



**Australian
Competition &
Consumer
Commission**

**Layer 2 bitstream service declaration
Final report**

February 2012



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1 Introduction

The Australian Competition and Consumer Commission (ACCC) has concluded its public consultation on the service description of a Layer 2 bitstream service. Subsection 152AL(3C) of the *Competition and Consumer Act 2010* (CCA) requires the ACCC to declare a Layer 2 bitstream service as soon as practicable after the subsection commences. The subsection is expected to commence on 13 April 2012.

This is a final report setting out the views of the ACCC and stakeholders on the service description for the local bitstream access service, as this Layer 2 bitstream service will be known.

A declaration instrument with the service description of the local bitstream access service is attached. The ACCC is publishing this declaration prior to the commencement of the legislative provision to provide industry with certainty as to what services are considered Layer 2 bitstream services.

1.1 Structure of the report

The paper is structured as follows:

- **Section 2** provides an overview of the legislative provisions regarding the declaration of a Layer 2 bitstream service
- **Section 3** outlines the issues for a Layer 2 bitstream service description
- **Section 4** outlines the consultation undertaken and submissions received
- **Section 5** outlines the ACCC's service description
- **Appendix A** contains the declaration instrument, including service description.

1.2 Consultation Process

Subsection 152AL(3E) of the CCA provides that the ACCC is not required to hold a public inquiry under Part 25 of the *Telecommunications Act 1997* (Telco Act) for a declaration regarding this Layer 2 bitstream service. However, unlike other declarations under subsection 152AL(3) of the CCA, the Layer 2 bitstream declaration will not have an expiry date and will stay in force indefinitely.¹ The ACCC, therefore, considered it prudent to consult on the proposed service description of the declared Layer 2 bitstream service.

In August 2011, the ACCC released a discussion paper on the service description for a Layer 2 bitstream service. The ACCC received submissions from AAPT, iiNet and Internode, NBN Co, Optus and Telstra. In November 2011, the ACCC released a draft final report and draft service description for a further period of consultation. The ACCC received submissions from NBN Co, Optus, Telstra and TransACT. All the submissions are available on the ACCC's website.

¹ Subsections 152ALA(1), 152ALA(5) and 152ALA(5A) of the CCA.

2 Legislative Background

The *Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Act 2011* (NBN Access Arrangements Act) introduced amendments to both the Telco Act and the CCA regarding Layer 2 bitstream services.²

These amendments set out a regime to regulate the provision of Layer 2 bitstream services to ensure that these services are offered on an open and equivalent access basis. This includes a mandatory requirement for the ACCC to declare a Layer 2 bitstream service.

The amendments commence on a day set by proclamation or 12 months after Royal Assent (12 April 2011) if no date is set by proclamation. It is anticipated that these amendments will commence on 13 April 2012.

Subsection 152AL(3C) of the CCA requires the ACCC to declare a Layer 2 bitstream service as soon as practicable after the commencement of the subsection. Under subsection 152AL(3) of the CCA, the Layer 2 bitstream declaration will not have an expiry date and will stay in force indefinitely.³

The reasoning behind having a declaration that does not expire is set out in the Explanatory Memorandum which states that ‘it is not appropriate to require the declaration to expire,’ and requiring the declaration to stay in force indefinitely ‘provides certainty in relation to the enduring nature of this requirement.’⁴

This Layer 2 bitstream declaration will apply only to services supplied using a designated superfast telecommunications network.⁵ A designated superfast telecommunications network includes a telecommunications network (except the NBN) used, or proposed to be used, to supply one or more Layer 2 bitstream services, and used, or proposed to be used to supply a superfast carriage service, to residential or small business customers, provided that the network:

- came into existence after 1 January 2011, or
- is upgraded after that time and as a result of the upgrade becomes capable of supplying a superfast carriage service.⁶

A superfast carriage service is defined in subsection 141(10) of the Telco Act as a carriage service that enables end-users to download communications, the download transmission data rate is normally 25 Mbps or higher and the carriage service is supplied using a line to a premises occupied or used by an end-user.⁷

The Explanatory Memorandum makes it clear that a Layer 2 bitstream service is ‘not intended to capture services provided through mobile, satellite or wireless networks.’⁸

² Note that references to the Telco Act and the CCA are references to those acts as amended by the Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Act 2011.

