provider under the Telecommunications Universal Service Obligation (USO) to provide a standard voice telephone service to all premises on request, under contract until 2032. However, in its December 2017 response to the Productivity Commission's 2017 inquiry into the USO, the Government announced its intention to develop a new Universal Service Guarantee (USG) to provide both broadband and voice services to all Australian premises on request.<sup>21</sup> That response also noted that a consideration in developing the new USG will be alternative means to provide voice services in NBN satellite areas. Whether any of the legacy copper network could have a role in that context remains unclear.

## 6. Considering future declaration in 2018

It is clear that the copper network remains relevant to a large number of end-users. The March 2018 Snapshot of Telstra's customer access network<sup>22</sup> indicates that it still has over 1.1 million ULLS in operation (which can be used by third parties to provide retail voice and or broadband services) and around 300,000 LSS (for third party retail broadband only services), out of the nearly 6 million services supplied over the copper network. The Telstra Economic Model (TEM) Structural Separation Undertaking (SSU) FY18H1 Public Report<sup>23</sup> also identifies that there are just over 1 million resale services in operation (listed as 'Local Carriage Services') still active on the copper network.

The key question is whether continued declaration would be in the LTIE, having regard to the mandatory considerations in the CCA.

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<sup>19</sup> <https://www.nbnco.com.au/corporate-information/about-nbn-co/corporate-plan/weekly-progress-report.html>

<sup>20</sup> <https://www.nbnco.com.au/blog/the-nbn-project/changing-the-way-we-activate-on-our-hfc-network.html>

<sup>21</sup> <https://www.communications.gov.au/documents/australian-government-response-productivity-commissions-inquiry-telecommunications-universal-service>

<sup>22</sup> <https://www.accc.gov.au/system/files/Snapshot%20of%20Telstra%27s%20customer%20access%20network%20-%20Mar%202018.pdf>

<sup>23</sup> <https://www.accc.gov.au/regulated-infrastructure/communications/monitoring-reporting/telecommunications-reports-record-keeping-rules/telstra-ssu-migration-plan-reporting/tem-reports>

## 6.1. Network services and resale services

The considerations relevant to the declaration of network services and resale services are quite similar – as both allow an access seeker to provide a retail service in competition with the monopoly infrastructure owner. In some cases an access seeker may have their own DSLAM equipment installed in exchanges, in others they will not.

While many end-users have already migrated to NBN based services (which are in most cases substitutes for the legacy copper network's services within the NBN fixed line footprint), a large number of end users still receive services over Telstra's legacy copper network. This includes end users in the NBN fixed line services footprint where the rollout and migration has not been completed, as well as end users in fixed wireless and satellite areas where the copper network is not being 'switched off' at this time and that have not chosen to use NBN based services.

Without continued declaration, in the context of migration to the NBN, there remains an incentive and ability for Telstra to charge access seekers higher wholesale prices to access the copper network if the services were to become unregulated. The ability to charge higher prices would allow a monopoly infrastructure provider to offer its own retail services more cheaply, which would in turn be advantageous for retaining end users when they choose an NBN service provider. However, with continued declaration of network and resale services, access seekers would continue to be able to offer competitive retail services to continue to compete over the legacy copper network and vie for retail customers as they migrate to the NBN.

In relation to the requirement in subsection 152AB(4) of the CCA (see section 2.1 of this paper for the overviews of these specific legislative requirements), end-users do not directly acquire the services from the provider – rather, they acquire retail services that utilise them via a retailer. End-users would likely be able to access such retail services from a vertically integrated monopoly provider (particularly where there is a USO in place), they may not be able to do so on reasonable terms – hindering their access to those services. Declaration can remove obstacles to retail competition and end-user choice by facilitating the entry of alternative service providers.

Accordingly, further to the 2014 Final Declaration Decision and having regard to the changes since 2013 described in Chapter 5, the ACCC considers extending the declaration of network and resale services would continue to **promote competition** in relevant markets. This is particularly the case until the competitive landscape is better known once the NBN rollout is complete and decisions relating to the future of the USO are made by the Government.

Compared to at the time of the 2014 Final Declaration Decision, the likelihood of new investment in the legacy network is substantially lower, so the ACCC does not consider it as relevant to declaration at this point in time. However, continued declaration of network and resale services during the NBN rollout and migration will help maintain **economically efficient use of existing infrastructure**, as it will ensure access prices better reflect efficient costs and end user services can still be competitively offered utilising existing infrastructure – both the copper network and any existing DSLAM equipment that has been installed in exchanges by access seekers.