³ Subsections 152ALA(1), 152ALA(5) and 152ALA(5A) of the CCA.

⁴ Revised Explanatory Memorandum, Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Bill 2011, p. 174.

⁵ Subsection 152AL(3D) of the CCA.

⁶ Section 152AGA of the CCA.

⁷ The definition in the Telco Act is imported into the CCA in section 152AC of the CCA.

⁸ Revised Explanatory Memorandum, Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Bill 2011, p. 167.

The ACCC is not able to vary or revoke the Layer 2 bitstream declaration made under subsection 152AL(3C) of the CCA.⁹ Further, paragraphs 152BC(3)(h) and (i) would usually allow the ACCC to use an access determination to limit or restrict the application of the standard access obligations (SAOs). However, the NBN Access Arrangements Act inserted subsection 152BC(4A) into the CCA which specifically excludes the operation of paragraphs 152BC(3)(h) and (i) of the CCA for an access determination relating to a Layer 2 bitstream service supplied using a designated superfast telecommunications network.

2.1 Effect of Layer 2 bitstream service declaration

Once the ACCC declares a Layer 2 bitstream service, carriers and carriage service providers will be required to comply with the Category A SAOs under section 152AR of the CCA.

Prior to the commencement of the NBN Access Arrangements Act, the Category A SAOs were known as the SAOs. The Category A SAOs are the SAOs that carriers or carriage service providers other than an NBN corporation must comply with. The Category A SAOs require that an access provider must:

- supply the service to an access seeker on request,
- ensure that the quality and fault handling of the service provided to the access seeker is equivalent to that which it provides itself, and
- allow interconnection.¹⁰

2.2 Level playing field arrangements

The NBN Access Arrangements Act inserts provisions into the Telco Act regarding Layer 2 bitstream services. These include the new Parts 7 and 8 which specify that a network capable of supplying a superfast carriage service must not be used unless:

- a Layer 2 bitstream service is available for supply (section 141), and
- the Layer 2 bitstream service is supplied on a wholesale only basis (section 143).

The Layer 2 bitstream service that must be offered under Part 7 is defined as a ‘Layer 2 Ethernet bitstream service’ or a ‘Layer 2 bitstream service specified in a legislative instrument made by the ACMA’ supplied as a fixed line carriage service.¹¹ At this time, the ACMA has not made an instrument defining a Layer 2 bitstream service. The Explanatory Memorandum states that the terms ‘Layer 2’ and ‘Ethernet’ are to have their industry standard definitions.¹²

Exemptions by the Minister

The Minister may exempt specified networks, local access lines or owners from the:

- section 141 Layer 2 bitstream provision (section 141A), and/or
- section 143 wholesale only provision (section 144).

⁹ Subsection 152AO(4) of the CCA.

¹⁰ Section 152AR of the CCA.

¹¹ Section 7 of the Telco Act.

¹² Revised Explanatory Memorandum, Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Bill 2011, p. 166.

The Minister must consult with the ACCC and the ACMA before making exemptions under sections 141A and 144.

The Supplementary Explanatory Memorandum states, that in exercising the powers under section 141A, the Minister could consider the following:

- the size of the network concerned (e.g., premises serviced)
- the proposed duration of the exemption
- the basis on which the exemption would cease
- the impact on investors of having to change to existing plans, particularly where projects are underway, contracts are signed, or negotiations are well advanced and this can be demonstrated
- the relative benefits and disadvantages for end-users, including the period they may need to wait for superfast broadband
- the types of customers predominantly served by the network
- the technological capabilities and adaptability of the technologies involved
- the availability of other wholesale services on the network (networks would also be subject to normal telecommunications regulation, including access regulation)
- significant changes in a carrier's operating environment that would have a demonstrable and material impact on its planned operations, and
- the potential impact on NBN Co's ability to deliver on its national objectives.¹³

The Supplementary Explanatory Memorandum states that in exercising the exemption power under section 144, the Minister could consider a range of factors similar to those that could be considered in relation to an exemption under section 141A.¹⁴

The requirements and exemptions under Parts 7 & 8 of the Telco Act are related to, but separate from the declaration of the Layer 2 bitstream service. The ACCC is responsible for the declaration of this service, while the Minister is responsible for the exemptions decisions.

The ACCC has included a pass through clause in the Layer 2 bitstream service description for Ministerial exemptions given under section 141A of the Telco Act to make clear that these services are exempt from the SAOs.¹⁵ This will mean that networks, local access lines, and owners that are exempt from the requirements of section 141 of the Telco Act will also be exempt from the Layer 2 bitstream service declaration under subsection 152AL(3C) of the CCA.

Under Part 7 of the Telco Act there are statutory exemptions from the level playing field playing field arrangements for certain network extensions.¹⁶ These statutory

¹³ Supplementary Explanatory Memorandum, Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Bill 2011, p. 19.

¹⁴ Supplementary Explanatory Memorandum, Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Bill 2011, p. 24.

¹⁵ The ACCC notes that if the Minister has exempted a network under subsection 141A(1) of the Telco Act, that network is not a designated superfast telecommunications network (through the operation of subsection 152AGA(2) of the CCA) and as such the declaration does not apply. Where a local access line or an owner of a network is exempted under subsections 141A(2) or 141A(3) of the Telco Act, there is no mechanism to automatically exempt the local access line or owner from the operation of a declaration under subsection 152AL(3C) of the CCA.

¹⁶ See subsections 141B(3) and 141B(4) of the Telco Act.

exemptions are imported into the definition of designated superfast telecommunications network, so that those extensions will be excluded from the Layer 2 bitstream service description.¹⁷ For clarity, the ACCC has also included a pass through clause for these statutory exemptions in the Layer 2 bitstream service description.

On 9 January 2012, the Minister granted Telstra exemptions for its fibre network in the South Brisbane exchange area and for selected Velocity sites.¹⁸ These exemptions are subject to conditions, including that Telstra offer a wholesale fibre product.

¹⁷ See subsections 152AGA(5) and 152AGA(6) of the CCA.

¹⁸ Details of the Telstra exemptions can be found on the Department of Broadband, Communications and the Digital Economy's website at: http://www.dbcde.gov.au/broadband/national_broadband_network/level_playing_field_arrangements_and_exemptions/ministerial_exemptions_from_parts_7_and_8_of_the_telecommunications_act_1997_granted_to_da [te](#).

3 Issues for a Layer 2 bitstream service description

3.1 Scope of the service description

The CCA requires that the declaration of this Layer 2 bitstream service cannot be varied or revoked and does not have an expiry date.¹⁹ Because of this, the ACCC has carefully drafted the service description to be technology neutral. The service description will cover all Layer 2 bitstream services that are superfast carriage services provided on non-NBN networks, provided that the services are provided over 'superfast' networks.

The regulatory framework for the Layer 2 bitstream service is focussed on regulation of the customer access network, similar to how NBN Co will be providing the customer access network to the majority of premises in Australia. Consistent with this, the ACCC proposes a service description that covers the customer access network of non-NBN superfast networks. The ACCC has therefore reflected this by naming the declared service the 'local bitstream access service'.

3.2 International jurisdictions

The regulation of access to wholesale broadband services, provided over both copper and fibre optic telecommunications networks, has been considered in several international jurisdictions. In most jurisdictions a monopoly provider has installed (or is installing) and will retain ownership over the majority of the broadband network.

In most of these cases the relevant regulator or advisory body has settled on a definition or service description of the wholesale service that enables an access seeker to provide differentiated retail offerings to end-users. In its August 2011 Discussion Paper, the ACCC considered service descriptions used in the United Kingdom, New Zealand, Malaysia and by the Body of European Regulators for Electronic Communications. The ACCC also considered the service description proposed by NBN Co at that time.

3.3 NBN Co service description

In Australia, NBN Co will also be offering a wholesale Layer 2 bitstream service. This service description is extracted below.