Having regard to the above and further to the 2014 Final Declaration Decision, the ACCC's position is that continued declaration of network services and resale services would be in the LTIE.

### Question 2

Do you consider that continued declaration of network access services will promote competition and the economically efficient use of infrastructure? Please explain the reasons for your view.

### Question 3

Do you consider that continued declaration of resale services will promote competition and the economically efficient use of infrastructure? Please explain the reasons for your view.

## 6.2. Voice interconnection services

Any-to-any connectivity remains of particular relevance to voice interconnection services – as these services allow users on one network to make and receive voice calls to another party regardless of which network they are on. While the number of fixed line SIOs is dropping, the larger networks retain a position of power such that if they were to raise the cost of voice interconnection services it could negatively impact on any-to-any connectivity. Any-to-any connectivity can be more readily assured through continued declaration.

In relation to subsection 152AB(8) of the CCA, the ACCC considers that continued declaration will mean end-users will be able to communicate with each other whether or not they are connected to the same network. Accordingly, the declaration of voice interconnection services will **achieve any-to-any connectivity**.

Further, such price increases would impact retail competition as smaller providers would be forced to take higher prices to allow their users to call users on the large networks. Prices that reflect the exercise of power drawn from network effects would also result in less efficient use of the network.

In relation to the requirement in subsection 152AB(4) of the CCA, end-users do not directly acquire the services from the provider – rather, they acquire retail services that utilise them via a retailer. End-users would likely be able to access such retail services from a vertically integrated monopoly provider (particularly where there is a USO in place), they may not be able to do so on reasonable terms – hindering their access to those services. Declaration can remove obstacles to retail competition and end-user choice by facilitating the entry of alternative service providers.

As such, continued declaration would continue to **promote competition** in retail markets.

Regarding the requirements of subsection 152AB(6) of the CCA, given the legacy nature and longstanding regulatory arrangements applicable to the six services currently under consideration, the ACCC considers that technical feasibility is no longer an issue of substantial relevance and this discussion paper does not discuss these matters in detail.



However, this does not prevent submissions on these matters if there are new issues stakeholders wish to raise.

Despite the migration to the NBN, given the large number of services still in operation over the copper network, the ACCC considers Telstra will retain the ability to exploit economies of scale and scope, and recover efficient costs if the six services continue to be declared. Accordingly, consistent with the 2014 declaration, the ACCC considers continued declaration would not be substantially detrimental to Telstra's legitimate commercial interests.

Also, as the NBN rollout is scheduled for completion in 2020, the main focus is now more appropriately on the economically efficient use of existing infrastructure<sup>24</sup> rather than incentives for new investment, as investment in the copper network (either by access seekers or Telstra) is likely to decline in conjunction with the NBN migration. As such, the effect on incentives for investment is likely to be neutral.

Accordingly, declaration would continue to promote the **economically efficient use** of the remaining copper network infrastructure.

Having regard to the above and further to the 2014 Final Declaration Decision, the ACCC's position is that continued declaration of voice interconnection services would be in the LTIE.

#### Question 4

Do you consider that continued declaration of voice interconnection services will achieve any-to-any connectivity, promote competition and maintain economically efficient use of existing infrastructure? Please explain the reasons for your view.

#### Interconnection in the future

Voice interconnection services may continue to exhibit qualities that warrant declaration in the future, within and outside the NBN fixed line footprint – even if the copper network is no longer in use. For example, the provider of a FOAS special service cannot choose the network the call originates from or terminates on. Nor can a caller making a standard voice call choose which network the call terminates on.

As noted above, there is an increasing move from TDM to IP-based voice services. In addition to this trend, voice services are increasingly being delivered 'over-the-top' on the internet<sup>25</sup>, which is outside of existing voice interconnection arrangements (whether those be TDM or IP-based). These OTT services ultimately rely on the exchange of data traffic under the internet interconnection arrangements between providers.

The ACCC has previously given consideration to the declaration of an internet interconnection service. For example, in 2004 the ACCC conducted an inquiry into whether declare an internet interconnection service, but decided not to proceed with a declaration.<sup>26</sup>

The ACCC also considered internet interconnection in its recent communications sector market study, which identified concerns where Telstra, Optus and TPG appear to hold some market power in relation to access to their networks. The study noted that the ACCC is

<sup>24</sup> Part of the ACCC's required LTIE considerations under section 152AB.

<sup>25</sup> Communications Sector Market Study – Final Report (April 2018), page 7.