Services supplied by the NBN Co are not covered by a Layer 2 bitstream declaration.²⁰ However, the ACCC has considered the equivalent wholesale service that NBN Co offers under the Wholesale Broadband Agreement when making the Layer 2 bitstream declaration.

NBN Co is offering a Layer 2 bitstream product called the NBN Co Fibre Access Service. NBN Co proposes to define the service as follows:

- (a) The NBN Co Fibre Access Service (the **NFAS**) is an Ethernet-based, Layer 2 virtual connection on the NBN Co Fibre Network that carries traffic between:
 - (i) a User Network Interface (**UNI**) on the Network Termination Device (**NTD**) located at or near a Premises; and

¹⁹ Subsections 152ALA(1), 152ALA(5), 152ALA(5A), and 152AO(4) of the CCA.

²⁰ Subsection 152AL(3A) of the CCA.

(ii) the Network-Network Interface (**NNI**) at the Point of Interconnection (**POI**) associated with the Connectivity Serving Area (**CSA**) in which that Premises is located, for the purposes of enabling Customer or a Downstream Customer to supply a Carriage Service or Content Service.

(b) The NFAS comprises the following four Product Components:

(i) a **UNI**, being a physical port on the NTD at a Premises;

(ii) an **Access Virtual Circuit** or **AVC**, being Ethernet-based, Layer 2 virtual connection on the NBN Co Fibre Network that carries Customer traffic to a UNI on the NTD at a Premises;

(iii) a **Connectivity Virtual Circuit** or **CVC**, being Ethernet-based, Layer 2 virtual capacity on the NBN Co Fibre Network for the transport of Customer traffic from multiple access virtual circuits within a CSA on an aggregated basis and presented at the NNI at the POI associated with that CSA; and

(iv) a **NNI**, being the physical interface (and associated ports) between the NBN Co Fibre Network and the Customer Network at the POI,

each with the Product Features made available by NBN Co, and selected by Customer, in respect of that Product Component.

...

(g) The boundaries of the NFAS are:

(i) the End User-side of the UNI on the NTD located at or near the Premises to which the NFAS is supplied; and

(ii) the Customer-side of the NNI at the POI that serves the relevant Premises.

(h) The NNI at the POI that serves the relevant Premises is the point at which Customer may connect its backhaul to interconnect the Customer Network with the NBN Co Fibre Network. Customer is required to connect to the NNI at NBN Co's appearance on the NBN Co ODF associated with that NNI.²¹

²¹ NBN Co Limited, Product Description: NBN Co Fibre Access Service, Release 1.0, pp. 6-7, contained in NBN Co Limited, WBA Product Catalogue – version 1.0, 30 November 2011.

4 Consultation

Subsection 152AL(3E) of the CCA provides that the ACCC is not required to hold a public inquiry under Part 25 of the Telco Act for a declaration regarding this Layer 2 bitstream service. However, unlike other declarations under subsection 152AL(3) of the CCA, the Layer 2 bitstream declaration will not have an expiry date and will stay in force indefinitely.²² The ACCC, therefore, considered it prudent to consult on the proposed service description of the declared Layer 2 bitstream service.

August 2011 consultation

In August 2011, the ACCC released a discussion paper on the proposed service description. The ACCC allowed four weeks for consultation on this paper. It sought comments on the content and drafting of the proposed service description.

Five parties made submissions in response to the August 2011 Discussion Paper: AAPT, iiNet and Internode, NBN Co, Optus and Telstra. All submissions can be found on the ACCC's website. For the most part, submissions were in favour of the ACCC's draft service description.

AAPT generally agrees with the technology neutral nature of the service description. However, AAPT submits that the proposed service description is too 'open ended' in that it does not explicitly refer to all 'carve outs' and exceptions.²³

iiNet and Internode make a joint submission in which they raise the issue of whether or not Telstra's fibre to the premises network in the South Brisbane exchange area will be covered by the Local Bitstream Access Service. They submit that the ACCC should ensure that the South Brisbane area is covered by some form of access regulation.²⁴

NBN Co submits that the service description should explicitly exclude services provided by NBN Co. It submits that the definition of 'user-network interface' should reference 'designated superfast telecommunications network', as the definition of 'network-network interface' does, thus ensuring that services provided over the NBN are not included in the declaration.²⁵

Optus broadly supports the ACCC's draft service description. It submits that the final decision should explicitly state that the access seeker will be able to offer differentiated quality of service levels and that the declaration applies to all levels of quality of service.²⁶

Telstra submits that the ACCC should not declare a Layer 2 bitstream service at this time because of regulatory and commercial uncertainty. It argues that the ACCC should wait until the NBN Co services have been finalised before making this declaration. Telstra suggests that the draft service description may be too broad and 'fail to define a service that is capable of precise definition.'²⁷

²² Subsections 152ALA(1), 152ALA(5) and 152ALA(5A) of the CCA.

²³ AAPT submission in response to the August 2011 Discussion Paper, September 2011, pp. 2-3.

²⁴ Herbert Geer submission on behalf of iiNet and Internode in response to the August 2011 Discussion paper, September 2011.

²⁵ NBN Co submission in response to the August 2011 Discussion Paper, September 2011, p. 2.

²⁶ Optus submission in response to the August 2011 Discussion Paper, September 2011, p. 2, pp. 5-6.

²⁷ Telstra submission in response to the August 2011 Discussion Paper, September 2011.

November 2011 consultation

On November 24 2011, the ACCC released a draft final report and draft service description for further comment. Four submissions were received from NBN Co, Optus, Telstra and TransACT.

NBN Co states that the service description will ‘facilitate a level playing field.’²⁸

Optus argues that there should not be a pass through mechanism for Ministerial exemptions from the Layer 2 bitstream requirement under Part 7 of the Telco Act. Optus argues that despite a Ministerial exemption, if an access provider still provides a Layer 2 bitstream service that it should be subject to the ‘ACCC’s oversight on price and non-price terms.’²⁹

The ACCC remains of the view that a pass through mechanism for exemptions under Part 7 of the Telco Act is appropriate and adds clarity to the service description. Subsection 152AGA(2) of the CCA states that if a network is the subject of an exemption under Part 7 of the Telco Act, that network is not a designated superfast telecommunications network. This subsection means that, regardless of a pass through mechanism in the service description, such networks would not be subject to this Layer 2 bitstream declaration.

The ACCC considers that the legislation and the explanatory memorandum effect a pass through of the exemptions into the Layer 2 bitstream service declaration.³⁰ The ACCC believes it is helpful to industry to include the pass through mechanism in the service description to clarify which networks are subject to this declaration. It is also open to the ACCC to make other Layer 2 bitstream declarations if the ACCC determines such declarations are in the long-term interests of end-users.³¹

Telstra reiterates its position from the August 2011 consultation, saying that there is no imperative to declare a Layer 2 bitstream service at this time. Telstra suggests that the ACCC should wait until there is more clarity surrounding which networks will be subject to a Layer 2 bitstream declaration and what services will be offered over the NBN.³² Telstra notes that once the ACCC makes the declaration for the Layer 2 bitstream service, it must commence within 30 days a public inquiry into making an access determination.³³

The ACCC is of the view that it is appropriate to make this Layer 2 bitstream declaration at this time. This will give industry certainty as to what services will be regulated under this declaration as access providers develop and build Layer 2 networks.

TransACT argues that the ACCC should address the South Brisbane exchange and the potential that the Layer 2 bitstream declaration is premature because NBN Co has yet to finalise its own product descriptions.³⁴

Given that Telstra has been granted an exemption for the South Brisbane exchange area, the Layer 2 bitstream declaration does not apply to services supplied over that

²⁸ NBN Co submission in response to the November 2011 Draft final report, December 2011, p. 1.

²⁹ *ibid.*

³⁰ Supplementary Explanatory Memorandum, Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Bill 2011, p. 29.

³¹ See subsections 152AL(3F) and 152AL(3G) of the CCA.

³² Telstra submission in response to the November 2011 Draft final report, December 2011, p. 1.

³³ *ibid.*, p. 2.