<sup>26</sup> Internet Interconnection Service: Final Report on whether or not an Internet interconnection service should be declared under Part XIC of the Trade Practices Act 1974 (Cth) (December 2004).



continuing to assess whether access to these services is available at prices, and on terms, that support competition in downstream markets.<sup>27</sup>

As noted above, the ACCC does not propose to adopt a technology neutral description of voice interconnection at this point in time. However, depending on industry moving to IP-based voice interconnection and the outcomes of the ACCC's assessment of the internet interconnection market, consideration of a technologically neutral service description that covers IP (voice and data) interconnection may be warranted in the future.

## 7. The ACCC's position

While the legacy copper network is becoming less relevant in the broader Australian telecommunications market, it is likely that in locations around Australia it will remain as bottleneck infrastructure of relevance to many end-users at least until the NBN rollout is complete.

Based on the factors described in Chapters 4 to 6, and in the context of a changing market while the NBN rollout and migration are completed, **the ACCC's position is that the long term interests of end-users (LTIE) will be promoted by the six existing declarations being extended.**

### Length of declarations

Due to the current timing of this inquiry, which is required under the CCA prior to the expiry of the existing declarations, the inquiry is being undertaken in the interim period where the NBN rollout is well advanced but not complete. Accordingly, a number of matters relevant to the length of any declarations are still developing; for example, the size of the footprint for legacy copper wire services and the number of customers or retail competitors that will be using the legacy network.

As such, the ACCC's position is that – if these services are declared – **the declarations should be extended for five years until 30 June 2024.**<sup>28</sup> This will allow time for a further declaration inquiry after the NBN rollout and migration is expected to be complete (by 2020 – with full migration potentially around 18 months later) and the competitive landscape is clearer.

#### Question 5

Do you support the extension of the six fixed line declarations?

#### Question 6

Is the extension of the declaration for five years until 30 June 2024 an appropriate timeframe, or should a shorter period be considered?

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<sup>27</sup> Communications Sector Market Study – Final Report (April 2018), page 10.

<sup>28</sup> The ACCC may, by notice published in the Gazette, extend or further extend the expiry date of a specified declaration under section 152AL, so long as the extension or further extension is for a period of not more than 5 years (CCA, subsection 152ALA(4)).

## 8. Final access determinations (FADs)

As a separate matter that is not relevant to the question of declaration, if ACCC were to continue declaration of the services in some form, access determinations (FADs) would need to be made.

The existing FADs that apply to the six fixed line services are in place until 30 June 2019. In the previous FAD Final Decision<sup>29</sup>, the ACCC applied a one-off 9.4 per cent decrease in the primary prices of all the declared services.

If the ACCC were to continue declaration of the services in some form, it would assist the ACCC to receive any early views on potential future access issues, including access terms and pricing (including, for example, whether a 'rollover' approach to the terms and pricing would be appropriate). Early views would assist the ACCC in formulating its approach if a FAD is required.

Responses to the question below will not be considered in, or form any part of, the ACCC's decision on declaration.

### Question 7

If the six services are declared by the ACCC, are there any issues or views you would like to flag with respect to price and non-price terms for access to the potentially declared services at this stage?

## 9. Next steps

Following this consultation, the ACCC will consider submissions and determine whether further consultation is needed, or whether it can move to a final decision on the declaration of the six fixed line services.

Once a final decision is made and if some or all of the declarations are extended, the ACCC will commence the process to consult on making FADs. The FAD process must be commenced before the current FAD expires on 30 June 2019, unless a declaration inquiry is still on foot and the FAD is extended in the interim as a result.

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<sup>29</sup> <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2013/final-decision>

## Attachment A – Consolidated list of questions

### **Question 1**

Do you agree that the service descriptions remain current and appropriate?

### **Question 2**

Do you consider that continued declaration of network access services will promote competition and the economically efficient use of infrastructure? Please explain the reasons for your view.

### **Question 3**

Do you consider that continued declaration of resale services will promote competition and the economically efficient use of infrastructure? Please explain the reasons for your view.

### **Question 4**

Do you consider that continued declaration of voice interconnection services will achieve any-to-any connectivity, promote competition and maintain economically efficient use of existing infrastructure? Please explain the reasons for your view.

### **Question 5**

Do you support the extension of the six fixed line declarations?

### **Question 6**

Is the extension of the declaration for five years until 30 June 2024 an appropriate timeframe, or should a shorter period be considered?

### **Question 7**

If the six services are declared by the ACCC, are there any issues or views you would like to flag with respect to price and non-price terms for access to the potentially declared services at this stage?