³⁴ TransACT submission in response to the November 2011 Draft final report, December 2011, p. 2.

network.³⁵ The ACCC does not consider that the current terms of access to Telstra's South Brisbane fibre network raise competition concerns. The ACCC notes that it is able to declare another Layer 2 bitstream service if necessary.

On 30 November 2011 NBN Co published its Wholesale Broadband Agreement, which contains the definition of the NBN Co Fibre Access Service, NBN Co's fibre Layer 2 bitstream product. The ACCC considers that the Layer 2 bitstream declaration will cover products similar to the NBN Co Fibre Access Service that are provided over designated superfast telecommunications networks.

TransACT also submits that there should be a pass through mechanism in the service description for statutory exemptions under subsections 141B(3) and 141B(4) of the Telco Act.³⁶ The ACCC notes that these exemptions are imported into the definition of designated superfast telecommunications network, so are already included in the service description.³⁷ However, for clarity and simplicity in the service description the ACCC has amended it to include a pass through for statutory exemptions.

³⁵ The relevant exemptions can be found on the DBCDE website at:
http://www.dbcde.gov.au/broadband/national_broadband_network/level_playing_field_arrangements_and_exemptions/ministerial_exemptions_from_parts_7_and_8_of_the_telecommunications_act_1997_granted_to_date.

³⁶ *ibid.*

³⁷ See subsections 152AGA(5) and 152AGA(6) of the CCA.

5 Service description

5.1 Background

The ACCC has developed a service description for the service to be declared under subsection 152AL(3C) of the CCA. The ACCC has taken into consideration the fact that the service description cannot be altered or revoked once it is made and that it will not expire.³⁸ Therefore, the ACCC has drafted the service description in general, technology neutral terms to ensure that it is relevant in the future.

The ACCC is permitted to declare other Layer 2 bitstream services, separate to a service declared under subsection 152AL(3C) of the CCA. In declaring this Layer 2 bitstream service, the ACCC is seeking to regulate the customer access network component of superfast telecommunications networks. The ACCC therefore will call this Layer 2 bitstream service the 'local bitstream access service' to differentiate it from other Layer 2 bitstream services.

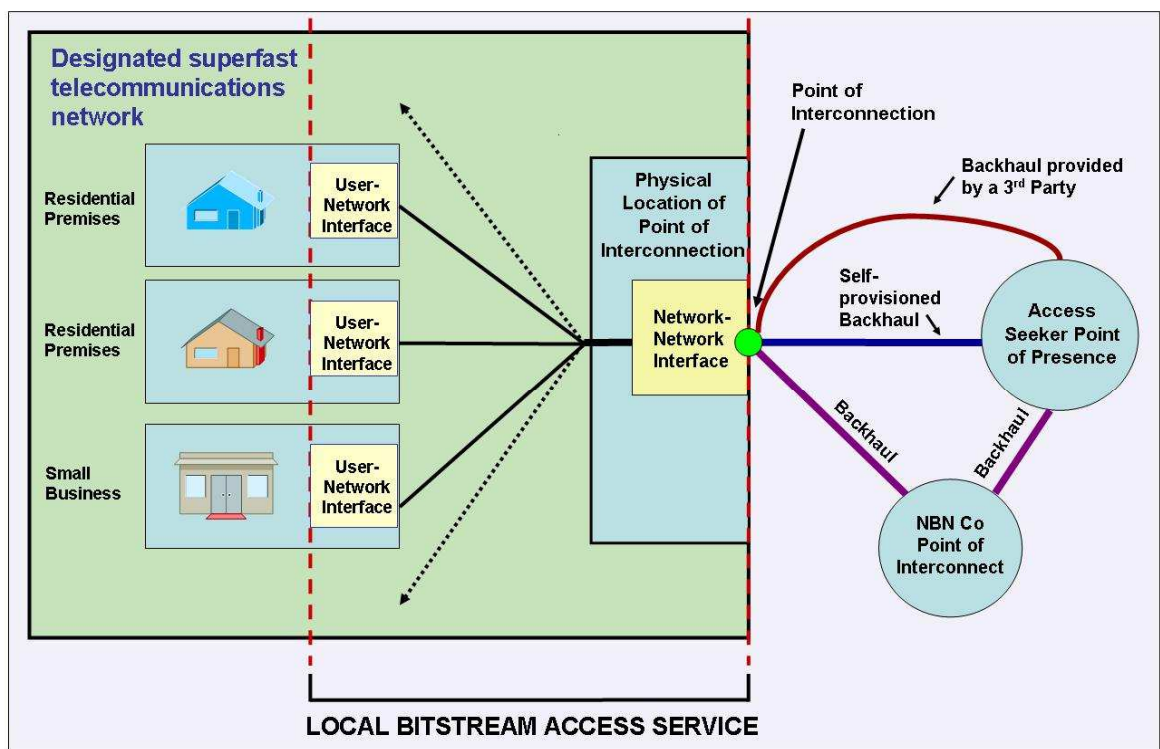
The subsection 152AL(3C) declaration only applies to services supplied using designated superfast telecommunication networks as defined by section 152AGA of the CCA.³⁹ Therefore, a throughput rate must be specified in the service description.

Rather than specifying a particular throughput rate in the declaration itself, the ACCC has specified that the service is to be a superfast carriage service, as defined by section 152AC of the CCA which cross references to subsection 141(10) of the Telco Act.

This provides for some future flexibility in the service description and may allow for the further developments in throughput rate over time. The ACCC considers that this provides an appropriate balance between certainty and ensuring that the service description remains relevant over time.

³⁸ See subsections 152ALA(1), 152ALA(5), 152ALA(5A) and 152A0(4) of the CCA.

³⁹ Subsection 152AL(3D) of the CCA.



The figure above depicts a simplified access network, showing the network connection at the premises, the aggregation of traffic to a point of interconnection and backhaul to an Access Seeker's point of presence (PoP). The backhaul options depicted in the diagram are for example only. The source, routing or method of backhaul will not affect the applicability of the local bitstream access service.

The service description below describes the service from the customer premises to the point of interconnection. The service description does not include any backhaul from that point of interconnection to the Access Seeker's PoP.

The ACCC anticipates that Access Seekers will purchase backhaul from the point of interconnection to the PoP as a separate service from the Layer 2 bitstream access to the customer premises. This backhaul may be provided on a competitive basis. Where competitive backhaul is not available, the ACCC is of the opinion that the backhaul service is likely to be the regulated domestic transmission capacity service (DTCS). Therefore, Access Seekers are likely to be able to acquire DTCS to carry their traffic from the point of interconnection to their PoP.

The ACCC has included a pass through clause in the service description so that it is clear that any Ministerial exemptions under section 141A and statutory exemptions under subsections 141B(3) and 141B(4) of the Telco Act have effect and those networks (or local access lines or owners) are not subject to this declaration.

5.2 ACCC's conclusion

In light of submissions received over the consultation periods, the ACCC has made five changes to the draft service description to arrive at the final service description, below. The reasons for the changes are explained below the service description. Defined terms are in **bold** to highlight that they are defined terms.

The local bitstream access service is a point to point service for the carriage of communications in digital form between a **network-network interface** and a **user-network interface** supplied using a **designated superfast telecommunications network** that is:

- (a) a **Layer 2 bitstream service**; and
- (b) a **superfast carriage service**.

This declaration does not apply to services supplied, or capable of being supplied:

- (a) using a specified network; or
- (b) using a specified local access line; or
- (c) by a specified owner of a local access line;

where that network, local access line or owner is the subject of a Ministerial exemption under section 141A or statutory exemption under subsection 141B(3) or 141B(4) of the *Telecommunications Act* and any conditions that apply to the exemption are satisfied.

Definitions

Where words or phrases used in this declaration are defined in the *Competition and Consumer Act 2010* or the *Telecommunications Act 1997*, they have the meaning given in the relevant Act.

Layer 2 bitstream service has the meaning given in section 152AC of the *Competition and Consumer Act 2010*

designated superfast telecommunications network has the meaning given in subsection 152AGA of the *Competition and Consumer Act 2010*

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

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

superfast carriage service has the meaning given in section 152AC of the *Competition and Consumer Act 2010*

a **user-network interface** means an interface located at a physically defined end-user's premises where the access provider's **designated superfast telecommunications network** is present to an end-user

The five changes are:

- two variations of the pass through mechanism for exemptions under the Telco Act,
- clarifying that the service must be provided over a designated superfast telecommunications network,
- change to the definition of 'point of interconnection', and
- change to the definition of 'user-network interface'.

The pass through mechanism for section 141A exemptions has been varied to align with the terminology in section 141A of the Telco Act. It has also been varied to include a pass through for exemptions under subsections 141B(3) and 141B(4) of the Telco Act. These changes do not affect the scope of the service description.

The service description has been varied to add that the service must be supplied using a designated superfast telecommunications network. This change does not affect the scope of the service description; it simply makes explicit which networks are covered by the declaration as set out in subsection 152AL(3D) of the CCA.

The definition of ‘point of interconnection’ has been varied to reference the standard access obligation in the CCA (subsection 152AR(5)) relating to the interconnection of facilities. This change will ensure that access seekers are able to interconnect at a technically feasible point on the access provider’s network, of the access seeker’s choosing.

The definition of ‘user-network interface’ has been altered to refer to an access provider’s ‘designated superfast telecommunications network’ instead of the access provider’s ‘local access network’. This change aligns the definition of ‘user-network interface’ with the definition of ‘network-network interface’. The change helps to clarify that the service is provided over a designated superfast telecommunications network, which by definition excludes the NBN.

The ACCC believes that the service description for the local bitstream access service will help to ensure that other providers of superfast broadband networks can provide outcomes to consumers similar to those on the NBN. The service description will ensure that all Layer 2 bitstream services that are superfast carriage services, provided over networks other than the NBN, will be regulated.

5.3 Implementation

The ACCC is able to make the decision to declare this Layer 2 bitstream service prior to subsection 152AL(3C) commencing through the operation of section 4 of the *Acts Interpretation Act 1901*. Publishing this declaration prior to commencement will give industry certainty surrounding the requirements of the level playing field provisions, prior to the commencement of those provisions.



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COMPETITION AND CONSUMER ACT 2010

Declaration under subsection 152AL(3)

1. The Australian Competition and Consumer Commission declares pursuant to subsection 152AL(3) of the *Competition and Consumer Act 2010* (the Act) that the local bitstream access service (LBAS) is a 'declared service' for the purposes of Part XIC of the Act.
2. This declaration takes effect on the date that subsection 152AL(3C) of the Act commences. This declaration, pursuant to subsection 152ALA(5A), does not expire.
3. The LBAS is described in Annexure 1 to this instrument.

.....
Rodney Graham Sims
Chairman

Dated: 24/2/12

Annexure 1 – Service description

The local bitstream access service is a point to point service for the carriage of communications in digital form between a **network-network interface** and a **user-network interface** supplied using a **designated superfast telecommunications network** that is:

- (a) a **Layer 2 bitstream service**; and
- (b) a **superfast carriage service**.

This declaration does not apply to services supplied, or capable of being supplied:

- (a) using a specified network; or
- (b) using a specified local access line; or
- (c) by a specified owner of a local access line;

where that network, local access line or owner is the subject of a Ministerial exemption under section 141A or statutory exemption under subsection 141B(3) or 141B(4) of the *Telecommunications Act* and any conditions that apply to the exemption are satisfied.

Definitions

Where words or phrases used in this declaration are defined in the *Competition and Consumer Act 2010* or the *Telecommunications Act 1997*, they have the meaning given in the relevant Act.

Layer 2 bitstream service has the meaning given in section 152AC of the *Competition and Consumer Act 2010*

designated superfast telecommunications network has the meaning given in subsection 152AGA of the *Competition and Consumer Act 2010*

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

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

superfast carriage service has the meaning given in section 152AC of the *Competition and Consumer Act 2010*

a **user-network interface** means an interface located at a physically defined end-user's premises where the access provider's **designated superfast telecommunications network** is present to an end-user